

30 September 2015

Our ref: 162092

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The logo for Natural England, featuring the words "NATURAL" and "ENGLAND" stacked vertically in a bold, sans-serif font. "NATURAL" is in a light green color and "ENGLAND" is in a dark green color. The text is set against a solid yellow rectangular background.

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Dear Amanda

Planning consultation: East Devon Local Plan – Habitat Regulations Assessment and Report of Additional Work Following July 2015 Hearing Sessions – Incorporating Proposed Changes to the Plan

Thank you for your consultation on the above dated 26 August 2015 which was received by Natural England on the same day.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

In our responses to the proposed changes to the Draft East Devon Local Plan as consulted upon in April 2015 we set out a number of concerns relating to the soundness of the plan. These were also raised at the July 2015 Hearing Sessions and discussed at a meeting with your Authority on 23rd July 2015.

Compliance with Conservation of Habitats and Species Regulations 2010 (as amended)

This response relates specifically to our concerns with regard to Habitat Regulations compliance (see *attached letter dated 11-06-15*). Our advice is based upon the additional work undertaken, and further proposed changes made, as a result of those representations, specifically the following documents:

- East Devon Local Plan – Report of Additional Work Following July 2015 Hearing Sessions – Incorporating Proposed Changes to the Plan resulting from follow on work (Draft 24 August 2015)
- Habitat Regulations Assessment of the East Devon Local Plan (August 2015)

Based on our response of 11-06-15, the issues we considered needed to be resolved can be summarised as follows:

1. Revision and updating of the Habitat Regulations Assessment (HRA) to take account of changes made to the Plan in 2014, at examination and in 2015.
2. Uncertainty regarding deliverability of mitigation measures and timeliness of delivery – including where and how Suitable Alternative Natural Green Space (SANGS) will be delivered
3. The implications of the proposed increased housing provision, particularly in the West End, for the South East Devon European Sites Mitigation Strategy (SEDESMS) and the level and types of mitigation it proposes.
4. The need to address outstanding recommendations from the HRA of the Exmouth Masterplan

and the risk that some strategic projects may not be deliverable in a way which is compliant with the requirements of the Habitat Regulations

5. The risk to the integrity of Beer Quarry and Caves SAC from proposed development, in the absence of planning guidance which will safeguard important bat commuting and foraging areas.

Taking these in turn:

1. Revision and updating of the Habitat Regulations Assessment (HRA)

We are satisfied that a new, revised HRA has been undertaken which takes account of the recent proposed changes to the Plan. Section 9 in particular identifies some significant challenges which remain in ensuring that adequate mitigation is delivered in a timely manner.

2. Uncertainty regarding deliverability of mitigation measures and timeliness of delivery

The strategic approach to the avoidance of likely significant effect of proposed residential development on 3 European sites (East Devon Pebblebed Heaths SAC/SPA, Exe Estuary SPA/Ramsar and Dawlish Warren SAC), as set out in the 'SEDESMS,' incorporates a range of measures including site access management and monitoring on the European sites, cross-site measures and SANGS.

We acknowledge the progress reported at point 3 in the table of "6. *Commentary on Natural England objections to the plan*" in the "*Report of Additional work...*" document which should begin to address the lack of mitigation delivery to date. However, your Authority still has significant work to do, outside the Plan, to overcome the apparent confusion over pre- and post- CIL Regulations consents, definitions of "infrastructure", etc., in order to establish effective procedures and monitoring systems to ensure that sufficient mitigation can be delivered to keep pace with the occupancy of new residential development within the 10km zone of influence for these European sites. This approach needs to be supported by appropriate policy wording.

Regarding proposed changes to the wording of Strategy 47 we welcome the intention to place the onus on developers to contribute to the provision of mitigation as, in our view, uncertainty regarding responsibility for delivery of mitigation, and SANGS in particular, is a significant risk to your ability to ensure that delivery of the Plan can remain compliant with the Habitat Regulations. However we consider that the policy, as currently drafted, has become extremely lengthy over detailed and potentially unclear in its key messages. It would therefore benefit from a substantive review and rewriting prior to adoption. Attached as Annex 1 are some suggested amendments to the text.

3. The implications of the proposed increased housing provision, particularly in the West End, for the South East Devon European Sites Mitigation Strategy (SEDESMS) and the level and types of mitigation it proposes.

