

Brixham Peninsula Neighbourhood Plan
Post Examination Version
Draft
Habitats Regulations Assessment
Appropriate Assessment
November 2018

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1. Introduction

This Report sets out stage 2, Appropriate Assessment (AA), of the Habitats Regulations Assessment (HRA) process based on the Brixham Peninsula Neighbourhood Plan (BPNP) Examiner's recommendations and further modifications made post examination. The AA considers the policies that were screened out subject to recommended mitigation measures at the screening stage (see Brixham Peninsula Neighbourhood Plan HRA Screening Report, 2017).

The approach to considering mitigation measures at stage1 screening has been influence by the Judgment of the European Court of Justice, case C-323/17 on 12 April 2018, which interpreted that *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of a plan or project on the site"*.

The Examiner's Report (para.12.9.4) states that *"On the basis that Waterside Quarry is deleted from the plan, I am satisfied that the HRA 'Screening Stage' does substantively meet the requirements, subject to the mitigation measures identified in the BPNP HRA"*. The Council, as the competent authority, considers the information provided at the screening stage is sufficient to meet the HRA regulations.

2. The Screening Report Outcome

The BPNP HRA Screening Report¹ shows that the BPNP² policies were screened out with exception of policy J1 (Employment land – proposed, retained and refurbished) and BH3 (Delivery of new homes), which were screened out with recommended mitigation measures. The two policies have allocated/identified housing and employment sites respectively. Seven of these sites were found to have no likely significant effects and were therefore screened out. The remaining seven sites were screened out subject to recommended mitigation measures to ensure the Plan accords with the recent EU ruling.

Housing Sites

The Plan has allocated 11 housing sites (see Table 2, page 25, Policy BH3 (BPNP, 2017)), four of which were screened out. These are listed below:

1. Brixham Town Centre;
2. Torbay Trading State;
3. Brixham Police Station;
4. Former Jewson; and

Further six sites were screened out subject to recommended mitigation measures. These have been considered in this AA to ensure they accord with the recent EU ruling, these are listed below:

¹ AECOM (2017) - Habitats Regulations Assessment Screening: Brixham Peninsula Neighbourhood Plan (2012-2030)

² Brixham Peninsula Neighbourhood Forum. (2017) - Brixham Peninsula Neighbourhood Plan

1. St. Mary's / Old Dairy
2. St. Kilda
3. Northcliff Hotel
4. Oxen Cove and Freshwater
5. Knapman's Yard
6. Castor Road.

One site (Waterside Quarry) has been deleted by the Examiner on HRA grounds. This has been further assessed in this report for consistency (see Appendix B).

Employment sites

The Plan has identified³ four employment sites (see Table 1 Policy J1 (BPNP, 2017)), three of which were screened out. These are listed below:

1. Brixham Town Centre;
2. Torbay Trading Estate; and
3. 74 New Road⁴;

The remaining site (Oxen Cove and Freshwater Quarry) was screened out subject to recommended mitigation measures. This site has, therefore been considered in this AA to ensure it accords with the recent EU ruling.

³ 'Identified' J1 employment sites: These are not allocated sites and do not have policy weight but recognise a potential development site for consideration through the development management process primarily for employment investment subject to other policies in the Development Plan.

Committed J1 employment sites have extant planning permission. If this planning permission expires, any proposal will be considered on the basis of the Development Plan unless material considerations indicate otherwise. A site's planning history is likely to be a material consideration.

⁴ A committed development (P/2015/0235)

3. Appropriate Assessment

This section sets out stage two Appropriate Assessment (AA) of the HRA process. The AA considers the Likely Significant Effects (LSE) on European sites, identified in the screening stage (see Table 1 below) in more detail against the sites conservation objective. It also recommends mitigation measures to avoid and reduce any adverse effect on the integrity of European sites. Along with the strategic policy mitigations already in place, the strategic mitigation recommended in Appendix A should be incorporated into the BPNP.

