

East Devon District Council

Statement on the need for Habitat Regulation Assessment of the Lypstone Neighbourhood Plan (July 2014)

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Introduction

The Lypstone Neighbourhood Plan has been produced by the local community to guide development within the Parish (which is also the Neighbourhood Area) of Lypstone. It does not propose a level of new development beyond that proposed in the emerging Local Plans for the District though it does allocate sites for development that are not allocations in the adopted plan. On adoption by East Devon District Council, the Neighbourhood Plan will be a material consideration in determining planning applications, and is intended to inform pre-application discussions.

East Devon District Council are required to assess whether plans or projects prepared to guide development within the Neighbourhood Plan require a Habitats Regulation Assessment. If one is required the Council has the responsibility to carry it out. In the first instance the Council therefore has to take a view on whether a full stage 1 Habitats Regulation Assessment is or is not required.

This statement sets out the findings of this exercise.

Background

The Conservation (Natural Habitats &c.) Regulations 1994 (The Habitats Regulations) transpose the requirements of the European Habitats Directive 92/43/EEC into UK law. The Habitats Directive and Regulations afford protection to plants, animals and habitats that are rare and vulnerable in a European context.

Habitats Regulations Assessment (HRA) is a systematic process through which the performance of a plan or project can be assessed for its likely impact on the integrity of a European Site. European Sites, also referred to as Natura 2000 sites, consist of Special Protection Areas (SPA), Special Areas of Conservation (SAC); Potential Special Protection Areas and candidate Special Areas of Conservation (pSPA and cSAC); and listed or proposed Ramsar sites.

Article 6(3) of the Habitats Directive states:

‘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 and projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives’.

Sites which are relevant to the Lympstone Neighbourhood Plan are the Exe Estuary, which is designated as a Special Protection Area (SPA) and Ramsar site, and the East Devon Pebblebed Heaths, which are designated as an SPA and a Special Area of Conservation (SAC). These sites are also of national importance and designated as Sites of Special Scientific Interest (SSSI).

Natural England were consulted by Lympstone Parish Council and their response is referred to below and appended to this document. They will have a further opportunity to comment during the formal consultation on the submission document which the District Council will carry out shortly.

Screening Criteria Questions

1. Is the Neighbourhood Plan directly connected with, or necessary to the management of a European site for nature conservation?

No

2. Does the Neighbourhood Plan propose new development or allocate sites for development?

The Neighbourhood Plan allocates land for 40 new dwellings in the village. Of these, 12 new houses are allocated on two sites within or adjoining the village centre and the Plan identifies two further sites on which 28 dwellings have recently been granted planning permission.

The level of development proposed is broadly in conformity with the adopted East Devon Local Plan, which doesn't specify numbers in each settlement but has a presumption in favour of development within the Built-up Area Boundary. All of the sites allocated in the Neighbourhood Plan for development are within the Built-up Area Boundary, with one exception- a site for six houses on the old Nurseries site which lies outside but adjacent to the boundary. This site would be subject to a development brief as it is located in an historically sensitive location and would need to provide an area of public open space to benefit the wider area.

The level of development in the Plan is also in line with the emerging East Devon Local Plan which assigns 40 new dwellings to Lympstone.

The Neighbourhood Plan does support some other non-site specific development- eg. a football/cricket field, completion of the Dinan Way link road, provision of a cycle path and footpaths and additional car parking. This is in line with Policies in both Local Plans and is largely intended to meet an existing need, for instance to alleviate on road parking and congestion. A detailed assessment of potential impacts will be carried out when specific sites come forward through the planning system. Mitigation measures may be required in line with the Local Plan Policies. More importantly, working with partners Exeter City Council and Teignbridge District Council, both of who have up to date adopted development plans, and Natural England, the District Council has agreed a mitigation strategy to address adverse impacts that could otherwise arrive at the designated sites of the Exe and Pebblebeds and also Dawlish Warren. As part of the mitigation work East Devon District Council has formally

endorsed a schedule of charges that will be applied to any new dwellings that fall within defined zones (all of the Lympstone Neighbourhood Plan area falls within a defined charging area). The charges made, by explicit design, will fund mitigation and therefore typically negate the need for proposals for new residential dwellings to go through full habitat regulations. The proposals for residential development in the Neighbourhood Plan fall in line with form of residential development that the mitigation strategy was designed to deal with.

Natural England's response to the pre-submission consultation expressed the view that.

"(If) the Neighbourhood Plan is progressed in advance of the Local Plan adoption- under this scenario it is not sufficient to rely on the HRA of the Local Plan as this Plan has not yet been through Examination. The measures required to mitigate against any impacts to European sites as a result of housing (particularly recreational disturbance) are not formally in place. Should the Parish Council wish to progress the Neighbourhood Plan in the absence of an adopted Local Plan, it will be necessary to undertake an independent screening exercise with respect to the Habitats Regulations. The screening assessment would need to assess the effects of the Neighbourhood Plan without the Local Plan being in place. The Neighbourhood Plan cannot progress if it would result in a likely significant effect on a European site and therefore reduction and/or avoidance measures may need to be incorporated into the Neighbourhood Plan to ensure compliance with the Regulations."

