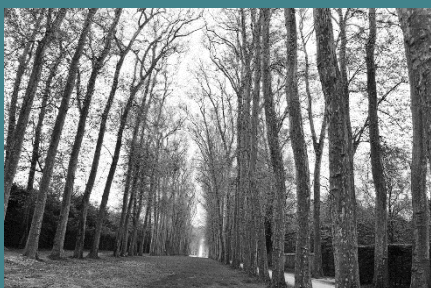




Appendix 13.9

Shadow Habitat Regulations Assessment

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Shadow Habitat Regulations Assessment

Client

Bloor Homes & Pigeon

Project

**North Hemel Hempstead,
Hertfordshire**

Date

November 2025

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APPENDICES

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Rev	Issue Status	Prepared/Date	Approved / Date
-	Draft	REM / 18.09.25	OGJ / 13.10.25

1.0 INTRODUCTION

- 1.1 The following shadow Habitat Regulation Assessment (sHRA) has been prepared by FPCR Environment and Design Ltd. on behalf of Bloor Homes and Pigeon. It provides an assessment of the likelihood for an outline planning application for a residential development at land North of Hemel Hempstead, Hertfordshire (central OS Grid Ref: TL 08435 10789) herein referred to as 'the Site' to result in a significant effect on European Designated Sites.
- 1.2 This report has been prepared to provide supporting information to assist St Albans Council in their responsibility to assess the likelihood of significant effects on Internationally Designated Sites of Nature Conservation importance within their remit. It provides a detailed assessment of the likelihood for the proposals onsite to result in a Likely Significant Effect.

Site Location and Context

- 1.3 The Site is located to the north and east of Hemel Hempstead. It comprises a series of agricultural field compartments that are generally large and open. Where they are present, field boundaries comprise hedgerows or woodland. Other habitats onsite comprise species-poor grassland in the south-east of the Site, a pond and small areas of scrub.
- 1.4 The surrounding landscape to the north, east and west is composed largely of agricultural and pastoral land with small pockets of woodland interspersed throughout. The M1 motorway lies approximately 0.5km east of the Site, with the village of Redbourn beyond. To the south and west of the Site, the landscape comprises the urban environs of Woodhall farm in the north-east of Hemel Hempstead.

Legislation

- 1.5 The Conservation of Habitats and Species Regulations (CHSR) 2017 (as amended) ratifies into UK law the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC). The 2019 amendment ensures that habitat and species protection derived from EU law continues to apply following Brexit. The CHSR requires the compilation and maintenance of a register of European protected sites, which include:
- Special Areas of Conservation (SAC) – designated for important habitats/species listed under Annex I and II of the Habitats Directive.
 - Special Protection Areas (SPA) – designated for important bird populations/assemblages.
 - Ramsar sites – designated for internationally important wetlands.

European Protected Sites Considered

- 1.6 A search area of 15km was considered for European protected sites, with this report assessing the potential impacts of the designated features on the Chilterns Beechwood SAC (Site reference UK0012724) which lies approximately 7.3km west. This is the only European designated site within 15km of the Site.

2.0 THE HRA PROCESS

- 2.1 The following assessment provides the information necessary for the Competent Authority, St Albans City & Borough Council, to fulfil their duty as required under Regulation 63 of the CHSR.
- 2.2 The HRA process has developed into four stages:
- **Stage One: Screening** – also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a likely significant effect, an Appropriate Assessment is required.
 - **Stage Two: Appropriate Assessment** – the Competent Authority will only agree to plans or projects that will not affect the integrity of a European site also known as the “Integrity Test”.
 - **Stage Three: Alternative Solutions** – assesses any alternative solutions of a potentially damaging plan or project that failed the Integrity Test, and if it is determined there are no alternative solutions, the project cannot be agreed to and it will either need to be changed or refused.
 - **Stage Four: IROPI** – The final stage may allow a plan or project to proceed if after failing stage three if it is for Imperative Reasons of Overriding Public Interest (IROPI), and only if suitable compensatory measures are secured.
- 2.3 In accordance with the “People Over Wind” ruling (High Court Justice for European Union Case 323/17)¹, the screening of likely significant effects takes place in the absence of any mitigation measures that would avoid or reduce any effects on European designated sites.
- 2.4 This report identifies and considers ecological pathways between the application site and each European site within the zone of influence selected. Each was screened (Stage One) for a likely significant effect alone and in-combination with other plans/projects. Where there are any ecological pathways that could not be screened out without mitigation, alone or in-combinations, a Stage Two Appropriate Assessment was conducted and included in this HRA.
- 2.5 When assessing mitigation relating to nutrient impacts, in line with the “Dutch Nitrogen Case” (High Court Justice for European Union Case 293/17), any proposed mitigation measures must demonstrate no adverse effect “beyond reasonable scientific doubt” and their benefits must be certain at the time of the appropriate assessment before planning permission can be granted².
- 2.6 The following planning documents have been reviewed where relevant:
- St Albans City & District Council Habitats Regulations Assessment HRA 2024
 - St Albans Local Plan