Table 1: likely significant effects on European sites

European site	LSE as identified at the screening stage
South Hams SAC	<ul style="list-style-type: none"> • Fragmentation, loss and disturbance of commuting routes and foraging areas for greater horseshoe bats; and • Recreational pressure on the calcareous grassland and European dry heath
Lyme Bay and Torbay Marine SAC	<ul style="list-style-type: none"> • Water quality effects on the reefs • Recreational damage to the sea caves from diving-related tourism

Recreational pressure on the South Hams SAC and Lyme Bay and Torbay Marine SAC was covered in the Screening Report⁵ (sections 7.2 & 7.3). The policy framework in the Torbay Local Plan (Policy NC1) and the proposed Neighbourhood Plan policy E8 include measures to control additional recreational pressure resulting from the proposed development in the BPNP.

The AA has examined the following sites in more detail. The Mitigation measures included in this assessment have been extracted from the Screening Report and other available sources such as the Torbay Local Plan HRA and planning applications (relevant references were provided in Appendix A).

3.1 St. Mary’s / Old Dairy

The site is currently occupied with light industrial buildings. While the main area of the site offers no foraging opportunities, GHBs have been recorded commuting through this area. Consequently, disturbance from new development (through increased light pollution and/or loss of lines of trees and habitat on the eastern part of the site) could result in a likely effect on the South Hams SAC; particularly by severing this established flyway known from the radio-tracking studies⁶.

⁵ AECOM (2017) - Habitats Regulations Assessment Screening: Brixham Peninsula Neighbourhood Plan (2012-2030)

⁶ Natural England (2010) – South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance

From the previous radio-tracking studies, it is clear that GHBs use St Mary's Lane and the adjacent fields on either side to reach open countryside to the south-west of Brixham. It is therefore important that any development proposals for the St Mary Industrial Estate do not impair potential flight routes. It is apparent from the radio-tracking studies that the bats will, over limited distances, pass through built up areas in this part of Brixham and indeed it appears that they must fly through the gaps between buildings around the existing development at St Mary's Industrial Estate.

Mitigation Strategy

Effective mitigation measures would have to be provided to ensure:

- no additional light spill into adjacent areas and boundary features (e.g. tree lines along the eastern and northern boundaries);
- no loss of these boundary features so that they continue to function as strong linear features in the landscape;

It is important that all existing mature trees and hedge lines are retained and protected to provide continued commuting habitat/features for the bats as they pass through this point. In addition, development should seek to retain the rural character of the St Mary's Lane (e.g. narrow and relatively unlit) with no light spill greater than 0.5 lux outside the boundaries of any new development e.g. a dark corridor must be retained.

While it is clearly possible that the tree lines can be retained, and for lighting on site to be designed in such a way as to limit light spill, it must be recognised that development may need to be set back at sufficient distance from the northern hedge line to achieve mitigation objectives.

3.2 St. Kilda

St. Kilda's site is located centrally in Brixham off Drew Street. The Higher Brixham Watercourse, runs in the northern part of the site, may provide a more sheltered and darker potential commuting corridor for bats. The site was assessed as low bat roosting potential; negligible bat roosting potential for bats of the horseshoe family⁷. The light levels on site appear to be high, there is an abundance of overlooking residential buildings with external lighting and good street light provision. This creates no obvious dark corridors to be used for bat commuting in proximity of the existing building.

Mitigation Strategy

Light spill should be retained to no greater than 0.5 lux at the Higher Brixham Watercourse that runs at the northern part of the site.

⁷ AECOM HRA Screening 2017

3.3 Northcliff Hotel

The site lies on top of the cliffs overlooking Brixham Harbour. It is relatively flat and open and provides little or no semi-natural foraging habitat (although the adjacent allotments may be a source of invertebrates). Roosting and commuting opportunities would also appear limited by virtue of its position on the cliff tops. The West and North West parts of the site is surrounded by the Battery Grounds and Battery Gardens respectively.

Mitigation Strategy

The key issue for development in this location is to ensure that light spill is minimised and does not extend to the West, North West or over the open water in Brixham Harbour (something that is considered highly unlikely from a residential development as is being considered).