The existing, adopted Local Plan was not subject to an HRA (it pre-dated the requirement) but, as most of the housing allocated in the Lympstone Neighbourhood Plan is within the Built-up Area Boundary, re/development has already been found to be acceptable in principle. The allocation of 6 houses outside the Built-up Area Boundary were not proposed as part of the Local Plan, however detailed proposals are to be worked up through a Development Brief and will include an area of open space which is intended to meet some recreational pressures arising from new residents and the existing population.

The allocations in the Neighbourhood Plan do also accord with the emerging Local Plan for the District which is subject to an HRA. A screening opinion was provided by Land Use Consultants early in the Plan production process and an HRA was completed by Footprint Ecology before, and informed, the submission version of the Local Plan. It indicated that the Local Plan will have sufficient policy provisions to enable the subsequent delivery of necessary measures to avoid and mitigate adverse effects on the integrity of European Sites.

Notwithstanding this, it was agreed by the District Council (on 2 July 2014) that a programme of mitigation measures will be put in place to deal with impacts to European sites which arise from housing across the East Devon. From 1 August 2014, these mitigation measures (which include on site works and the provision of alternative green spaces as well as dedicated management time and a funding package to implement them raised through developer contributions in affected areas) will apply to all new residential development. In the case of development at Lympstone allocated through the Neighbourhood Plan, developer contributions will be sought on all new dwellings, a network of open space will be provided at Exmouth and a small 'village green' will be provided as part of the development at the former Nurseries.

3. Are there any other projects or plans that together with the Neighbourhood Plan could impact on the integrity of a European Site?

No

Conclusion

The Lympstone Neighbourhood Plan does not require a Habitat Regulation Assessment.

The Lympstone Neighbourhood Plan is unlikely to have an adverse effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010 (d), alone or in combination with other plans and projects. It does not propose a level of development significantly over and above that in the adopted Local Plan and is in accordance with the emerging Local Plan (which was itself subject to HRA). The mitigation strategy which comes into force on 1 August 2014 will ensure that appropriate measures are put in place so that effective mitigation is established, supported by robust evidence and applied on a consistent basis.

Appendix 1- Response from Natural England to the Lymptone Neighbourhood Plan pre-submission consultation

Natural England - Lymptone Neighbourhood Plan – Draft

Thank you for consulting Natural England on the above Neighbourhood Plan, which is currently at consultation stage.

Natural England would like to raise an initial comment with respect to the Plan's relationship with the Local Plan and the requirement to undertake a screening exercise with regard the Habitats & Species Regulations 2010 (as amended).

The draft document states that the Neighbourhood Plan '*fits with, and does not conflict with*' the Local Plan and goes on to state that the Local Plan itself '*is still at consultation stage and must be agreed by the government*'. This is a crucial point to consider with respect to the requirements of the Habitats Regulations. Although the Local Plan has been subject to a Habitats Regulations Assessment (HRA) this document, along with the Local Plan, has not yet been through the Examination process. Therefore the Neighbourhood Plan cannot rely on the conclusions of the Local Plan HRA and the overarching policy context contained in the Local Plan until the Local Plan has been formally adopted by the Local Planning Authority. If the Parish Council intend to rely on the Local Plan HRA then the Neighbourhood Plan should not be adopted before the Local Plan to ensure the mitigation requirements in relation to European protected sites are part of the statutory policy framework for East Devon as a whole.

Below is further advice in relation to two potential scenarios:

- 1) The Neighbourhood Plan is adopted **after** the Local Plan – in this instance the Neighbourhood Plan can rely on the HRA of the Local Plan, provided that the Neighbourhood Plan does not propose any additional development over and above that contained within the Local Plan. Under this scenario the higher tier policies contained within the Local Plan, along with the mechanism to delivery mitigation in relation to impacts on European sites, will be formally adopted and therefore any uncertainty in relation to the impact of housing will have been addressed.
- 2) The Neighbourhood Plan is progressed in **advance** of the Local Plan adoption – under this scenario it is not sufficient to rely on the HRA of the Local Plan as this Plan has not yet been through Examination. The measures required to mitigate against any impacts to European sites as a result of housing (in particularly recreational disturbance) are not formally in place. Should the Parish Council wish to progress the Neighbourhood Plan in the absence of an adopted Local Plan, it will be necessary to undertake an independent screening exercise with respect to the Habitats Regulations. The screening assessment of the Neighbourhood Plan would need to assess the effects of the Neighbourhood Plan without the Local Plan being in place. **The Neighbourhood Plan cannot progress if it would result in a likely significant effect on a European site** and therefore reduction and/or avoidance measures may need to be incorporated into the Neighbourhood Plan to ensure compliance with the Regulations.

The above principles also apply in relation to Strategic Environmental Assessment (SEA) and again Natural England would expect a screening exercise to be undertaken with regard to the SEA Directive.

We trust the above offers sufficient clarity, should you wish to discuss our comments in further detail please do not hesitate to contact me.

Regards

Zoe