

East Devon Local Plan Examination - Topic Paper 4 - Statement of Common Ground on Habitat Regulations

This Statement of Common Ground addresses Habitat Regulation issues.

This document has been discussed with and agreed by:

- a) East Devon District Council;
- b) Natural England ;
- c) Environment Agency; and
- d) Royal Society for the Protection of Birds.

The intent being that there are no outstanding issues or concerns as far as the above bodies are concerned regarding soundness of the East Devon Local Plan in respect of meeting the requirements of the Habitat Regulations.

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1 Introduction

- 1.1 The East Devon Local Plan was submitted for Examination on 2 August 2013. In a Letter to the Council dated 26 September 2013 the Local Plan Inspector advised of the appropriateness of consultation on proposed changes. In response to consultation Natural England advised (as part of their representation) that:

“1. Habitat Regulations

The details of a mitigation strategy and certainly regarding how it will be delivered, and when, have still not been provided (Strategy 5). Natural England suggests that it may be appropriate for you to prepare a ‘Statement of Common Ground’ with us which will address these outstanding issues, and give sufficient certainty that Habitat Regulations requirements can and will be met, prior to the Examination of the Plan, to enable it to be judged sound. In addition to this general requirement relating to the overall mitigation strategy there is a need for further specific information regarding identification and delivery of SANGS/open space provision in and around Exmouth (Strategy 22) and the Clyst Valley Regional Park (Strategy 10).

If your Council intends to rely upon the CIL to fund mitigation measures to avoid adverse effects on the Exe Estuary and East Devon Pebblebed Heaths European sites resulting from the Plan housing allocations then this should be made clearer in the Plan (there is currently only a brief reference to this in 19.11 but not in Strategy 50). The various elements of the strategy (cross-site, on-site and off-site measures and monitoring) must be properly referenced and costed in the CIL schedule and IDP, with a clear indication that, to provide certainty of delivery, they must be funded before development can proceed, regardless of other demands on the levy.

Further work is also needed to provide certainty that the additional phosphate loading associated with the proposed housing and employment allocations in Axminster (Strategy 20) can be accommodated without deterioration in existing water quality in the River Axe SAC (which is currently failing to meet targets) through any increase in phosphate concentration and without affecting the potential for achievement of conservation objectives within a reasonable timescale.

Natural England is already working with the Environment Agency to ascertain whether this is likely to be achievable in the absence of additional investment in the Sewage Treatment network. We will continue to work with your Council and the EA to resolve this issue.”

- 1.2 This paper has been agreed with Natural England and other partners and provides a Statement of Common Ground that the Council and Natural England and others are satisfied will ensure Habitat Regulations are complied with. The paper provides

certainty to ensure that the growth and development proposals of the Local Plan can be implemented in a manner that complies with habitat regulations.

- 1.3 This paper provides contextual information that informs the statement of common ground. The Common Ground statement, as an explicit statement, is set out in Appendix 1.

2 Mitigation Strategy for the Exe Estuary and Pebblebed Heaths

- 2.1 The Exe Estuary and the East Devon Pebblebed Heaths, on the south western side of East Devon District, are recognised as critical environmental assets. The Exe Estuary is designated as a Special Protection Area (SPA) and Ramsar Site and the East Devon Pebblebed Heaths are designated as a Special Area of Conservation (SAC) and a SPA. The Exe Estuary designated site also includes land (and estuary/water areas) in Teignbridge and Exeter City. Whilst not falling in East Devon, but lying at the southern end of the Exe, in Teignbridge District, Dawlish Warren is also designated as an SAC.
- 2.2 East Devon District Council, has been working in partnership with
- a) Exeter City Council;
 - b) Teignbridge District Council;
 - c) Natural England;
 - d) Royal Society for the Protection of Birds; and
 - e) The Exe Estuary Partnership;
- on production of a mitigation strategy to address adverse impacts that could otherwise arise as a consequence of development proposals in all three of the local authority areas. This draft mitigation strategy is part of the evidence of the Council (CD/Env038) and is scheduled for completion in early 2014. The mitigation strategy was produced by Footprint Ecology and follows on from a series of technical documents also produced by the same consultants to inform this mitigation strategy.
- 2.3 The text in the Local Plan was written with the clear intent of ensuring that appropriate mitigation measures would be secured to ensure that development proposals in the plan could go ahead without adverse impacts occurring at these designated sites. It is recognised through reviewing representations, however, that it would provide greater certainty if wording were more explicit.
- 2.4 Text in Appendix 1 provides agreed wording that will overcome concerns raised in representations.

