

FOI Reference Number: FOI/219/1920

Date: 09 October 2019

Request:

I would be grateful if you could confirm what the average response times that Shared Environmental Services take to respond to consultations received from Planning authorities.

It would be great if you could break this down into 2017 and 2018, and if possible to date.

And what are the target times.

If you need any clarification on this please do not hesitate to let me know.

(I had also requested some details on references of scientific information which informs the new guidelines which SES are now employing can you confirm that you will be actioning this also).

Response:

Thank you for your information request which Mid and East Antrim Borough Council received on 11 September 2019.

Please find below Mid and East Antrim Borough Council's response in relation to your request.

Q. 'I would be grateful if you could confirm what the average response times that Shared Environmental Services take to respond to consultations received from Planning authorities.

It would be great if you could break this down into 2017 and 2018, and if possible to date'

A. Refer Table below:

	2017	2018	2019 to date
<i>(Completed) Formal Consultations</i>	1632	1935	1040
<i>Avg response time (days)</i>	38	60	59

Q. And what are the target times.

A. *SES is not a statutory consultee - SES undertakes Habitats Regulations Assessments of behalf of all planning authorities. SES response times reflect increasing workload and complexity of applications. SES must also take account of the representations of NIEA in accordance with Regulation 43(3).*

Q. (I had also requested some details on references of scientific information which informs the new guidelines which SES are now employing can you confirm that you will be actioning this also).

A. *The guidance is reflective of recent case law and its interaction with extant scientific evidence.*

For example, the summary of the Natural England commissioned report “Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of Conservation importance” reads: “When all the habitats are considered separately, the response of species richness to long-term N deposition is curved, with sharper losses in diversity from well below the habitat-specific critical load range. At levels of N deposition at and above the upper end of each habitat-specific critical load, additional increments of long-term N are associated with further declines in species richness.”

The Wealden¹ judgment found that Natural England had erroneously advised where a specified threshold relating to deposition of NOx was not exceeded it would justify a finding of no ‘Likely Significant Effect’ alone or in combination

Therefore, it is difficult to justify ignoring ‘small’ increments, especially when the majority of designated sites exceed Critical Levels/Loads.

This is reflected in the Netherlands² judgment: “...where the conservation status of a natural habitat is unfavourable, the possibility of authorising activities which may subsequently affect the ecological situation of the sites seems necessarily limited.” [para 103]

In light the foregoing, SES considered it necessary to revise its approach.

At a recent PAC³ hearing, NIEA advised the commissioner that its ‘operational protocol’ could not be relied upon and was legally vulnerable.

- 1. Wealden D C v SSCLG [2017] EWHC 351 (Admin)*
- 2. CJEU C-293/17 and C-294/17*
- 3. PAC 2018/E0003 (LA01/2016/0373/CA & EN/2018/0017)*

If you are dissatisfied with the handling of part of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the Chief Executive at the Braid Ballymena Town Hall, 1-29 Bridge Street, Ballymena, BT43 5EJ.

Please remember to quote the reference number FOI/219/1920 in any future communications. /

If you are not content with the outcome of an internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Please be advised that Mid and East Antrim Borough Council may release the response to this information request into the public domain via our website at <https://www.midandeantrim.gov.uk/>.

If we publish our response to your request, your personal data will be removed to protect your privacy.