

Date: 12 December 2018
Our ref: 264300
Your ref: Brixham Neighbourhood Plan HRA. Post examination version dated
November 2018



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Dear Ashwag

Planning consultation: Brixham Peninsula Neighbourhood Plan (BPNP), post examination Habitats Regulations Assessment dated November 2018

Thank you for your consultation on the above dated 12 November 2018. For clarification we are responding to the version of the HRA published on the Council's website and to which we were supplied a link in an email from Andrew Gunther dated 19th November 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 comments on report which are set out below which we hope you will find useful. Most of these are procedural and a number relate to the organisation of material to ensure the assessment reflects the 'People over wind' judgement issued by the European Union. That judgement ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage (*People over Wind & Sweetman v Coillte Teoranta Case C-323/17*).

Screening and appropriate assessment stages. The first sentence on the section 2 states that the Brixham Peninsula Neighbourhood Plan (BPNP) HRA screening report shows that the BPNP policies were screened out with the exception of policy J1 (employment land) and BH3 (delivery of new homes). It is these two policies and associated site allocations that need to be considered as part of the appropriate assessment stage. This point was made in our letter of 9 October 2018. This does not necessarily require the gathering of new evidence. It is however important that the supporting evidence is referred to at the appropriate stage within the HRA.

Employment sites. The HRA should be clear about the status of these sites. We note the Examiner's comment (on page 27 of her report) that as these sites have not been allocated any potential shortfall in evidence in relation to the HRA can be adequately addressed should any planning application come forward. Given that these employment sites are not allocated we question whether they need to be considered within this version of the HRA.

Section 3 – Appropriate Assessment. The second para states that recreational pressure on the South Hams SAC and Lyme Bay and Torbay Marine SAC was covered in the (AECOM) Screening report section 7.2 and 7.3. However sections 7.2 and 7.3 put forward policy measures for mitigation at the screening stage (which is not compliant with the recent People over Wind judgement). This issue should therefore be covered as part of the appropriate assessment stage.

Mitigation. Where the need for mitigation is identified, the HRA (through the appropriate assessment) must set out what policy measures are in place to safeguard the integrity of the European site. At this stage relevant adopted Torbay Local Plan policy or emerging BPNP policies may be referred to. For instance, section 3 the HRA sets out the mitigation required for specific allocations but not how existing policy addresses this issue. For each allocation the appropriate assessment should provide a concluding sentence or paragraph setting out what policy measures are in place to require the mitigation measures identified.

Para 3.4 Oxen Cove and Freshwater Quarry. From the Examiner's report it appears that this site is allocated for housing but not employment use. It would be useful if the site status could be clarified.

Para 3.5. The first sentence states that the allocation at Castor Road lies within the sustenance zone for Greater Horseshoe Bats. This is also the case for other allocations within the BPNP area. The implications of the sustenance zone should be addressed for each relevant allocation or within a more general comment. The South Hams SAC – Greater horseshoe bat consultation zone planning guidance prepared by Natural England in 2010 and the emerging South Hams Special Area of Conservation Greater Horseshoe Bat Supplementary Planning Document published by the Council in 2018 should be referred to.

The second paragraph in this section states that 'Natural England has deemed the habitat within the site as possible but poor foraging habitat'. This sentence doesn't seem to make sense. In addition a full reference for the comment should be supplied.

Section 4 – In combination assessment. The in-combination assessment should be addressed as part of the appropriate assessment. It seems from this paragraph that mitigation identified at the screening stage is being relied on as the first sentence states that "In-combination assessment was covered in the Screening report (section 6). This does not comply with the People over Wind judgement. In addition the section should be updated to refer to the emerging Joint Plymouth and South West Devon Local Plan which is currently at the examination stage.

Section 5. The second paragraph, in referring to 'initial findings', suggests that the process of appropriate assessment of the BPNP has not reached a conclusion. This section should summarise the findings of the appropriate assessment and be clear about policy measures in place to avoid or mitigate impact on the integrity of European sites.

We have already made a number of comments on the HRA both in this letter and in a previous response dated 9th October. We also discussed the issue with you at a meeting at your offices on 7th November. If you feel a further meeting would be useful to go through the points made above we would be happy to meet with you again.

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

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