3 Use of CIL and 106 Agreements to Fund Mitigation

- 3.1 The expectation is that habitat mitigation measures will be funded through CIL and/or 106 agreements. Partial or full 106 agreement payments may be applicable on larger schemes, especially where there is a clear case for on site mitigation. However for smaller schemes, including for single dwellings, the funding for mitigation measures will need to come in the form of contributions that are pooled.
- 3.2 CIL is seen as an appropriate means to secure monies and the intent is that CIL receipts (potentially taken in conjunction with other monies) will be used to fund mitigation. Because development could not otherwise go ahead without mitigation measures such measures will need to be the priority draw on CIL.
- 3.3 European Protected wildlife site mitigation will receive the highest level of funding prioritisation. This commitment to the protection and delivery of necessary mitigation measures for European Protected wildlife sites and species will ensure the Council's legal requirements are satisfied.
- 3.4 Appendix 1 sets out details of how this will be applied.

4 Exmouth Masterplan Proposals

- 4.1 The Exmouth Masterplan was commissioned by the District Council and partners and it forms a basis for securing the implementation of a series of projects in Exmouth. It addresses sites and land areas that abut the Exe Estuary and sea front as well as other parts of the town.
- 4.2 In practical terms the key role of the Masterplan is to help bring forward a series of development projects that individually and in tandem with other initiatives will help secure social and environmental improvements and enhancement and secure investment and jobs in the town.
- 4.3 The Masterplan proposals dovetail with wider Local Plan proposals and the Local Plan includes reference to the Masterplan. To date projects coming forward under the Masterplan proposals have been individually assessed under the Habitat Regulations when required. However, it is recognised that there is merit, given the collective and cumulative potential impacts taken in conjunction with broader local plan proposals for the Masterplan, as part of wider work to underpin the Local Plan, to be subject to review under the Habitat Regulations. The Habitat Regulations Assessment will determine whether the Masterplan is likely to have a significant effect on any of the European sites. If it is then appropriate mitigation measures will be needed, which will be drawn from and complement those in the 'South-east Devon European Site Mitigation Strategy' to ensure that schemes can go ahead, without an adverse effect on the integrity of the Exe Estuary, Dawlish Warren or Pebblebed Heaths European sites.
- 4.4 Consultants have been appointed to do this work and are projected to complete in early 2014. Appendix 1 sets out detail of commitment to ensure work is completed and appropriate mitigation secured.

5 Phosphate Loading on the River Axe SAC

- 5.1 The River Axe is designated as an SAC from upstream of Axminster down to the sea. The water quality in the River Axe, and the habitats/species it supports, is currently adversely affected by higher than acceptable phosphate levels.
- 5.2 Nutrient pollution enters the River from various point sources (around 30%), including sewage treatment plants and some industrial plants as well as from diffuse sources (around 70%). The greatest source of pollution comes from diffuse sources such as agricultural run-off. There are ongoing initiatives seeking to address this issue.
- 5.3 Natural England advised EDDC on 19 December 2013 that they consider future growth in the (draft) local plan will exacerbate levels of phosphorus in the R. Axe SAC below Axminster STW. The levels currently exceed the conservation target for the river. However, more information is needed in order to advise the LPA that the increase in input from new development will not prevent achieving objectives in the longer term. The following explains the background and agreed reasoning.
1. EA reviewed the discharge license for Axminster STW under the Habitats Regs in 2006. As a consequence they tightened the permit standard for P concentration in the discharge. The EA have concluded, following their review and improvement to the discharge, that the adjusted permit is compliant with the Habitats Regs and so is will not have an adverse effect on integrity of the European site.
 2. It is the assumption of NE and the LPA that planned growth can be accommodated within this flow limit but this should be confirmed by South West Water¹.
 3. Nevertheless, the catchment average P concentration is 120 µg/l (2009) and the monitored P levels at the monitoring point above Axminster STW are 124 µg/l (2009), 120 µg/l (2012). P levels below Axminster from observed monitoring data continue to be in the order of 105-134 against the conservation objective target of 60 µg/l.
 4. NE preliminary understanding (based on water quality modelling undertaken by EA for the permit review) is that whilst STWs are contributing to this overall exceedance in the order of 24%, the greatest contribution is now

