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## BY EMAIL ONLY

Dear Carly

**Proposal:** Outline application for residential led development of up to 400 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved

**Location:** Land To The South Of White Rock, Adjacent To Brixham Road, Aka Inglewood, Paignton

Thank you for your consultation on the above dated 13 November 2017, and agreeing to extend the deadline to our response.

*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 note that the proposed development does not accord with the provisions of the development plan (Torbay Local Plan 2012-2030).

### SUMMARY OF 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)**. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation. The following information is required:

- A comprehensive mitigation, avoidance, and enhancement package
- A Habitats Regulations Assessment

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.

## CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (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 2010, 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<sup>1</sup>. 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.

### South Hams Special Area of Conservation

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 the *sustenance zone*<sup>2</sup> for the Berry Head South Hams SAC greater horseshoe bat roost, and has the potential to provide important foraging and commuting habitat for this rare and mobile species. *Sustenance zones* are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC.

### Environment Statement (Stride Treglown, 1 November 2017)

- We welcome the **enhancement and mitigation measures** that have been put forward. Specifically, we support the measures outlined under "Construction avoidance, minimisation and mitigation measures..." (pages 67-68), and "Operational avoidance, minimisation and mitigation measures..." (page 68).

We note that the proposals include enhancement measures to address impacts associated with this development coinciding with the mitigation measures necessary for the adjacent consented Whiterock development. This is not an approach that we tend to favour, but in this instance the enhancement measures put forward are sufficiently robust to address concerns regarding this type of approach. Further, the Framework Landscape and Ecological Management Plan (Section 1.3.4 & Section 2.5.5, Stride Treglown, October 2017) states "This framework LEMP and actions associated with it will be included within Section 106 agreements associated with the site, providing confidence that land reserved for ecological and landscape and visual integration will be secured and not built on in the future."

The mitigation and enhancement measures will need to be underpinned by sufficient resources (financial/ expertise) for their in-perpetuity management (see Section 1.3.3 & Section 2.5.5, Framework Landscape and Ecological Management Plan, Stride Treglown, October 2017).

- We observe that some of the submitted documents refer to "no net loss of cattle grazed pasture". However, the documents also refer to on-site cattle grazed wood pasture that

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<sup>1</sup> Requirements are set out within Regulations 61 and 62 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 61 and 62 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/>

<sup>2</sup> South Hams SAC – Greater horseshoe bat consultation zone planning guidance (NE, 2010)

does not appear to have been taken into account as part of the analysis calculations. We also note that there appears to be insufficient recognition of the greater horseshoe bat value of making off-site fields smaller. This we suspect is an oversight regarding the overall analysis, and should be updated accordingly.

- As part of a robust approach towards addressing impacts and providing resilience, we welcome proposal to provide a contribution towards “an off-site bat house”. We understand that this relates to the creation of **bespoke greater horseshoe bat maternity roost** in close proximity to the designated Berry Head roost. This measure has the potential to deliver valuable resilience for the greater horseshoe bat population associated with the South Hams SAC. Further detail regarding the contribution, and implementation of this aspect requires further elaboration. The provision of this bespoke roost will contribute towards a strategic approach and provide confidence that the measures put forward offer a robust basis for the corresponding Habitats Regulations Assessment.
- We welcome the commitment to keep all green infrastructure areas at below 0.5lux (see Figure 5, Framework Landscape Ecological and Management Plan, Stride Treglown, October 2017). All sources of **proposed lighting** will need to meet this requirement in order to safeguard greater horseshoe bat habitats. Although, the Ecology Mitigation Land largely coincides with the Green Infrastructure land, we advise that you seek confirmation that the 0.5lux threshold applies to the Ecology Mitigation Land. This would then need to be secured through an appropriately worded planning condition/obligation to safeguard the greater horseshoe bat habitats from detrimental light spillage associated with the proposed development.