3.4 Oxen Cove and Freshwater Quarry

The site, consists of two car parks, has been identified for employment within the Torbay Local Plan as a potential development site for consideration in the Neighbourhood Plan. The site lies within the sustenance zone for greater horseshoe bats. The car parks are unsuitable for bats but surrounding habitat, namely steep rock faces covered in ruderal vegetation, have been assessed⁸ as providing foraging opportunities and night roosts for low numbers of bats. The site lies within flood risk zone, development of the site could potentially impacts upon the marine features of the Lyme Bay and Torbay SAC as a result of increased sedimentation.

Mitigation Strategy

The mitigation strategy aims to ensure there is no increase in the levels of pollutants likely to have an adverse effect on the integrity of the Lyme Bay and Torbay Marine SAC". This could be achieved through:

- managing recreational pressure on the interest feature i.e. reefs and sea caves
- considering sustainable urban drainage and water sensitive urban design to protect the site.

Effective mitigation measures for South Hams SAC would have to be provided to ensure the South and South West boundaries of the site retained dark i.e. light spill is no greater than 0.5 lux.

3.5 Castor Road

The site lies within the sustenance zone for greater horseshoe bats. The Neighbourhood Plan states that Castor Road is proposed for the construction of 10 homes. It was subject to a planning application P/2016/0947⁹ and is technically a committed site. The site is comprised of a meadow of semi-improved grassland on the back of residential housing.

⁸ AECOM HRA Screening 2017

⁹ Note: Application refused 16 December 2016; Appeal Allowed Decision 13 July 2017

Natural England has deemed the habitat within the site as possible but poor foraging habitat.

Greena Ecological Consultancy identified an open-fronted shed during the 2017 surveys in the south-western part of the site which was deemed as having moderate potential for a night roost for horseshoe bats. The shed itself would not compromise the ability to deliver development on this site even if its potential roost feature had to be retained or recreated.

Mitigation Strategy

Appropriate design and mitigation should be put in place, including limiting light spill to no greater than 0.5 lux outside the boundaries of the new development.

3.6 Knapman's Yard

This site is presently a builders' yard enclosed by residential properties on Stoke Gabriel Road in Galmpton. The site gently slopes downwards from the road, and is currently used for car parking and the storage of building materials. As a brownfield site, the development would not cause the loss of any potential bat foraging habitats. The surrounding properties and position of the site make it unlikely that development would have significant adverse effects on the character of the street or wider area.

Night roosting potential was identified, on the site visit, in the structures at Knapman's Yard. This was concluded purely based on the appearance of the properties, their construction and materials used, therefore the areas of mature trees and vegetation around the site should be preserved.

Majority of the buildings at Knapman's Yard are too light to support day-time bat roosting. No evidence of bat presence, current or past, was found within the buildings.

Mitigation Strategy

The areas of mature trees and vegetation around the site should be preserved.

4. In combination Assessment

In-combination assessment was covered in the Screening Report (Sections 6). Subject to implementation of the proposed mitigation measures, the impacts of additional development in Brixham would be reduced to an insignificant level and therefore the Brixham Peninsula Neighbourhood Plan policies will not affect the integrity of any of the European sites identified alone or in-combination with other plans and projects and the conservation objectives of these sites would be sustained.

5. Conclusions and Recommendations

The BPNP has been screened to check for the likelihood of significant effects on any European site. Torbay Council as a competent authority needs to ascertain whether the plan is likely to have a significant effect on European sites (either alone or in combination with other plans or projects). The assessment only considers the habitats and species that are qualifying interest features of the European sites.

These initial findings, identify that BPNP is not likely to have an adverse effect on the integrity of four out of the six European sites identified within 20 km of Torbay boundaries; either alone or in combination with other plans or projects. Based on the precautionary principle, the potential negative significant effects on Lyme Bay and Torbay Marine SAC and South Hams SAC have been assessed at stage 2 Appropriate Assessment.