¹ In an email to the Council in January 2014, Mark Beighton of South West Water advised:

“SWW is aware of the concerns raised by the Environment Agency around the water quality of the Axminster SAC and the impact of all of the discharges on the river. If additional flows from a development have been identified as being potentially detrimental to the environment we will always work with the Environment Agency, Developers and East Devon District Council to ensure that we are compliant with our discharge permit when treating the additional flows.”

coming from diffuse sources (e.g. agriculture) 76% including a very small percentage from small unsewered discharges.

5. Future growth will exacerbate this exceedance in the order of 1-2% (this has been calculated roughly).
 6. In advising the LPA, NE considers that in light of recent monitoring data and on the basis of these rough calculations whilst future growth will add to the nutrient load we are not confident to advise whether this will undermine the long term achievement of the conservation objectives and whether other actions are needed.
 7. In order to be able to advise the LPA, NE, and arguably the LPA, require more robust evidence than is available now. NE has commissioned a study to gather and review the evidence on point sources and non point sources (including non sewered effluent) but this will not report until April.
 8. We understand that waiting until April may have implications for the LPA in relation to permitting current development and timetabling of the HRA of its local plan and the EiP of the plan.
 9. On the basis of the rough calculations NE does not feel that HRA or the EiP should be delayed. If the NE commissioned study reports that further action is needed, to manage phosphorus emissions to accommodate growth and to achieve the Protected Area requirements over the longer term, options are available to mitigate the additional phosphorus associated with the development. This includes the Joint Environment Agency / Natural England approach to “Advising on Growth and Water Quality in Natura 2000 sites and SSSIs” published in July 2011.
 10. When the outcome of NE study is known a way forward will then be agreed between the LPA, NE and EA.
- 5.4 Because it is recognised that there is a degree of uncertainty/an evidence deficiency in respect of these matter it is considered necessary that concerns are explicitly noted. Text in Appendix 1 provides agreed wording which will overcome these concerns.

Appendix 1 – Proposed Statement of Common Ground

Through this paper agreement there is agreement from:

- a) East Devon District Council (All listed Issues 1 - 8);
- b) Natural England (All listed Issues 1 - 8)
- c) Environment Agency (Issue 7); and
- d) Royal Society for the Protection of Birds (Issues 1 to 6 and 8).

The appendix seeks to ensure that through modifications to the Local Plan (if recommended by the Inspector) and/or through separate commitment of the parties involved that development proposals contained in the East Devon Local Plan can be accommodated and mitigation measures implemented without adversely impacting on European wildlife sites.

Issue	Lead	Key Partners	Technical and Other Work	Suggested Action or Potential Plan Amendment
1. To establish overarching commitment to ensure the plan provides certainty that the Habitat Regulations are affectively complied with.	EDDC	<ul style="list-style-type: none"> • Nat Eng • RSPB <p>As well as:</p> <ul style="list-style-type: none"> • Exeter City Council and • Teignbridge District Council. 	Consultants, at February 2013, were working on completion of the mitigation strategy. This mitigation document is schedule for completion in winter/early Spring 2014.	<p>Suggested revision of text in Strategy 5 point 8 to read:</p> <p><i>“8. To ensure the protection and enhancement of all European sites, working in partnership with neighbouring authorities to implement a consistent and strategic approach as required.”</i></p> <p>Suggested inclusion of new policy, or addition to Strategy 47 in the plan, or free standing statement to read:</p> <p><i>“The mitigation proposals of the ‘South-east Devon European Site Mitigation Strategy’ (as set out in the draft document and upon completion) will be implemented alongside or ahead of development 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.”</i></p>