Section 5.5.18 refers to the use of vegetation to prevent detrimental light spillage from vehicle headlights upon greater horseshoe bat habitats. In addition to the planting, we advise that a hedgebank is created in order to deliver a more robust and long term solution. Monitoring (LEMP Section 6.1) should include monitoring of light impacts upon the “Ecology Mitigation Land”.

- As acknowledged in the LEMP (Section 4.5), an **adequate Phasing of habitat works** needs to be delivered in advance of construction. This should be secured through pre-commencement conditions. The **phasing plan** has an important role in the delivery functional habitats as outlined in the mitigation and enhancement measures. It is important that there is no repetition of the problems encountered with the phasing of habitat works on the adjacent Whiterock site. Typically, it takes a period of time before ecological habitats can become functional to support greater horseshoe bat activity. Therefore, good planning and sufficient advance planting needs to be undertaken (in advance of construction), whilst recognising constraints associated with the planting season (winter activity).
- We support the proposals put forward in the **Farm Management Plan** (Stride Treglown, October 2017). This will form an important consideration in the corresponding Habitats Regulations Assessment and will need to be secured via an appropriately worded planning conditions and/or planning obligation.
- **Delivery** of the Landscape and Ecological Management Plan, will be an important consideration. To ensure adequate delivery and assist with the practical delivery of the LEMP, we suggest that some user friendly templates are drafted to be utilised by the farmer/management company. The templates should provide clear instruction regarding works outlined in the LEMP, and used as a means for recording delivery. It will be important to ensure that the farmer/management company have sufficient understanding regarding the delivery and maintenance of ecological habitats associated with the mitigation and enhancement measures. This will also be an important aspect for the successful delivery of

multifunctional SuDS, providing biodiversity value – rather than simply green engineered structures.

- To enhance biodiversity opportunities, the new woodland planting should also include suitable native **woodland ground flora planting**.
- We welcome the proposed information boards, and other means of raising **public awareness** to highlight the biodiversity interest that will underpin some of the site management. Opportunities that allow the public to engage in conservation activity would be positive.

## NATURAL ENGLAND'S ADVICE

### FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON EUROPEAN 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). Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required (see previous section for further detail):

- **Bespoke greater horseshoe bat maternity roost** (within proximity to Berry Head SAC roost) contribution, and delivery mechanism.
- Clarification regarding **light controls** associated with the Ecology Mitigation Land. In addition, further more robust mitigation regarding light spillage associated with vehicles needs to be put forward in order to provide long term resilience.
- New **woodland native ground flora** planting.
- 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 mitigation measures will need to be sufficiently detailed and underpinned by robust delivery mechanisms that reflect the duration of impacts.

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.

## Landscape

The proposed development is for a site within or close to a nationally designated landscape namely South Devon Area of Outstanding Natural Beauty (AONB). Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal and that you consult the relevant AONB Partnership or Conservation Board. The policy and statutory framework to guide your decision and the role of local advice are explained in Annex 1 of this letter.

## Soils and Land Quality

Having considered the proposals as a consultation under the Development Management Procedure Order (as amended), and in the context of Government's policy for the protection of the 'best and

most versatile' (BMV) agricultural land as set out in paragraph 112 of the National Planning Policy Framework, Natural England draws your Authority's attention to the following land quality and soil considerations:

1. Based on the information provided with the planning application, it appears that the proposed development comprises approximately 31 ha of agricultural land, including 31 ha classified as 'best and most versatile' (Grades 1, 2 and 3a land in the Agricultural Land Classification (ALC) system).
2. The applicant states that 31 ha of 'best and most versatile' agricultural land would be irreversibly lost, the majority of which is Grades 2-3b.
3. Government policy is set out in Paragraph 112 of the National Planning Policy Framework which states that:

*'Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.'*

4. It is recognised that a proportion of the agricultural land affected by the development will remain undeveloped. In order to retain the long term potential of this land and to safeguard soil resources as part of the overall sustainability of the whole development, it is important that the soil is able to retain as many of its many important functions and services (ecosystem services) as possible through careful soil management.
5. Consequently, we advise that if the development proceeds, the developer uses an appropriately experienced soil specialist to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site. Detailed guidance is available in Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#) (including accompanying [Toolbox Talks](#)) and we recommend that this is followed.