¹ The Planning Inspectorate (2018) PINS Note 05/2018 Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta. Available at: <https://pinslibrary.org.uk/vufind/Record/22547>

² Planning Advisory Service (2022) Legal advice on the implications of the Habitats Regulations for local authority decision making in the context of nutrient neutrality. Available at: <https://www.local.gov.uk/sites/default/files/documents/PAS%20Briefing%20Note%20NN%2015%20November%2022.pdf>

3.0 STAGE ONE: SCREENING/TEST OF LIKELY SIGNIFICANT EFFECT (TOLSE)

Conservation Objectives for European Sites

SACs

- 3.1 The conservation objectives Chiltern Beechwoods SAC are to: *"ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:*
- *The extent and distribution of qualifying natural habitats and habitats of qualifying species.*
 - *The structure and function (including typical species) of qualifying natural habitats.*
 - *The structure and function of the habitats of qualifying species.*
 - *The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely.*
 - *The populations of qualifying species.*
 - *The distribution of qualifying species within the site."*

CHILTERN BEECHWOODS SAC**Qualifying Features****Table 2: Qualifying Features of Chiltern Beechwoods SAC**

Designation	Qualifying Features
SAC ³	Designated for supporting the Annex I habitat <i>Asperulo-Fagetum</i> beech forests. The site represents an extensive tract of these forests in the centre of the habitats UK range and is an important part of a grassland-scrub-woodland mosaic. Supports important populations of the Annex II species stag beetle <i>Lucanus cervus</i> .

Threats and Pressures

3.2 The most important development-related impacts and activities threatening the condition of the Chiltern Beechwoods SAC are:

- Recreational disturbance
- Hydrological changes
- Nitrogen deposition (due to changes in air quality)

Ecological Pathways

3.3 The ecological pathways typically associated with residential development, which could arise from the proposals alone (not in combination with others), and have the potential to affect the Chiltern Beechwoods SAC are detailed below:

Table 3: The Chiltern Beechwoods SAC Designations Ecological Pathways and HRA Screening Conclusions - Alone

Ecological Pathway	Assessment	Likely Significant Effect?
Recreational Disturbance	Increased recreational disturbance at the SAC has potential to lead to tramping, erosion, vandalism and nutrient enrichment from dog waste⁴. Although the proposed development is over 7.3km, Site's such as the Chiltern Beechwoods can act as attractive 'honey-pot' sites to draw in residents from a wide surrounding area. A Natural England letter provided to Dacorum Borough Council stated the following regarding the likelihood for recreational draw on the SAC "Postcode data was used to derive a ZOI, within which net new development would be expected to result in increased recreational pressure to the Ashridge Commons and Wood SSSI part of the Chilterns Beechwoods SAC. Based on the 75th percentile (distance of which 75% of visitors originated), a 12.6km zone around Ashridge Commons and Woods SSSI was recommended which represents the core area surrounding that part of the SAC where likely significant effects on the SAC from net increases in development due to recreational impacts." The Site fall within this Zone of Influence. It is therefore considered that the development has the potential to lead to an increased recreational disturbance on the SAC. The potential for a likely significant effect as a result of this increased recreational disturbance caused by the proposals therefore cannot be ruled out.	Yes

³ JNCC (2015) Natura 2000 Standard Data Form: UK0012724 Chilterns Beechwoods

⁴ Panter, C., Liley, D., Lake, S., Saunders, P., & Caals, Z. (2022). Visitor survey, recreation impact assessment and mitigation requirements for the Chilterns Beechwoods SAC and the Dacorum Local Plan. Report by Footprint Ecology for Dacorum Borough Council.