The August 2015 Habitat Regulations Assessment considers that the SEDESMS, and the mitigation measures within it, are sufficiently flexible to accommodate the proposed increase in housing numbers by a proportionate increase in the delivery of a number of the mitigation measures. Therefore, providing that the requirement for provision of additional mitigation to achieve this is acknowledged and incorporated into the management and monitoring of delivery of the SEDESMS, Natural England concurs with the assessment in the HRA that a 'likely significant effect' of the additional housing can be avoided.

4. The need to address outstanding recommendations from the HRA of the Exmouth Masterplan and the risk that some strategic projects may not be deliverable in a way which is compliant with the requirements of the Habitat Regulations

We welcome your Council's intention to redefine the status of the current masterplan, recognising that it is "*dated*" and that "*full evidence to support all projects is not in place.*" The suggested changes to para 10.9 and 10.12 achieve this but, as with Policy 47, repeated amendments have left the text wordy and potentially confusing, with repeated references to the existing Masterplan still remaining as well as the statement that the masterplan has "been endorsed by the council", implying greater status for the

Masterplan than is now intended. A succinct re-writing of the text of 10.9 and 10.12 would help to clarify your intentions with regard to Exmouth and the existing Masterplan.

5. The risk to the integrity of Beer Quarry and Caves SAC from proposed development, in the absence of planning guidance which will safeguard important bat commuting and foraging areas.

The revised Habitat Regulations Assessment (August 2015) states that “*The Council is supporting work currently underway by the East Devon AONB team that is specifically assessing bat activity with a final report output to include consultation zone definition and planning guidance. Recommendation incorporated and action therefore complete.*”

It is true that the East Devon AONB team are undertaking work based on the evidence currently available regarding bat roosts and activity associated with Beer Quarry and Caves SAC. However, this work is not yet complete and is lacking resources to progress in the absence of support from EDDC. The need for the guidance is becoming more urgent as the Beer Neighbourhood Plan is reliant on this in order to proceed, as may other neighbourhood plans in the vicinity. We therefore suggest that a commitment to completing the guidance, before any developments potentially affecting the SAC are determined, should be made explicit at 18.80 in the Plan.

For any queries relating to the specific advice in this letter only please contact me on the email or telephone number below. For any new consultations, or to provide further information on this consultation please send your correspondence to consultations@naturalengland.org.uk.

Yours sincerely

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Annex 1

Proposed Amendments: Strategy 47 - Nature Conservation and Geology:

All development proposals will need to:

1. Conserve the biodiversity and geodiversity value of land and buildings and minimise fragmentation of habitats.
2. Maximise opportunities for restoration, enhancement and connection of natural habitats.
3. Incorporate beneficial biodiversity conservation features.

Development proposals that would cause a direct or indirect adverse effect upon internationally and nationally designated sites will not be permitted unless:

- a) They cannot be located on alternative sites that would cause less or no harm.
- b) The public benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats.
- c) Prevention, mitigation and compensation measures are provided.
- d) In respect of Internationally designated sites, the integrity of the site will be maintained.

Development proposals where the principal objective is to conserve or enhance biodiversity or geodiversity interests will be supported in principle.

Where there is reason to suspect the presence of protected species applications should be accompanied by a survey assessing their presence and, if present, the proposal must be sensitive to, and make provision for, their needs.

Habitat Regulations and **Mitigation of Potential Adverse Impacts of Development**

In the case of impacts to internationally, nationally and locally designated sites, we will seek appropriate mitigation measures. **Development schemes which have the potential to significantly affect a European site will need to be subject to project level assessment to establish potential need for and form of any mitigation.**

Where development or the occupants of development could lead to adverse biodiversity impacts due to recreational or other disturbance, we will ~~seek~~ **require** mitigation measures and contributions ~~to allow for measures to be taken~~ to offset adverse impacts and to create new habitats. This will be of particular importance where development could impact upon 'European Designated Sites' (~~In the case of other impacts to internationally, nationally and locally designated sites, we will seek appropriate mitigation measures~~). Where **European** designated sites might be affected there will be a need for Appropriate Assessment in line with Conservation and Species Habitat Regulation requirements. Mitigation measures will be required if harmful impacts are predicted or could arise.

