

Meeting: Cabinet meeting

Date: 23rd July 2019

Wards Affected: All

Report Title: South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats: Habitats Regulations Assessment Guidance

Is the decision a key decision? Yes

When does the decision need to be implemented? ASAP

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1. Proposal and Introduction

- 1.1 The South Hams Special Area of Conservation (SAC), and associated Consultation Zone, cover an area which lies within five local planning authority areas: Dartmoor National Park Authority, Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Council. Greater horseshoe bats are one of the 'features of interest' associated with the South Hams SAC. Management of the SAC Guidance is co-ordinated by an officer group of representatives from each of the above authorities and Natural England, forming the South Hams SAC Greater Horseshoe Bats Steering Group.
- 1.2 Greater horseshoe bats are one of Britain's rarest bats with about 30% of the population found in South Devon. The South Hams SAC has been designated (under the EC Habitats Directive and UK Habitats Regulations) by Natural England to help protect the bats and includes both maternity and hibernation roosts vital to the survival of the species. SACs form part of a network of designated sites across Europe and have the highest level of protection. Five greater horseshoe bat roosts are designated as part of the SAC, including the Berry Head to Sharkham Point in Torbay.
- 1.3 Local Planning Authorities (LPAs) have a legal duty (under the Habitats Directive and Habitats Regulations) to ensure that there will be no adverse effect on the integrity of the South Hams SAC population of greater horseshoe bats as a result of any plan or project. Any which will lead to an adverse effect on the integrity of the South Hams SAC will be refused, other than in exceptional circumstances.

- 1.4 This Guidance will update and replace the 'South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance' published by Natural England in 2010. It provides advice on which applications may have a likely significant effect on the SAC greater horseshoe bat population and which may therefore require the relevant LPA to carry out a Habitats Regulations Assessment (HRA). It also provides advice on the information that applicants may need to submit with a planning application in order for the LPA to undertake the HRA.
- 1.5 A draft version of the guidance was published for consultation from 16th April until 13th June 2018. It has since been amended to take into consideration comments raised during the consultation. A summary of comments and responses is in Appendix 2 and the representations in full are available on the Devon County Council website at: www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance/south-hams-sac-spd-consultation

2. Reason for Proposal and associated financial commitments

- 2.1 The South Hams SAC Consultation Area defines, as closely as possible, the geographical extent of the greater horseshoe bat population in the area. Within this Consultation Area, the Natural England 2010 South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance defines designated roosts, sustenance zones and strategic flyways as the main features used and populated by greater horseshoe bats. More recent evidence available from a wider source of datasets has, however, shown that many of the bats are also likely to travel through the South Devon landscape (outside of the Sustenance Zones and not confined to the strategic flyways) to access other smaller roosts at certain times of year (male bats can be found in small roosts during the summer and both males and females will fly to mating roosts in the autumn and spring). The bats may also travel between Designated Roosts (with stop overs at transitional roosts on the way).
- 2.2 All existing evidence (from research and records) indicates that the bats using this landscape are dispersed in low numbers, using a complex network of sheltered hedges, woodland edge, stream corridors etc. to move around the landscape. In order to maintain Favourable Conservation Status of the population it is therefore important that we keep sufficient connectivity across the whole of this landscape (allowing landscape scale permeability), rather than just protecting a number of flyways.
- 2.3 The net result of this work has been a more robust delineation of an area within which greater horseshoe bats are known to use. The Guidance will therefore replace the 2010 strategic flyways with a 'landscape connectivity zone' (LCZ) to protect the complex network of flight lines which link the designated roosts. This change affects interpretation of Local Plan Policy NC1. Therefore, until the Local Plan is reviewed, Policy NC1 will remain the statutory basis for decision making, however the new Guidance will form a material consideration (see para 2.7 below).
- 2.4 A further change arising from the shift away from flyways and to the landscape connectivity zone is how applications are screened for HRA. Currently, any application affecting a flyway requires HRA. Once the Guidance is in place, HRA will be limited to those applications picked up by the flow chart shown on Page 11 of Appendix 1. This approach better reflects how different types of uses have different impacts on greater horseshoe bats, thereby reducing the burden for

applications where there is likely to be no impact and ensuring that other applications which may have an impact will have an HRA, regardless of whether or not they fall within a tightly defined flyway.

- 2.5 A series of separate Advice Notes are being prepared on such matters as greater horseshoe bat ecology and mitigation (current best practice and lighting issues) to help clarify further more detailed aspects concerning management arrangements. These will be widely circulated to interested parties and placed on the Devon County Council Strategic Planning and Policy website with links to other useful guidance. However, the purpose of the Guidance is to act as a simple stand-alone source to give planners and developers clear and concise guidance on where and which developments may have a significant effect on the South Hams SAC Greater horseshoe bat population and therefore require a Habitats Regulations Assessment.
- 2.6 The partner authorities originally consulted on a document envisaged to be a Supplementary Planning Document (SPD). However, following the receipt of consultation responses and a review of legal challenges taking place elsewhere in the country on the legality of SPDs, further consideration has been given to the scope and status of the document.
- 2.7 Case law has confirmed (in relation to the Planning & Compulsory Purchase Act 2004 Regulations and the Town and Country Planning (England) Regulations 2012) that it is not possible to provide SPD as the basis on which planning applications can be determined. Instead determinations can only be made on the parent policy to which the document relates (i.e. policies contained in the Local Plan).
- 2.8 It has never been the intention for the Guidance to introduce policy. Instead, the guidance will help inform which developments are likely to require a HRA at an early stage and provide advice on information applicants may need to submit with their planning application. The non-statutory guidance will be used primarily at validation stage for planning applications received by the partner authorities to determine whether an HRA is required.
- 2.9 It will be given the same weight as has previously been delivered by the South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance published by Natural England in 2010.
- 2.10 The Guidance does not present new financial implications. Updated HRA requirements may lead to further assessment work commitments for the Special Planning which would be met from existing budgets.