The AA involves an assessment of Policy J1 and BH3. The record of the assessment for the likelihood of significant effects and proposed mitigation measures were set out in section 2 above and Appendix A. Subject to implementation of the proposed mitigation measures, the impacts of additional development in Brixham would be reduced to an insignificant level and therefore the Brixham Peninsula Neighbourhood Plan policies will not affect the integrity of any of the European sites identified alone or in-combination with other plans and projects and therefore the conservation objectives of these sites would be sustained.

6. References

1. AECOM. (2017) - Habitats Regulations Assessment Screening: Brixham Peninsula Neighbourhood Plan (2012-2030).
2. Brixham Peninsula Neighbourhood Forum. (2017) - Brixham Peninsula Neighbourhood Plan (submitted version)
3. Kestrel Wildlife Consultants Ltd. (2014) - HRA Site Appraisal Report of Torbay Local Plan Strategic Delivery Areas (Proposed Submission Plan).
4. Greenbridge Ltd. (2017) - Review of Greena Ecological Consultancy's Ecological Survey Report and HRA Site Appraisal for two residential and two employment sites.
5. Sunflower International Ecological Consultancy. (2015) - Castor Road, Brixham Ecological Appraisal.
6. Jacob's (2017) - Review of the Waterside Quarry site allocation.

