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Our ref: 257655
Your ref: Brixham Neighbourhood Plan, revised HRA



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BY EMAIL ONLY

Dear Ashwag

Planning consultation: Brixham Neighbourhood Development Plan, Habitats Regulations Assessment Sept 2018.

Thank you for your consultation on the above dated 05 September 2018

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We have a number of interim comments on the revised Habitats Regulations Assessment (HRA) Report which are set out below (with more detailed comments in Annex 1). The comments mostly relate to the structure of the report. It is important that the scope of the report is clear and that the conclusions drawn are set out clearly. We will be able to provide our formal and final comments when the matters raised have been addressed and when the Council have decided on the actions they wish to take in the light of the Examiner's report. We hope you find these comments useful.

The report needs to be clear at the beginning whether it is a new stand-alone Habitats Regulation Assessment (including a screening and appropriate assessment stage) or if it is relying/drawing on stages/information in previous reports (e.g. the Habitats Regulations Screening report 2017 prepared by AECOM (the AECOM report)).

We note from the Examiner's report (para 12.9.4) that the Council consider that the assessment and mitigation measures set out in all three neighbourhood plan HRA screening stages "substantially meet the [HRA] requirements" although "that this could be made clearer through minor reformatting to set out the same in an Appropriate Assessment stage".

From the above it would appear that the Council proposes to reformat the existing AECOM report to ensure that potential impacts and measures for mitigation are addressed as part of the Appropriate Assessment stage rather than as part of the screening stage. This needs clarification.

However the Examiner's report suggests (para 12.5.1) that the Council has independently carried out a separate screening exercise and (in the case of the South Hams SAC) screened out sites within the Sustainance Zone for Greater Horseshoe Bats which are within existing built up areas. It may therefore be that the Council is not seeking to rely on previous screening undertaken by AECOM but has undertaken its own independent screening exercise instead. We also note that Appendix A to this Appropriate Assessment sets out a screening assessment. As stated above we therefore seek clarification on whether this is a new stand-alone Habitats Regulation Assessment (including a screening and appropriate assessment stage) or if it is relying/drawing on

stages/information in previous reports (e.g. the Habitats Regulations Screening report 2017 prepared by AECOM (the AECOM report).

There also appears to be some confusion about screening as two screening stages are mentioned in the Council's Appropriate Assessment. In the third para of the introduction it states that all the Neighbourhood Plan policies have been screened out with exception of BJ1 and BH3. These policies (and associated site allocations) would therefore need to be taken forward for Appropriate Assessment. However section 2 then goes on to discuss further screening, which is confusing. It would appear that section 2 is, in effect, the start of the Appropriate Assessment Stage. Clarification is sought on the screening stage and which policies are screened in and out. Those that are screened in should then be addressed as part of the Appropriate Assessment.

In summary the Habitats Regulations Assessment report should:

- Clearly set out the policies (and associated allocations) that are screened 'in' and 'out' (with justification)
- Address policies/allocations screened 'in' as part of the Appropriate Assessment stage. Conclusions regarding mitigations requirements and whether there are likely to be any significant effects should be set out clearly. Supporting evidence can be set out in an appendix.
- State whether the Appropriate Assessment updates a previous report produced by AECOM and if so what elements of the AECOM report still stand and what elements have been revised. If this report is a new document entirely this should be made clear.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Carol Reeder on 0208 225 6245/07721 108902 or carol.reeder@naturalengland.org.uk. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Carol Reeder
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Annex 1 – further more detailed comments

Section 2.2 Screening outcome – employment sites

From the Examiners report it would appear that these sites are not considered as allocations in the Plan. The Council's decision in the light of the Examiner's report should therefore be reflected in the Appropriate Assessment (AA). It would appear that the assessment of Oxen Cove and Freshwater Quarry reflects the fact that it has been allocated for housing rather than employment use. This point should be clarified in the AA report.

Section 3. Appropriate Assessment

This section needs to address significant effects where impact pathways have been identified and policies/allocations have not been screened out. The AECOM report (Table 1) noted the following potential impact pathways:

- Fragmentation or disturbance of commuting routes and foraging areas of greater horseshoe bats; and
- Increased recreational pressure on the habitats within the South Hams SAC or Lyme Bay & Torbay SAC.

The Appropriate Assessment appears to concentrate almost solely on the first potential impact referred to above (although mention of impact on Lyme Bay and Torbay SAC is made in relation to the allocation at Oxen Cove and Freshwater Quarry). Little mention is made of impacts arising from recreational pressure on South Hams SAC, or those on Lyme Bay & Torbay SAC. These impacts therefore need to be addressed in the Appropriate Assessment. We note that these issues are covered in the AECOM screening report (section 7.2 and 7.3) and mitigation measures are discussed although it is also recognised that following the recent Sweetman ruling (Court of Justice of the European Union People over wind v Coillte Teoranta C-323/17) mitigation measures should not be taken into account at the screening stage. You may therefore wish to draw on relevant sections in the AECOM report to complete the Appropriate Assessment stage.

For each of the allocations addressed here it would be useful if the report should set out clearly mitigation measures needed to maintain integrity of the Special Area of Conservation (SAC) in question. For instance for Oxen Cove and Freshwater Quarry the report states that “steep rock faces covered in ruderal vegetation have been assessed as providing foraging opportunities and night roosts for low numbers of bats” but no text is provided on mitigation measures. Where information on mitigation is provided, it would be useful if this could be identified clearly by setting it out under a separate heading. For each allocation the report should also include an explicit conclusion regarding likely significant effects.

Supporting evidence. Where this is used to support conclusion in the Appropriate Assessment the information should be appended.

Appendix A: Appropriate Assessment Matrix

The table refers to the screening assessment. As initial screening appeared to screen ‘in’ policies BJ1 and BH3, should the table not just set out the conclusions of the Appropriate Assessment (i.e. whether there are likely significant effects and whether/what mitigation is required)? Also clarification is sought on whether this is a new and separate screening assessment undertaken to supersede that undertaken by AECOM. It would appear that in this case the information contained in the AECOM report has not been used

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