

INDEPENDENT EXAMINATION OF THE BEER NEIGHBOURHOOD PLAN

EXAMINER: David Hogger BA MSc MRTPI MCIHT

Phil Twamley
East Devon District Council

cc: Geoff Pook
Chair Beer Parish Council

Examination Ref: 02/DH/BNP

20 June 2018

Dear Mr Twamley

BEER NEIGHBOURHOOD PLAN EXAMINATION

The Habitats Regulations Assessment (February 2018), with regard to the Beer Neighbourhood Plan, concludes that there could be an adverse effect on the European site known as Beer Quarry Caves Special Area of Conservation (a bat habitat) as a consequence of development on land at Short Furlong. Currently it is a requirement of Policy H3 (the site allocation) that proposals should include a Bat Mitigation Strategy.

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-323/17*¹, 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 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.

In the interests of transparency, may I prevail upon you to ensure that a copy of this letter, and any subsequent responses, are placed on the websites of both the Local Planning Authority and the Parish Council.

¹ View at:

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

Thank you in advance for your assistance.

Your sincerely

David Hogger

Examiner