Appendix A: Appropriate Assessment Matrix

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
1. Brixham Town Centre (25) (Housing and employment)	The site lies within the sustenance zone for greater horseshoe bats, but consists primarily of hard standing in the form of an active car park with no structures or vegetation. It is not a suitable habitat for bats.	Yes	No	N/A	BPNP HRA Screening Report (2017)
2. St. Mary's / Old Dairy (5)	The site is currently occupied with light industrial buildings. While, as a result, the main area of the site offers no foraging opportunities, GHBs have been recorded commuting through this area. Consequently, disturbance from new development (through increased light pollution and/or loss of lines of trees and habitat on the eastern part of the site) could result in a likely effect on the South Hams SAC; particularly by severing this established flyway known from the radio-tracking studies.	No	Yes	<p>It is important that all existing mature trees and hedge lines are retained and protected to provide continued commuting habitat/features for the bats as they pass through this point. In addition, development should seek to retain the rural character of the St Mary's Lane (e.g. narrow and relatively unlit) with no light spill greater than 0.5 lux outside the boundaries of any new development e.g. a dark corridor must be retained.</p> <p>Effective mitigation measures would have to be provided to ensure:</p> <ul style="list-style-type: none"> no additional light spill into adjacent areas and boundary features (e.g. tree lines along the eastern and northern boundaries); and no loss of these boundary features so that they continue to function as strong linear features in the landscape. 	BPNP HRA Screening Report (2017) & HRA Site Appraisal Report Addendum (2014)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
3. St. Kilda (12)	The site was assessed as low bat roosting potential; negligible bat roosting potential for bats of the horseshoe family. The light levels on site appear to be high, there is an abundance of overlooking residential buildings with external lighting and good street light provision. This creates no obvious dark corridors to be used for bat commuting in proximity of the existing building. The Higher Brixham Watercourse runs in the northern part of the site. The stream may provide a more sheltered and darker potential commuting corridor for bats.	No	Yes	Light spill should be retained to no greater than 0.5 lux at the Higher Brixham Watercourse that runs at the northern part of the site.	BPNP HRA Screening Report (2017)
4. Northcliff Hotel (15)	The site is relatively flat and open and provides little or no semi-natural foraging habitat (although the adjacent allotments may be a source of invertebrates). Nor are any obvious opportunities for roosting and commuting opportunities would also appear limited by virtue of its position on the cliff tops. The West and North West of the site is surrounded by the Battery Grounds and Battery Gardens.	No	Yes	Effective mitigation measures aim to restricting light spill into adjacent areas of woodland. This could be provided through a combination of sensitive lighting design in association with sympathetic new landscape planting.	BPNP HRA Screening Report (2017) & HRA Site Appraisal Report Addendum (2014)
5. Torbay Trading Estate (15) (Housing and employment)	The site is located within South Hams SAC greater horseshoe bat sustenance zone but not within a strategic flyway. The landscape around the site is too light and the wooded land to the east of the site is not considered to be suitable for roosting or foraging bats.	Yes	No	N/A	BPNP HRA Screening Report (2017)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	The site was found unsuitable for bat roosting. Potential egress points are limited and the rooms under the carpark appear too light to support day-time roosting. No evidence of bat presence was found.				
6. Oxen Cove and Freshwater Quarry (10) (Housing and employment)	The site, consists of two car parks, has been identified for employment within the Torbay Local Plan. The site lies within the sustenance zone for greater horseshoe bats. The car parks are unsuitable for bats but surrounding habitat, namely steep rock faces covered in ruderal vegetation, have been assessed as providing foraging opportunities and night roosts for low numbers of bats. The site lies within flood risk zone, development of the site could potentially impacts upon the marine features of the Lyme Bay and Torbay SAC as a result of increased sedimentation.	No	Yes	<p>The mitigation strategy aims to ensure there is no increase in the levels of pollutants likely to have an adverse effect on the integrity of the Lyme Bay and Torbay Marine SAC". This could be achieve through:</p> <ul style="list-style-type: none"> managing recreational pressure on the interest feature i.e. reefs and sea caves considering sustainable urban drainage and water sensitive urban design to protect the site. <p>Effective mitigation measures for South Hams SAC would have to be provided to ensure the South and South West boundaries of the site retained dark i.e. light spill is no greater than 0.5 lux.</p>	BNP HRA Screening Report (2017) & HRA Site Appraisal Report Addendum (2014)
7. Brixham Police Station (7)	The site is brownfield land surrounded by well-lit areas. Due to its modern construction and location in a highly illuminated urban area is both, unsuitable and with no potential	Yes	No	N/A	BNP HRA Screening Report (2017)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	roosting provision for Horseshoe bats. The two Urban Protection Areas located to the North and East of the site are managed in a way that is not suitable for greater horseshoe bat.				
8. Former Jewson (20)	The site has limited potential egress points in the building and has been deemed as unsuitable for horseshoe bats. The surrounding habitat is formed by commercial buildings and hard standing which is considered unsuitable for foraging and commuting bats.	Yes	No	N/A	BPNP HRA Screening Report (2017)
9. Castor Road (10)	Ecology assessment, extended phase 1 habitat (P/2016/0947) ¹⁰ hasn't resulted in finding any interest features. Whilst the site is considered to be of limited ecological value, it is located within a sustenance zone for the South Hams Greater Horseshoe Bat SAC. It is thought to be possible that the site lies on the edge of a GHB flyway from Berry Head to western outskirts of Brixham. The site lies outside the broad corridor that has been mapped as being within a strategic flyway. The site is well clear (130m) of flight paths ¹¹ . The site is surrounded by urban development on all sides, so developments within the site itself would have minimal to no impact on any of these sites.	No	Yes	Appropriate design and mitigation should be put in place, including limiting light spill to no greater than 0.5 lux outside the boundaries of the new development. The shed itself would not compromise the ability to deliver development on this site even if its potential roost feature had to be retained or recreated.	BPNP HRA Screening Report (2017) & Castor Road, Ecological Appraisal

¹⁰ Castor Road, Ecological Appraisal 2015

¹¹ Marquis & Lord and Penny Anderson Associates, data collected by radio tracking April 2010.

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	<p>The DBRC biodiversity data search has indicted a bat survey in not required, nor would it be justifiable. The site lies outside the strategic flyway for greater horseshoe bats, dispersing to forage from the Berry Head roost site.</p> <p>Natural England advises that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which South Hams SAC has been classified.</p>				
10. Knapman's Yard (6)	<p>The site is located within South Hams SAC greater horseshoe bat sustenance zone but not within a strategic flyway. The landscape around the site is hard standing within well-lit built-up area. Night roosting potential was identified in the structures at Knapman's Yard. This was concluded purely based on the appearance of the properties, their construction and materials used. Majority of the buildings at Knapman's Yard are too light to support day-time bat roosting. No evidence of bat presence, current or past, was found within the buildings.</p>	No	Yes	The areas of mature trees and vegetation around the site should be preserved.	BPNP HRA Screening Report (2017)
74 New Road (Employment)	<p>It is a committed site (P/2015/0235) most of it is hard standing within well-lit built-up area. It fall within greater Horseshoe bat sustenance zone but not in a strategic flyway.</p> <p>Natural England advises that the proposal, if undertaken in strict</p>	Yes	No	N/A	BPNP HRA Screening Report (2017)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	accordance with the details submitted, is not likely to have a significant effect on the interest features for which the South Hams SAC has been classified.				