In respect of the Exe Estuary and the East Devon Pebblebed Heaths (and Dawlish Warren in Teignbridge) an over-arching strategic approach to habitat mitigation measures has been established through the South East Devon European Sites Mitigation Strategy Disturbance Study. **All residential development schemes within a straight line 10 kilometres distance of any part of the SAC and/or**

~~SPASAC designated areas of the Exe Estuary or Pebblebed Heaths will be required to provide mitigation. The onus will rest on developers to demonstrate that mitigation can and will be provided, and granting of planning permission will be linked to clear evidence that delivery will actually happen to agreed timescales, keeping pace with occupancy rates and secured in perpetuity, to ensure that residential development will not have a net adverse impact on the integrity of a European sites.~~

~~Compliance with the South East Devon European Sites Mitigation Strategy Disturbance study work and associated assessments will typically negate the need for residential development schemes to be subject to individual Appropriate Assessment. Through this strategic approach monies collected through CIL, negotiated separately through Section 106 agreements or potentially otherwise paid or contributed through other means will address mitigation requirements. Non-residential development schemes within the 10 kilometres catchment (and potentially beyond) will need to be subject to project level assessment to establish potential need for and form of any mitigation. The Council has commissioned technical advice in respect of tourism accommodation development that, when concluded, will inform mitigation requirements for tourist accommodation parallel that for residential schemes.~~

Payment as part of the CIL contribution will typically be the expected approach and habitat mitigation will form ~~the first primary~~ draw on CIL funds. Mitigation will include on-site and off-site measures, to include (though this list is not exhaustive):

- Improved wardening and management of sites;
- Information and education;
- Changes to access arrangements and points;
- ~~Habitat improvements and provision ; and~~
- Provision of Suitable Alternative Natural Green Space (SANGS).
- Monitoring (of designated sites and of effectiveness of mitigations measures)

~~On-site mitigation measures are likely to be most appropriate in the very early years of the Local plan's life. Off-site provision in the form of SANGS should aim for a target level of provision of around 8 hectares of open space provision for every net new 1,000 residents accommodated through development. At a residential density averaged at 2.2 persons per each new home built this will equate to around 176 SqM of SANGS space per each net extra dwelling built. However actual space standards will depend on the quality, character and location of provision. SANGS will need to include substantial open space areas ideally of semi-natural character and should specifically be appealing to dog walkers. They can utilise land previously inaccessible to the public or arise from improvements of currently accessible but under-used spaces. To help ensure and secure timely delivery of mitigation, specifically SANGS, the Council has the option of exercising Compulsory Purchase Order powers to ensure availability of land.~~

Developments on the western side of the District – including ~~potential further development~~ in the West End, Ottery St Mary, Budleigh Salterton, and Sidmouth will all fall under the coverage of this policy.

Comment [M1]: Does this need to be in the policy? Could it be in the supporting text if it is felt necessary to explain?

Comment [M2]: Does this level of detail need to be in the policy?

To help preserve the integrity of the East Devon Pebblebeds Heath, specifically on account of the impacts of domestic cats through bird predation, new ~~dwellings~~ **residential uses** will not be allowed on or within 400 metres of the Pebblebed Heaths Special Protection Area.

The mitigation proposals, **including those** of the 'South-east Devon European Site Mitigation Strategy', ~~(as set out in the draft document and upon completion)~~ will **need to** be implemented ~~alongside or~~ ahead of development **being occupied and must provide for mitigation in perpetuity** to ensure that development does not have a net adverse impact on the integrity of European designated wildlife sites. This will include provision of on-site, off-site and cross-site measures and monitoring. **The delivery and success of mitigation will be monitored alongside development (specifically new housing development) and changes in population. Where mitigation lags behind development it will be a potential indicator that the worth and integrity of European sites could be being eroded. This will provide a policy basis and justification for resisting further development or occupation until effective mitigation is delivered in accordance with past development/occupancy. Work will be undertaken to establish effective trigger points or markers against which to formally assess delivery of mitigation and therefore establish a basis to refuse planning permissions with a formal first review planned for April 2018.**

Comment [M3]: This is repetition of the additional wording above.

Comment [M4]: Natural England would be happier if EDDC could give certainty that "work **is being** undertaken"