

Date: 4 July 2018
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Reference: PTR2/02/DH/BNP



Mr D Hogger
Examiner of the Beer Neighbourhood Plan

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Dear Mr Hogger

Thank you for your letters dated 5 June and 20 June.

Our responses to your questions are as follows:

Highways Question raised on 5 June 2018

Having visited the proposed development site off Long Furlong, I would welcome confirmation from the District Council that the County Highway Authority is content that a safe and, in all other regards, satisfactory vehicular access to the allocated land can be achieved?

The Senior Highway Development Management Officer (East) at Devon County Council has confirmed that the position is:

The proposed scheme for 31 houses will obtain access from Short Furlong, a road which has not been adopted by Devon County Council due to unresolved drainage problems. Devon County Council will only be able to adopt the new stretch of road which will serve the allocation once a suitable drainage scheme has been devised which resolves the run-off issues for both developments. When a planning application is submitted for the new housing it is anticipated that such a scheme will be required by the imposition of a planning condition/s.

Habitats Regulations Assessment 20 June 2018

I am writing to draw your attention to a recent judgement of the Court of Justice of the European Union (CJEU). In the case of People over Wind & Sweetman v Coillte Teoranta Case C-323/17¹, the CJEU ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and

^[1] View at:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddf571da66f02d449d9f60cc9f39bf8846.e34KaxiLc3qMb40Rch0SaxyNch10?text=&docid=200970&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=628325>

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that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

The implication of this judgement is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the Habitats Regulations Assessment (HRA) screening stage whether a plan is likely to have a significant effect on a European Site.

I would be grateful if the Council could confirm the extent to which it considers the Habitats Regulations Assessment (February 2018) to be legally compliant in the light of the judgement. In considering the response to this letter, the Council should revisit the screening assessment.

I apologise for the fact that two documents, the EDDC screening report and a further HRA opinion commissioned by the District Council, had not been available on our website. I believe that you were sent paper copies. The website has now been rectified and the documents are available as linked below.

[EDDC Screening link](#) – Previously available as included in the Basic Conditions Statement

[HRA opinion link](#)

Background:

East Devon District Council screened the draft Neighbourhood Plan in March 2017 and stated that:

With regard to Habitat Regulations- “In the absence of detailed information to the contrary, East Devon District Council concludes that the proposed development (due to its scale and location) could potentially result in a negative impact on the protected bat species’ and therefore requires a full Habitat Regulations Assessment”.

With regard to Strategic Environmental Assessment- “Taking the above assessment into consideration, The BNDP is likely to have a significant environmental impact beyond that has previously been identified through the SEA of the Local Plan. Beer is located in a sensitive area in the district, and taking into account the scale and nature of proposals in the plan, with particular consideration of the allocated site, an SEA should be undertaken to ensure that environmental impact is considered and satisfactorily mitigated”.

As a result of these conclusions, separate Habitat Regulations and Strategic Environmental Assessments were commissioned by the Parish Council and appear on the website. At pre-submission stage, the District Council commissioned an independent expert opinion regarding the conclusion of the Habitats Regulations Assessment (May 17), to ensure it was appropriate and robust (the SEA was assessed internally by Officers). The Plan was amended in light of the comments received and the Habitat Regulations Assessment was updated (from May 17 to February 18).

Conclusion:

At screening stage, the District Council (as competent authority) concluded, on the basis of the information available, that the Plan could have a significant effect on a European Site. The District Council did not take account of any integrated or additional avoidance measures in reaching this decision.

The Parish Council were asked to undertake a full Habitat Regulations Assessment (an Appropriate Assessment) which identified the potential harm which could occur to the European site and suggested a number of avoidance or integration measures. In order to be satisfied that the conclusions of this Assessment were sound, the District Council commissioned a further expert opinion and this informed the District Council’s comments on the pre-submission version of the Plan. The Habitat Regulations Assessment (February 18) was revised to reflect this feedback.

The Habitats Regulations Statement (February 2018), the opinion sought by EDDC and Natural England (in their response to the submission draft) agree that Policy H3 should include a requirement that:

“Any housing development will be required to undertake a project-level Habitat Regulations Assessment”.

The Neighbourhood Plan has not explicitly included this requirement in the policy and it is considered that this is an oversight. The requirement for a Bat Mitigation Strategy addresses the key concerns. However, the policy would be strengthened and clarified if it were to include the requirement referred to as well as the mitigation measures referred to in 5.1.2 of the HRA.

The Habitats Regulations Assessment is considered to be legally compliant as it recommends integrated or additional avoidance measures as part of a detailed Appropriate Assessment rather than at screening stage. The protective measures form part of the project and are aimed at avoiding or reducing any direct adverse effects for the site. The judgement suggests these can be relied upon at the appropriate assessment stage of the HRA process, in order to conclude that a project does not adversely affect the integrity of the European site.

If you require any further information, please do come back to me.

Yours sincerely

Phil Twamley
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East Devon District Council