Date: 30 October 2020
Our ref: 331349
Your ref: P/2020/0921

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Emily Elliott
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Spatial Planning
2nd Floor Tor Hill House
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BY EMAIL ONLY

Dear Ms Elliott,

Proposal: Formation of Lidl Supermarket with associated parking, landscaping & access works including new junction on A380 Kings Ash Road
Location: Land West Of Kings Ash Road Paignton TQ3 3XF

Thank you for your consultation on the above dated 19 October 2020.

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.

CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)
WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)
The application site is within or in close proximity to a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations').

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have[1]. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have. The site is also notified at a national level as Berry Head to Sharkham Point Site of Special Scientific Interest (SSSI).

[1] Requirements are set out within Regulations 63 and 64 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 63 and 64 are commonly referred to as the 'Habitats Regulations Assessment' process.
The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. http://guidanceanddata.defra.gov.uk/habitats-regulations-assessments/

South Hams Special Area of Conservation (SAC)
Berry Head to Sharkham Point Site of Special Scientific Interest (SSSI)
Greater horseshoe bats are among the rarest and most threatened bats in Europe. During the last 100 years, numbers have declined significantly throughout northern Europe. South Devon represents an international stronghold for the species supporting the largest recorded roost in northern Europe.

The proposed development site falls within a greater horseshoe bat *sustenance zone*[2] associated with the SAC roost at Berry Head. *Sustenance zones* are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC. The permanent loss of existing or potential habitat within the *sustenance zone*[2] and in proximity to the Berry Head roost has the scope to adversely affect the favourable conservation status of the Berry Head maternity colony. The proposals involve the net loss of land available for foraging greater horseshoe bats within the Berry Head sustenance zone, and impacts to the hedgerow network available to commuting greater horseshoe bats.

We note that the site contains a number of high value habitats that have the potential to support greater horseshoe bat activity – scrub, woodland, species-rich hedgerows. In addition, the masterplan (2013) for the site refers to a number of habitats that were not recorded as part of the information put forward with this application – semi-improved grassland occupied a significant proportion of the site, and scattered trees. Clearly the site is the subject of successional vegetation, with the potential to provide valuable and undisturbed habitats to support greater horseshoe bat activity. Value of scrub and successional vegetation, and the species it supports is noted in the "The nature conservation value of scrub in Britain" (JNCC, August 2000).

NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on greater horseshoe bats associated with the **South Hams Special Area of Conservation (SAC), and Berry Head to Sharkham Point Sites of Special Scientific Interest (SSSI)**. Your Authority will be required to undertake a Habitats Regulation Assessment (HRA) before determining this application. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- We note that the greater horseshoe bat survey deviated from best practice guidance. The automated survey failed to collect data during May (7 days), and the detector on the northern boundary failed to work in September (8 days). Best practice guidance states that at least 50 days of automated surveys are required. In this instance, 37 days survey were carried out on the northern boundary, and 41 days survey on the southern boundary. These **survey limitations** require full discussion in order to understand their significance, and whether the survey submitted provides a reliable basis to inform understanding of activity associated with the site.

- The Ecological Appraisal[3] that has been submitted fails to fully consider impacts and address the mitigation/enhancements requirements.

"Suitable mitigation is…being sought, ideally in the local vicinity, in order to

[2] South Hams SAC – Greater horseshoe. Habitats Regulations Assessment Guidance (October 2019).
[3] Devon Wildlife Consultants, July 2020.

enhance horseshoe bat commuting and foraging habitat in proximity to the site. This mitigation will be required in order to assess and mitigate residual impacts on greater horseshoe bats and ensure a measurable net biodiversity gain in line with the National Planning Policy Framework (NPPF)."

It is important to note that an Ecological Appraisal is not intended to replace an Ecological Impact Assessment, and an appraisal tends to be part of the ecological scoping phase. An **Ecological Impact Assessment**, in accordance with best practice guidance, is required to fully understand the potential impacts of the proposal on greater horseshoe bats associated with the South Hams SAC, and mitigation measures needed to address the identified impacts. Comprehensive **avoidance/mitigation measures and enhancements** need to be sufficiently detailed and unambiguous, providing certainty that they prevent detrimental impacts upon greater horseshoe bat activity. It will be important to demonstrate that the 'mitigation hierarchy' has informed the approach.

- A **lighting assessment** (Signify, 28 July 2020) has been put forward with the application, but fails to consider ecological constraints or impacts.

  Once suitable mitigation and avoidance measures have been put forward, an updated lighting assessment will be required to demonstrate that those features are not subject to detrimental light impacts.

  - Typically, detrimental light spillage upon greater horseshoe bat habitats (adjoining hedgerows/ woodland/ trees/ scrub/ linear features/foraging habitats) is thought to be associated with 0.5 Lux and above.

  - An assessment of light impact is best informed by identifying all potential sources of light and combining this information as part of a Lux analysis. This should include light spillage from the proposed building and transient lighting from vehicle headlights, all sources of external and internal light.

  - Assessment of potential light impacts at both construction and operational phases is often best informed by a suitably qualified lighting designer and ecologist.

  - To assess light impacts upon greater horseshoe bat habitat from the proposed development, it will assist to provide contour mapping (0.1lux intervals or less) that represents the lux modelling results (including vertical plane, and sample intervals of 200mm) on an OS map backdrop, and that can be used in conjunction with greater horseshoe bat habitat maps. A baseline assessment will be required to evaluate current light spillage associated with the site.

  - The assessment will require a consideration of wavelength to inform whether the lighting falls within the blue colour spectrum or 'cooler' light (more intrusive to both greater horseshoe bats, and their prey) - 'warm' white light 3000K or less, with average maximum wavelength of 550nm or more[4].

- Your authority will be required to carry out a **Habitats Regulations Assessment**, and this will need to be based upon a sufficient level of certainty and detail regarding potential impacts. Potential avoidance and mitigation measures will need to be sufficiently detailed and underpinned by robust delivery mechanisms that reflect the duration of impacts.

[4] **Bats and artificial lighting in the UK** *Bats and the Built Environment* series. **Guidance Note 08/18.** Institution of Lighting Professionals/Bat Conservation Trust (2018)

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained. Please note that we will require sufficient time to provide our advice on any further information. A further 21 days, but possibly more may be required for our further advice.

Biodiversity net gain
In the Chancellor's 2019 Spring Statement, the government announced that it "will Mandate net gains for biodiversity on new developments in England to deliver an overall increase in biodiversity". Further, biodiversity net gain delivery is enshrined within National Planning Policy Framework paragraphs 170, 174 and 175, and local policy EN8 Biodiversity Protection and Enhancement.

Accordingly and to future proof the proposed development, we advise that the proposals are reviewed in light of this commitment towards the delivery of biodiversity net gain. To objectively demonstrate the delivery of biodiversity net gain, the measures put forward to enhance and mitigate biodiversity need to be presented utilising a recognised biodiversity metric mechanism (e.g. defra metric).

Green Infrastructure
The proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement.

As part of Torbay Council's commitment towards Green Infrastructure, we are keen to see the integration of this important element into the proposals. This will facilitate a holistic approach and ensure that the development proposals are capable of contributing towards Torbay's Green Infrastructure Delivery Plan.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. ***You must also allow a further period of 21 days before the permission can be granted.***

Should the proposal change, please consult us again.

Should the developer wish to explore options for avoiding or mitigating effects on the natural environment with Natural England, we recommend that they use our Discretionary Advice Service. For any queries relating to the specific advice in this letter only please contact me on 02080267468. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Regards,

Julien

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Cc: Rose Bailey-Clark (TC)