Appendix B Appropriate Assessment of Deleted sites (for information only)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
Waterside Quarry	<p>AECOM</p> <p><i>“There are no buildings on the site. Habitat subject to week-long monitoring in 2015 where no greater horseshoe bats were recorded. It is recognised that this does not meet the survey standards set out for South Hams SAC for a project application, but is included purely for information. The site has since been cleared (according to the Greena Ecological Consultancy report from November 2016) and is thus no longer suitable for greater horseshoe bats. The site was however resurveyed over a 3 month period from April – June 2017 and no horseshoe bats were recorded on site.”</i></p>	Yes	No	<p>N/A</p> <p>The Council as the Competent Authority does not support this assessment</p>	HRA Screening Report BPNP (August 17)
	<p>Greenbridge Ltd</p> <p><i>“The Neighbourhood Plan allocation proposals for Waterside Quarry would almost inevitably lead to the loss of most of the semi-natural vegetation on site, and with it the majority of (if not all) suitable habitat for greater horseshoe bats, where this currently supports foraging/commuting activity on site and helps provide valuable protection and buffering from light at the cave roost. Furthermore, the cave is thought to be both a mating and a hibernation site</i></p>	No	No	N/A	Brixham Neighbourhood Plan Review of Greena Ecological Consultancy’s Ecological Survey Report’ and HRA Site Appraisal for Two Residential and Two

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	<p><i>making the value of the site even more significant in relation to the South Hams SAC.</i></p> <p><i>Loss of suitable habitat on site is also likely to have an adverse effect on how greater horseshoe bats move through this part of the urban landscape in Paignton, because it would greatly reduce (or even destroy completely) the site's potential to function as a stepping stone in the landscape.</i></p> <p><i>This allocation should therefore be removed from the Brixham Neighbourhood Plan as being contrary to BNP Policy E8 and contrary to Local Plan Policies SS8, SS9 and NC1."</i></p>				Employment Sites (May 17)
	<p>Jacobs</p> <p><i>"We consider the fact that GHBs were recorded during survey work associated with the Goodrington Quarry application and were known to be roosting in the cliff to be compelling evidence that they would be likely to be using the Waterside Quarry allocation site as well. Therefore, any development within the site allocation could be considered to potentially have an adverse effect on GHBs, particularly the GHB roost site in the cliff immediately adjacent to the allocation boundary.</i></p> <p><i>The presence of a roost within the cliff and activity across the site is considered to indicate that this site could be important to GHBs for some parts of the year and could provide</i></p>	No	Yes	The Forum should provide a mitigation strategy to enable a robust assessment.	Review of the Waterside Quarry site allocation (November 17)

Site	Screening Assessment	Screened out?	AA required?	Mitigations Strategy	Reference
	<p><i>“stepping stone” habitat between the roost at Berry Head SSSI and those within the wider sustenance zone, e.g. Paignton Zoo.</i></p> <p><i>We would contest that the conclusion of no potential effect on GHB reached by Aecom for Waterside Quarry is not based on all of the available information, as the Green Ecology records do not appear to have been [fully]¹² considered. We would recommend that this site allocation is assessed again, with a presumption that the site is used by GHB and recognising the presence of a GHB roost immediately adjacent, before determining whether or not a significant effect on GHB (and subsequently the South Hams SAC) is likely for Waterside Quarry.”</i></p> <p>Note: the further survey results, submitted by the Forum as part of the BPNP Submission letter on 17th December 2017, did not change Jacobs’ comments above.</p>				

¹² Not all the information available was acknowledged in the AECOM HRA.