Ecological Pathway	Assessment	Likely Significant Effect?
Hydrological Changes	There are no hydrological links between the Site and Chiltern Beechwoods SAC and the Site is sufficiently distant from the SAC for increased surface run-off not to have a significant effect on the designated site.	No
Air Quality	The proposed development site is sufficiently distant from the SAC that construction activities will not significantly impact the SAC. At one point, the A41 comes within 200m of the SAC. However, this specific location is over 22km drive from the proposed Development. The St Albans HRA states " <i>the average vehicle commuting distance of a UK resident is approx. 10km and beyond this distance traffic has generally dispersed across the network. As such the Tring Woodland SSSI is located beyond this distance. Due to the large distance involved, it is considered that the LP would not result in an increase in traffic flows (and thus atmospheric nitrogen deposition) on the A41 at Tring Woodland SSSI</i> ". As per St Albans assessment, we can rule out any significant negative effects on the SAC due to increase in traffic flows.	No

4.0 STAGE TWO: APPROPRIATE ASSESSMENT

- 4.1 The Test of Likely Significant Effect (TOLSE/Screening – Stage One) has scoped out all impacts on the European sites from the proposed development except for the potential impact of recreational pressure on Chilterns Beechwoods SAC.

Recreational Pressure

- 4.2 As the proposed development site falls within the 12.6km ZoI for the Ashridge Commons and Woods SSSI component of the SAC, the development must comply with the relevant Strategic Access Management and Monitoring Strategy (SAMMS). The strategy aims to mitigate potential recreational disturbance on the SAC from new residential developments in-combination. A financial contribution, in accordance with the applicable tariff, will be provided by the development to support the long-term implementation of the SAMMS. The current required contribution is £828.61 per dwelling but is subject to change. This contribution will be secured through a Section 106 agreement before the development commences.
- 4.3 Due to being within the ZoI, the development must also make provision for a new Suitable Alternative Natural Greenspace (SANG). This will provide a range of recreational opportunities for future residents and those in the local area, reducing the need to travel to the Chiltern Beechwoods SAC. A SANG has been proposed to the east of the proposed development Site which complies with the relevant SANG criteria.
- 4.4 The proposed SANG will be 28.8ha in size which will provide sufficiently for the maximum of 1,500 dwellings proposed, in line with the 8ha of SANG per 1,000 residents. The SANG will include a range of habitats including woodland, scrub, grassland and pond creation, providing a varied environment for visitors as well as varied habitats for wildlife. Parking will be provided to the west of the SANG, with the circular walk of over 4.5K starting and finishing at the car park.
- 4.5 As demonstrated in the Habitats Regulations Assessment for St Albans City & District Council⁵, the above measures are considered appropriate to avoid a significant effect on the nearby SAC due to recreational pressure, in isolation and in combination.

⁵ AECOM (2024). Habitats Regulations Assessment Regulation 19 Local Plan. Report by AECOM for St Albans City & District Council

APPENDIX A: THE HABITATS REGULATIONS ASSESSEMENT PROCESS**Legislative Background**

- 4.6 The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive (the Habitats Directive) 92/43/EEC, and EC Directive on Wild Birds (the Birds Directive) (Council Directive) 2009/147/EEC, into national UK law. The Regulations require the compilation and maintenance of a register of European sites that includes Special Areas of Conservation, as well as Special Protection Areas (SPAs) designated for birds and sites designated as internationally important wetlands under the Ramsar Convention known as "Ramsar Sites". These three designations form a collective Europe wide network of internationally protected sites known as Natura 2000.

The Habitats Directive

- 4.7 Article 6(3) of the Habitats Directive requires an Appropriate Assessment of any plans that could affect a Natura 2000 site.

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of Paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

- 4.8 Article 6(4) of the Habitats Directive discusses alternative solutions, the test of "imperative reasons of overriding public interest" (IROPI) and compensatory measures (transposed to Regulation 60):

"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."

- 4.9 A "likely significant effect" is defined as: "Any effect that may reasonably be predicted...that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects."
- 4.10 The "integrity of a site" is defined as: "The coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and / or the level of populations of the species for which it was classified."

The Habitats Regulations

- 4.11 In relation to undertaking and consenting plans or projects, the due consideration of Natura 2000 sites is outlined in regulation 61 of the Habitats Regulations, which has led to the HRA process, as follows.

"61. 1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given."

