

[REDACTED]

From: Mike Harris [REDACTED]
Sent: 04 May 2018 15:18
To: Luscombe, Adam; Future Planning
Cc: Delaney, Ailsa
Subject: RE: Torbay Neighbourhood Plan HRA Matters
Attachments: Advice Note on Appropriate Assessment and Basic Conditions Test.pdf

Dear Adam

Further to our submission below please see attached a supplementary note to share with the Examiners which expands upon the points raised.

Kind regards

Mike

Mike Harris *BSc (Hons) MA MRTPI*
Senior Associate Town Planner

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From: Mike Harris
Sent: 01 May 2018 17:30
To: 'Luscombe, Adam' ; 'Future Planning'
Cc: 'Ailsa.Delaney' [REDACTED]
Subject: Torbay Neighbourhood Plan HRA Matters
Importance: High

Dear Adam

On behalf of my client, please find attached a letter and associated legal advice note relating to potential HRA matters in respect of the three neighbourhood plans in the Torbay area.

I also attached, for ease of reference, the Natural England Reg 16 representations as these are relevant to the points raised.

If you have any queries please do not hesitate to contact me.

Kind regards

Mike

**Appropriate Assessment and Basic Conditions Test
Implications for Torbay Neighbourhood Plans**

1. I have been asked to advise further on the implications on the Torbay Neighbourhood Plans process of the EU Habitats Directive requirements for appropriate assessment.
2. Following my Advice Note of 1 May 2018, I understand that Torbay Council, further to their regulation 16 representations, continue to be of the view that the survey data and information provided in support of the NPs and in particular the Brixham Peninsula Neighbourhood Plan ("BPNP") is insufficient to allow a conclusion to be made that there can be no potential effect on the South Hams SAC. My attention has been drawn to an email dated 11 April 2018 that has recently been published on the Council's web portal for the BPNP (at <http://www.torbay.gov.uk/media/11189/bpnptorbaycouncilfurtherlate.pdf>) and which states that the Council's ecologist remains of the view that she *"would contest the conclusion of no potential effect on GHB..."* and that she recommends that the site be reassessed.

3. For ease of reference I restate the terms of regulation 102A:

102A Assessment of implications for European site: neighbourhood development plans

*(1) A qualifying body which submits a proposal for a neighbourhood development plan **must provide** such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required. [my bold emphasis]*

4. It seems to me that if the further survey data referred to in the 11 April 2018 email is not provided then there are two options:
 - a. Either the Council should make a formal request to the neighbourhood forum under regulation 102A of the Habitats Regulations which the forum would be under a duty to provide. If this route is taken then the examination of the neighbourhood plan would need to be suspended (as allowed for under paragraphs 2.13.7 to 2.13.10 of the NPIERS Guidance) to allow the relevant surveys to take place.
 - b. Alternatively, if the assessment is left at the current position where the Council as competent authority is clearly not satisfied that sufficient information has been provided to show that there will be no significant effects on the SAC, then the logical conclusion must be that the proposed neighbourhood plan does not meet the requirement of paragraph

8(2)(f) of Schedule 4A of the 1990 Act and therefore does not meet the basic conditions test and should be rejected.

I trust that the above is clear but if you would like to discuss anything or require any clarification please do not hesitate to contact me.

04 May 2018

Anne Harrison
Legal Director (Barrister)