Issue	Lead	Key Partners	Technical and Other Work	Suggested Action or Potential Plan Amendment
				<p>It is agreed that in the plan there needs to be policy wording to the effect that development will not be permitted to proceed unless mitigation is secured – this is considered to be the only way to guarantee the follow through on the Statement of Common Ground.</p>
<p>2. To adopt governance arrangements to secure authority to spend mitigation money.</p>	<p>EDDC</p>	<ul style="list-style-type: none"> • Exeter City Council and • Teignbridge District Council. 	<ul style="list-style-type: none"> • Mitigation Strategy • Strategic Mitigation Framework MoA/SPG to be agreed with ECC and TDC that establishes decision-making body, process of financial management, etc. 	<p>Suggested inclusion of new policy, addition to Strategy 47 in the plan, or free standing statement to read:</p> <p><i>“EDDC is working with Exeter City Council and Teignbridge District Council to determine the risks arising from their combined growth to sensitive international wildlife sites and to implement measures to mitigate these risks. EDDC will continue to implement this Joint Interim Approach and will accelerate progress in developing and adopting its successor. This will require establishing a cross-authority partnership to:</i></p> <ul style="list-style-type: none"> - <i>co-ordinate the identification and agreement of relevant mitigation measures,</i> - <i>raise appropriate funds from relevant developments,</i> - <i>co-ordinate the delivery of agreed measures.</i> <p><i>monitor annually the effectiveness of delivered measures, and if necessary modify their management.”</i></p>
<p>3. To agree to prioritisation of monies for mitigation.</p>	<p>EDDC</p>	<ul style="list-style-type: none"> • Exeter City Council and • Teignbridge District Council. • Natural England 	<p>No specific technical evidence will be required.</p>	<p>At present there is no explicit reference in the Local Plan in respect of a commitment to ensure that plan policies (regarding meeting Habitat Regulations) will be explicitly addressed and followed through in respect of the Community Infrastructure Levy charging assessment or the Infrastructure Delivery Plan. Such a commitment is needed and will be relevant should changes be made, especially to the Infrastructure Delivery Plan.</p> <p>Suggested inclusion of new policy or addition to ‘Strategy 50</p>

Issue	Lead	Key Partners	Technical and Other Work	Suggested Action or Potential Plan Amendment
				<p>Infrastructure Delivery’ in the plan or free standing statement to read:</p> <p><i>“It is recognised that in order to comply with Habitat Regulations, development proposals that could adversely impact on European designated sites cannot go ahead without mitigation being in place. To ensure that mitigation measures are effectively secured it will be essential that funding or alternative provision, whether from Section 106 agreements, Community Infrastructure Levy collected monies or alternative developer provision is explicitly and in all cases directly earmarked to deliver, manage and monitor the relevant mitigation measures.</i></p> <p><i>All mitigation for impacts to European sites shall be considered as critical in the Infrastructure Delivery Plan and sufficient contributions, to ensure that provisions remain in the long-term, will be taken from the CIL funding (discounting contributions from 106 or other explicit developer contribution that meets regulatory requirements) for Habitat Regulations mitigation measures before funding is used for other types of infrastructure.”</i></p>
<p>4. Green Infrastructure in East Devon’s West End</p>	<p>EDDC</p>	<ul style="list-style-type: none"> • Nat Eng • RSPB <p>As well as:</p> <ul style="list-style-type: none"> • Exeter City Council and • Teignbridge District Council. 	<p>A costed Green Infrastructure Plan is being produced for the Clyst Valley Regional Park. This will identify overall provision and those parts that are explicitly relevant to habitat mitigation in compliance with regulations and that can therefore legitimately qualify as Suitable Alternative Natural Green Space.</p>	<p>Suggested inclusion of new policy in the plan or addition to Strategy 10 or free standing statement to read:</p> <p><i>“Mitigation measures in respect of the West End established as needed to comply with Habitat Regulation related assessment will need to accord with emerging and ultimately adopted measures set out in the ‘South-east Devon European Site Mitigation Strategy’. Where possible SANGS should dovetail with wider Green Infrastructure policies and be compatible with neighbouring authorities’ plans. The functionality of any</i></p>

