
INGLEWOOD: ECOLOGY BRIEFING NOTE - NOVEMBER 2019

Updated with case law references 02/12/2019

1.0 Introduction

- 1.1 Nicholas Pearson Associates (NPA) have undertaken ecological surveys and prepared ecology information in support of an outline planning application for residential development (known as Inglewood) at land south of White Rock, Paignton (planning ref P/2017/1133).
- 1.2 The proposals have been reviewed by a wide range of consultees, including Natural England (NE) and the RSPB, who have both stated that they have no objection to the proposals. Jacobs, acting on behalf of Torbay Council, have also reviewed the proposals in terms of ecology and had no objection to the proposals. Following the *People Over Wind* case in April 2018, Jacobs' review included undertaking a full Appropriate Assessment under the Habitat Regulations which concluded that the proposals would have no adverse effect on the integrity (alone or in combination with other proposals or projects) on either South Hams SAC or Lyme Bay & Torbay SCI.
- 1.3 Since then the South Hams SAC HRA Guidance has been updated/finalised (June 2019). The main change from the 2010 guidance relates to Landscape Connectivity Zones replacing Strategic Flyways. The approach taken for and the assessments undertaken of the application (including the Jacob's Appropriate Assessment) are in accordance with the 2019 guidance and remain valid.
- 1.4 Notwithstanding the above we understand the case officer has requested clarification on certain ecology matters which were raised by a third party (Farrer & Co.) during the consultation period. These matters relate to whether the:
- ecology mitigation package can be considered mitigation as opposed to compensation;
 - ecological assessment "double counted" the mitigation that was required for the White Rock development to the north; and
 - if the assessment undertook a thorough in-combination assessment.
- 1.5 Sections 2-4 below set out information relating to these matters to provide clarification.

2.0 Mitigation / Compensation

- 2.1 Section 4.3.2 of the South Hams SAC HRA Guidance states “where it is not possible to avoid all impacts the applicant should put forward measures to reduce impacts (mitigation) and ensure no adverse effect on the integrity of the SAC. Required measures may include:”..... “creating or enhancing new Foraging Habitat in suitable locations within the same Sustenance Zone”.
- 2.2 The Inglewood proposals would create new and improved foraging habitat adjacent to the built development proposals and as such would meet the definition of mitigation under the SAC HRA Guidance. This is because it is mitigating the impact on the SAC, which will therefore remain unaffected by the Inglewood development.
- 2.3 The third-party objectors refer to various guidance documents and case law to suggest that the bulk of the ecology mitigation package is compensation and not mitigation. However, the guidance they refer to is for general scenarios, with the case law referring to instances where designated habitat within Natura 2000 sites are being lost. They also state (p.36 of letter dated 27 April 2018):
- “A measure that is incorporated into a project which compensates for losses to wildlife caused by the project by allowing other creatures (our emphasis) elsewhere to do better than they otherwise would have done in the absence of the project, is a compensatory measure...”*
- 2.4 In the case of Inglewood, it is habitat outside the Natura 2000 site that is being lost (albeit in the sustenance zone) and it relates to a mobile species i.e. it would be the same creatures that will benefit from the habitat creation and improvement (given that it is in such close proximity). This is why NE, Jacobs and the South Hams SAC HRA Guidance correctly consider the proposals in terms of the Habitat Regulations Assessment as mitigation and not compensation.
- 2.5 In a similar scenario at land at Churston Golf Club the inspector (appeal decision – APP/1165/A/13/2205208) was satisfied that the approach was mitigation. Two further cases where habitat creation outside Natura 2000 sites have been proposed (and accepted) as mitigation are Lee Valley Regional Park Authority v Epping Forest District Council 2015¹ and Hargreaves v Secretary of State for Communities and Local Government 2011². I would in particular draw your attention to paragraphs 57 to 58 and 79 to 81 inclusive of the first judgment and paragraphs 46 to 48 inclusive of the latter judgment.
- 2.6 To illustrate the point, if it were the case that ecological measures such as are proposed at Inglewood were compensation rather than mitigation, it would follow that any proposal for the loss and replacement of a hedgerow within the South Hams SAC sustenance zone would require going through the “imperative reasons of overriding public interest” (IROPI) test under the Habitats Regulations, with the vast majority of projects highly unlikely to pass the test. This simply isn’t how the regime is applied.