The Habitats Regulations Assessment Process

4.12 The HRA process has developed into a four stage process as follows:

- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect*, an Appropriate Assessment is required.
- Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site also known as the "Integrity Test".
- Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan or project that failed the Integrity Test, and if it is determined there are no alternative solutions, the project cannot be agreed to and it will either need to be changed or refused.
- Stage Four: The final stage may allow a plan or project to proceed if after failing stage three if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.

Key Case Law in relation to Test of Likely Significant Effect

4.13 The following are some relevant case law judgement quotes in relation to "likely Significant Effect" which are of relevance for a Stage 1 screening.

- 4.14 EC Case C-127/02 – Waddenvereniging and Vogelsbeschermingvereniging – the “Waddenzee Judgement” (paras 45, 47 and 48)
- “...any plan or project ... is to be subject to an appropriate assessment ... if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”*
- “Where plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site.”*
- “In assessing the potential effects of a plan or project, the significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project”*
- 4.15 Boggis v Natural England [2009] EWCA Civ 1061 20th October 2009 (para 36 and 37)
- “Notwithstanding the word “likely” ...is not that significant effects are probable, a risk is sufficient.” “...a claimant who alleges that there was a risk which should have been considered by the authorising authority so that it could decide whether that risk could be “excluded on the basis of objective information”, must produce credible evidence that there was a real, rather than a hypothetical, risk which should have been considered.”*
- 4.16 R (on application of An Taisce) v SoS [2014] EWCA Civ 1111 1st August 2014 (paras 38 and 39)
- “The word “likely” ...implies at least some degree of flexibility. There comes a point when the probability...of a significant effect is so remote that it ceases to be “likely”, however broad the concept of likelihood.”*
- “The competent authority does not have to be satisfied that there is no risk, however remote...”*
- 4.17 EC Case C-258-11 Reference for a preliminary Ruling, Opinion of Advocate General Sharpston ‘Sweetman’ (Para 48)
- “The requirement that the effect in question be “significant” lays down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by article 6(1), activities on or near the site would risk being impossible by reason of legislative overkill.”*
- 4.18 Bagmoor Wind Ltd v Scottish Ministers [2012] CSIH 93 7th December 2012 (para 45)
- “The requirement for objective information at the preliminary examination is not to be equated with a need for scientific knowledge. The Court only refers to “the best scientific knowledge” in the context of the appropriate assessment (para [61]). “Objective”, in this context, means information based on clear verifiable fact rather than subjective opinion.”*
- 4.19 R (Hart District Council) v Secretary of State for the Communities and Local Government [2008] EWHC 1204 (Para 55 and 76)
- “If the competent authority does not agree with the proponents’ view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to the efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information ...”*
- “The competent authority is not considering the likely effect of some hypothetical project in the abstract. The exercise is a practical one which requires the competent authority to consider the*

likely effect of the particular project for which permission is being sought. If certain features ...have been incorporated into that project, there is no sensible reason why those features should be ignored at the initial, screening, stage merely because they have been incorporated into the project in order to avoid, or mitigate, any likely effect...."

Note on Functionally Linked Land

- 4.20 "Functionally Linked Land" or "Functional Linkage" is a term that refers to the potential for habitat away from the designation boundaries of a Natura 2000 site, that is considered to have a "role" or "function" for a qualifying feature "beyond the boundary". This is covered in the Guidance document on the strict protection of animal species of Community interest under Habitats Directive 92/43/EEC 2007. Paragraph 7 states:

"Assessing and evaluating the conservation status of habitats and species within the Natura 2000 network is therefore not always enough, especially when the occurrences of habitats or species are only partly covered by the network, maybe even in some cases only to a relatively small extent."

- 4.21 A case law example of where the concept of Functionally Linked Land (FLL) has been applied was RSPB and others v SoS and London Ashford Airport Ltd [2014] EWHC 1523 16th May 2014 (para 27)

"There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied, as was the case at the Inquiry, that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice."

Note on the Sweetman ruling "people over Wind" and definition of "mitigation"

- 4.22 The *People Over Wind* judgement (Peter Sweetman v Coillte Teoranta (C-323/17)), in April 2018, changed the way mitigation is viewed during the HRA Stage One screening i.e. the Test of Likely Significant Effect. The ruling was based on the view that allowing mitigation measures to be considered at the screening stage allows projects to avoid an Appropriate Assessment (Stage Two), when is meant to be fuller and more detailed analysis of any proposed mitigation measure and whether or not there would be an effect on the integrity of the European site. The ruling stated:

"Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that 4 stage, which constitutes, however, an essential safeguard provided for by the directive." (paragraph 37 of the judgment)"

- 4.23 This has made what constitutes "mitigation" in relation to the European site and what would be considered integral to the scheme. The PINS Notes 05/2018 *Consideration of avoidance and*

reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta provides some clarification as follows:

"The implication of the CJEU judgment is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the HRA screening stage whether the plan or project is likely to have an adverse effect on a European Site.