Issue	Lead	Key Partners	Technical and Other Work	Suggested Action or Potential Plan Amendment
				<i>potential SANGS and its contribution to the avoidance of a likely significant effect must be clearly demonstrated ”</i>
5. Provision of Suitable Alternative Natural Green Space at Exmouth as Mitigation under Habitat Regulations	EDDC	<ul style="list-style-type: none"> • Nat Eng • RSPB 	A costed Green Infrastructure Plan is being produced for Exmouth. This will identify overall GI provision and those parts that are explicitly relevant to habitat mitigation in compliance with regulations and that can therefore legitimately qualify as Suitable Alternative Natural Green Space.	Suggested inclusion of new policy or addition to Strategy 22 or free standing statement to read: <i>“Mitigation measures in respect of Exmouth established as needed to comply with Habitat Regulation related assessment will need to accord with emerging and ultimately adopted measures set out in the ‘South-east Devon European Site Mitigation Strategy’. Where possible SANGS should dovetail with wider Green Infrastructure policies and be compatible with neighbouring authorities’ plans. The functionality of any potential SANGS and its contribution to the avoidance of a likely significant effect must be clearly demonstrated ”</i>
6. Exmouth Masterplan and ensuring compliance with habitat Regulations	EDDC	<ul style="list-style-type: none"> • Nat Eng • RSPB 	In support of Local Plan policy Footprint Ecology have been commissioned to produce an assessment under the Habitat Regulations of the potential impacts of individual projects and in combination impacts as set out in the Exmouth Masterplan and as seen in combination with overall local plan policies.	Suggested inclusion of new policy or addition to Strategy 22 or free standing statement to read: <i>“The implementation of proposals set out in the Exmouth Masterplan will need to demonstrate Habitat Regulations compliance through provision of appropriate mitigation in accordance with the ‘South-east Devon European Site Mitigation Strategy’ or as otherwise can be demonstrated to be technically robust. Component projects within the Masterplan should also seek to maximise opportunities to deliver relevant measures set out in the Mitigation Strategy.”</i>
7. Development at Axminster and potential impacts of increased nutrients release on the River Axe.	EDDC	<ul style="list-style-type: none"> • Nat Eng • Environment Agency. 	Further evidence is due in April 2014 which will indicate whether or not a nutrient management plan or other measures will be required. The outcome of the Natural England commissioned study will add to understanding of the	Suggested inclusion of addition to Strategy 20: <i>“Any new development which discharges into the River Axe may need to be subject to the measures of a Nutrient Management Plan, should one need to be produced. Should the capacity of existing sewage treatment work permits which discharge into the River Axe need to be re-examined, then a</i>

Issue	Lead	Key Partners	Technical and Other Work	Suggested Action or Potential Plan Amendment
			catchment.	<i>Habitats Regulations Assessment should be undertaken. The findings of which may require a review of the levels of development outlined in this plan. The LPA, NE and EA will need to ensure new development does not cause deterioration in water quality and that the objective of achieving SAC targets in the future is met.</i>
8. Lack of site specific evidence for impacts on the Pebblebeds.	EDDC	<ul style="list-style-type: none"> • Nat Eng • RSPB • Clinton Devon Estates 	In considering mitigation measures at the Pebblebed Heaths we are relying to some extent on assumptions and extrapolations as the basis for the strategic mitigation. It is likely that further assessment work will be required to refine these measures.	Suggested inclusion of addition text in the plan to read <i>“The Council will undertake further work to inform appropriate mitigation for the Pebblebed Heaths SAC/SPA. Priority will be given to the development of a visitor management plan.”</i>