¹ <https://www.casemine.com/judgement/uk/5a8ff74460d03e7f57eaa9e8>

² <https://www.casemine.com/judgement/uk/5a8ff77160d03e7f57eac79e#>

3.0 Double Counting

- 3.1 Initial responses to the Inglewood proposals included a query as to whether the ecological assessment “double counted” the mitigation that was required for the White Rock development to the north *n.b.* the White Rock ecological mitigation package included off-site mitigation measures on land that would be developed if the Inglewood proposals were approved.
- 3.2 This query was addressed in section 3 of the Ecological Addendum (NPA, February 2018, see extract below), and associated figures 5.3a and 5.3b (which are included with this ecology briefing note for completeness), which set out the relationship between the White Rock Off-Site Landscape and Ecological Management Plan (LEMP) commitments (*i.e.* hedge management/planting and species-rich grassland margin creation) and the extant Environmental Stewardship Agreement (notably hedge management and tussock grassland margins) that overlap with the Inglewood proposals.

Table 1: Effect of Inglewood Proposals on White Rock and Stewardship Commitments

Habitat	Hedgerows	Species-rich Grassland Margins	Tussock Margins
Existing on-Site	3.3km	4,200m ^{2*}	8,460m ²
Proposed loss	400m	1,670m ^{2**}	2,230m ^{2***}
Proposed “diminished value”	1,160m	2,410m ²	460m ²
Proposed total to be affected	1,560m	4,080m ²	2,690m ²
Proposed creation	3.5km****	0.6ha	1.2ha
Total Gain	3km	0.45ha	1.0ha
Net Gain - optimal value*****	1km	0.2ha	1.0ha

* but no evidence recorded on-Site during NPA’s ecology surveys.
 ** 690m² to roads and 980m² which are now proposed to be tussock grassland margins
 *** 330m² to roads and 1,900m² which Inglewood proposes to be hay meadow style margin
 **** approximately 2.5km of which would be in the Farm Management Area *i.e.* not adjacent to the proposed development.
 ***** *i.e.* Gain in habitats that would not be adjacent to development

- 3.2 In addition to the above, the proposals also include the following habitat creation which are not covered by the existing commitments:
- 4ha Spring Barley, over-wintered as stubble;
 - 1ha of woodland with scrub margins;
 - 0.4ha of orchard;
 - 2 bat houses (one on-Site and a contribution to one off-site); and
 - a pond.
- 3.3 In the vast majority of instances the Inglewood habitat proposals would be over and above those within the stewardship agreement (*i.e.* Inglewood proposals are to cut hedges higher and provide wider field margins). The exception to this is where small lengths of hedge or field margins would be removed, the intention is to remove these from the stewardship agreement.

- 3.3 In summary the addendum and associated figures demonstrated that the Inglewood proposals would retain the vast majority of the White Rock mitigation measures that lie within the Inglewood application boundary and deliver significant additional habitat creation (e.g. total gain of 3km of hedgerows) and resulted in the RSPB, NE and Jacobs (acting on behalf of Torbay Council), being satisfied that the Inglewood ecology assessment did not “double count” the White Rock mitigation measures.

4.0 **In-combination Assessment**

- 4.1 As set out in the ecology chapter of the Environmental Statement and Ecological Addendum, the vast majority of the ecological mitigation package would be provided in advance of any construction. This, and the phased nature of the construction, would mean that sufficient mitigation would always have been provided in advance of construction activities to mitigate for any negative impacts, resulting in no net residual impacts at any stage of the project *i.e.* the project always “washes its own face”. Therefore there is no requirement to assess non-significant impacts from other projects.
- 4.2 As an example, existing arable land would be reverted to lightly grazed pasture (with associated margins of hay meadow and tussocky grassland) at least one year/growing season ahead of any construction. Given that much of the existing pasture is ploughed annually and/or of limited botanical diversity it is considered that there would be no net loss of foraging habitat (for bats or Cirl Bunting) even in the short term from the loss of existing cattle grazed pasture and arable land on the part of the site that is to be developed.
- 4.3 Likewise, the proposals would plant/create 3.5km of hedge banks at least one year/growing season in advance of any construction, with 330m then being lost to allow for construction of primary infrastructure and Phase I of the development (see Figure I attached). Approximately 250m of this hedgerow loss would be in the location of the proposed roundabout *i.e.* adjacent to Brixham Road where only lower levels of Greater Horseshoe bat activity was recorded. In addition, only one pair of Cirl Buntings were recorded breeding in 2016 within close proximity to the proposed hedgerow loss (note that no Cirl Bunting pairs were recorded nesting in the 2019 surveys close to proposed early phase hedge loss). As such it is considered there would be a coherent network of hedgerows present at all stages of the project to maintain bat connectivity across the landscape and provide more than sufficient nesting habitat for the Cirl Buntings that have been recorded as nesting on Site.