3. Recommendation(s) / Proposed Decision

- 3.1 That the South Hams Special Area of Conservation Habitats Regulations Assessment Guidance, set out at Appendix 1 to the submitted report be approved subject to the following modifications and the Assistant Director Planning and Transport, in consultation with the Cabinet Member for Infrastructure, Environment and Culture, be given delegated authority to approve any necessary minor amendments to the document:

- a) Add the following text at the end of first sentence in paragraph (5.1) on page 17: *(by the Steering Group)*.
- b) Add the following note to Existing Features as foot note on page 11 and update the text in paragraph 5.2 on page 17: *(The DCC Environment Viewer will be updated at regular intervals to show new Pinch Points or Mitigation Features but is not exhaustive. Only strategic features are likely to be shown. Therefore, applicants and LPAs will have to have due regard to any likely conditions or s106 obligations that require the retention or provision of existing mitigation features on or near, which may affect their individual sites)*.

3.2 That once approved by Torbay Council, the Guidance will hold interim guidance status until agreed by all partner authorities in the South Hams SAC consultation area. It is hoped this will be completed by September 2019.

Appendices

Appendix 1: South Hams Special Area of Conservation: Habitats Regulations Assessment Guidance

Appendix 2: South Hams SAC Greater Horseshoe Bat HRA Guidance Consultation Summary

Background Documents

South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance' published by Natural England in 2010.

<http://webarchive.nationalarchives.gov.uk/20150303014524/http://publications.naturalengland.org.uk/publication/142010>

Section 1: Background Information

1.	<p>What is the proposal / issue?</p> <p>The Guidance will be used to determine whether a Habitats Regulations Assessment (HRA) Screening is required on any application submitted within the South Hams Special Area for Conservation (SAC) consultation area and provides advice on the information that applicants may need to submit with a planning application in order for the Local Planning Authority to undertake the HRA.</p>
2.	<p>What is the current situation?</p> <p>The Guidance will update the current <i>South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance</i> published by Natural England in 2010.</p>
3.	<p>What options have been considered?</p> <p>The partner authorities originally consulted on a document envisaged to be a Supplementary Planning Document (SPD). However, following the receipt of consultation responses and a review of legal challenges taking place elsewhere in the country on the legality of SPDs, further consideration has been given to the scope and status of the document.</p> <p>The Guidance will be given the same weight as has previously been delivered by the <i>South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance</i> published by Natural England in 2010.</p>
4.	<p>What is the relationship with the priorities within the Partnership Memorandum and the Council's Principles?</p> <p>The Guidance supports the Council's priorities and Principles as set out in the Corporate Plan.</p>
5.	<p>How does this proposal/issue contribute towards the Council's responsibilities as corporate parents?</p> <p>Not applicable.</p>
6.	<p>How does this proposal/issue tackle poverty, deprivation and vulnerability?</p> <p>Not applicable.</p>

7.	<p>How does the proposal/issue impact on people with learning disabilities?</p> <p>Not applicable</p>
8.	<p>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</p> <p>A full public consultation was held from 16th April until 13th June 2018 on a draft version of the Guidance which included statutory consultees, partners and the wider public. An invited stakeholder workshop session and public drop in was held at Dartmoor National Park Authority Offices, Bovey Tracey on 1st May. A summary of the comments received and officer responses are contained in the Statement of Public Participation (see Appendix 2)</p>

Section 2: Implications and Impact Assessment

9.	What are the financial and legal implications? The Guidance does not present new financial implications. Updated HRA requirements may lead to further assessment work commitments for the Spatial Planning which would be met from existing budgets. The guidance will be used primarily at validation stage for planning applications to determine whether an HRA is required.
10.	What are the risks? Not applicable.
11.	Public Services Value (Social Value) Act 2012 Not applicable.
12.	What evidence / data / research have you gathered in relation to this proposal? See the References page in Appendix 1.
13.	What are key findings from the consultation you have carried out? See Appendix 2.
14.	Amendments to Proposal / Mitigating Actions A number of refinements and changes have been made to the guidance following the public consultation process: <ol style="list-style-type: none">1. amendments to SAC Consultation Area map;2. addition of reviewing the guidance section;3. revised landscape connectivity zone with explanation;4. clarification to HRA requirement flowchart;5. clarification of survey requirements for HRA; and6. addition of list of references.

Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups		
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			No differential impact.
People with caring Responsibilities			No differential impact.
People with a disability			No differential impact.
Women or men			No differential impact.
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			No differential impact.
Religion or belief (including lack of belief)			No differential impact.
People who are lesbian, gay or bisexual			No differential impact.
People who are transgendered			No differential impact.
People who are in a marriage or civil partnership			No differential impact.
Women who are pregnant / on maternity leave			No differential impact.

	Socio-economic impacts (Including impact on child poverty issues and deprivation)			No differential impact.
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			No differential impact.
16.	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable.		
17.	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable.		