The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority must proceed to carry out an AA to establish whether the plan or project will affect the integrity of the European site, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures."

4.24 PINS Notes 05/2018 It does on to further explain:

"It should be noted that there is no authoritative definition of what constitutes an integrated or additional avoidance or reduction measure and this should be considered on a case by case basis. If a measure is being introduced to avoid or reduce an effect on a European site then it can be viewed as mitigation. It may be helpful to consider whether a proposal could be considered integral to a plan or whether it is a measure to avoid harm. For instance, the HRA report could identify European sites whose designated features are vulnerable to disturbance caused by people visiting the site. If evidence presented in the HRA report and during the examination demonstrates that the housing allocation is too far from the European site to lead to increased visitor numbers then it could be concluded that there is no pathway for likely significant effects to occur. However if the HRA report determines that the housing allocation would be likely to increase visitor use of the European site and relies on measures which reduce visitor pressure (such as securing land to provide a buffer to the European site or ensuring footpaths and car parks are located away from the site) to avoid or reduce likely significant effects an AA will be required to assess whether the plan will affect the integrity of the European site."

4.25 The interpretation of the above being taken by legal professionals appears to be that if it can be argued that mitigation, whether integrated or additional, is an "avoidance or reduction" measure directly due to an ecological pathway to a Natura 2000 site, then an Appropriate Assessment is required. If it is truly integrated into the proposals for other reasons, for example green space due to an unrelated protected species mitigation licence, as was the case with UK High Court ruling in August 2018 (R (on the application of Langton) v Secretary of State for Environment, Food and Rural Affairs, Natural England [2018] EWHC 2190 Admin) in relation to migration within a badger cull licence, then the mitigation is fully integrated and would not automatically trigger the requirement for an Appropriate Assessment.

Notes on The Dutch Nitrogen Cases (C-293/17 and C294/17)

4.26 The Dutch Nitrogen (Joined Cases C-293/17 and C-294/17 Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others) concerned nitrogen emissions and deposits from farming practices harming European sites.

- 4.27 The meaning of "project" was considered and the CJEU held that whilst EIA projects would all fall within article 6(3), the wider approach to "projects" under article 6(3) means that there may be "projects" which are not within EIA definition: e.g. the grazing of cattle and application of fertilisers.
- 4.28 It was stated that:
- "Article 6(3) of the Habitats Directive must be interpreted as not precluding national programmatic legislation which allows the competent authorities to authorise projects on the basis of an 'appropriate assessment' within the meaning of that provision, carried out in advance and in which a specific overall amount of nitrogen deposition has been deemed compatible with that legislation's objectives of protection. That is so, however, only in so far as a thorough and in-depth examination of the scientific soundness of that assessment makes it possible to ensure that there is no reasonable scientific doubt as to the absence of adverse effects of each plan or project on the integrity of the site concerned, which it is for the national court to ascertain."*
- "Article 6(3) of Directive 92/43 must be interpreted as meaning that an 'appropriate assessment' within the meaning of that provision may not take into account the existence of 'conservation measures' within the meaning of paragraph 1 of that article, 'preventive measures' within the meaning of paragraph 2 of that article, measures specifically adopted for a programme such as that at issue in the main proceedings or 'measures, in so far as those measures are not part of that programme, if the expected benefits of those measures are not certain at the time of that assessment."*
- 4.29 The Key point here is that where the conservation status of a protected habitat is unfavourable the possibility of authorising activities which may subsequently compromise the ability to restore the site to favourable condition and achieve the conservation objectives is "necessarily limited".
- 4.30 By informing the way in which Reg. 63 of the Habitats Regulations 2017 should apply to pollution-related matters, the Dutch Nitrogen Cases have resulted in the need for greater scrutiny of the effects of plans or projects that are likely to, either directly or indirectly, increase nutrient loads to internationally important sites (i.e. SACs, SPAs and Ramsar Sites) where a reason for unfavourable condition is an excess of a specific pollutant.

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