#### **Other advice**

Please refer to Annex A at the end of this letter, for our standard advice.

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](mailto:consultations@naturalengland.org.uk).

Regards,

*Julien*

#### **Julien Sclater**

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Cc: Damian Offer (TCCT); Helene Jessop (RSPB)

## Annex A – Additional advice

### Landscape

Your decision should be guided by paragraph 115 of the National Planning Policy Framework which gives the highest status of protection for the ‘landscape and scenic beauty’ of AONBs and National Parks. For major development proposals paragraph 116 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies.

We also advise that you consult the relevant AONB Partnership or Conservation Board. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the AONB’s statutory management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape’s sensitivity to this type of development and its capacity to accommodate the proposed development.

The statutory purpose of the AONB is to conserve and enhance the area’s natural beauty. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm that statutory purpose. Relevant to this is the duty on public bodies to ‘have regard’ for that statutory purpose in carrying out their functions (S85 of the Countryside and Rights of Way Act, 2000). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

### Biodiversity resilience

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that ‘*Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*’. Section 40(3) of the same Act also states that ‘*conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat*’.

The Town and Country Planning Association’s publication ‘*Biodiversity By Design*’ provides further information on this issue and the publication can be downloaded from <http://www.tcpa.org.uk/pages/biodiversity-by-design.html>

Examples of biodiversity enhancements that can be widely incorporated into development proposals include:-

- Green/brown roofs

The use of alternative roofing (turf, aggregate, brown and green roofs) can make a significant contribution to biodiversity, attenuation of rainfall, and energy efficiency as they can provide a high degree of insulation.

- Landscaping

Native species of plant should be used in landscaping proposals associated with development, unless there are over-riding reasons why particular non-native species need to be used. The nature conservation value of trees, shrubs and other plants includes their intrinsic place in the ecosystem; their direct role as food or shelter for species; and in the case of trees and shrubs, their influence through the creation of woodland conditions that are required by other species, e.g. the ground flora.

- Nesting and roosting sites

Modern buildings tend to reduce the amount of potential nesting and roosting sites. Artificial sites may therefore need to be provided for bats and birds. There is a range of ways in which these can



## Annex A – Additional advice

be incorporated into buildings, or built in courtyard habitats. Their location should provide protection from the elements, preferably facing an easterly direction, out of the direct heat of the sun and prevailing wind and rain.

- **Sustainable urban drainage system (SUDS)**

Many existing urban drainage systems are damaging the environment and are not, therefore, sustainable in the long term. Techniques to reduce these effects have been developed and are collectively referred to as Sustainable Urban Drainage Systems (SUDS). SUDS are physical structures built to receive surface water runoff. They typically include ponds, wetland, swales and porous surfaces. They should be located as close as possible to where the rainwater falls, providing attenuation for the runoff. They may also provide treatment for water prior to discharge, using the natural processes of sedimentation, filtration, adsorption and biological degradation. The SUDS strategy should be capable of delivering a high quality multi-functioning approach that provides high water quality (e.g. pollution control measures, use of reed beds, etc.), quantity (flood alleviation, run-off, etc.), and ecological and amenity value.

As part of the **SuDS Strategy**, it will be important to provide detail regarding how the SuDS will work in conjunction with providing ecological habitats. A SuDS engineer will be able to further advise based upon the risks associated with the building operations, and once the development is complete. Ciria has produced a SuDS manual (C753, 2015) that has some useful information, and <http://urbanwater-eco.services/> is another source of useful SuDS reference material.

### **Protected Species**

Natural England has produced [standing advice](#)<sup>3</sup> to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

### **SSSI Impact Risk Zones**

The Town and Country Planning (Development Management Procedure) (England) Order 2015, which came into force on 15 April 2015, has removed the requirement to consult Natural England on notified consultation zones within 2 km of a Site of Special Scientific Interest (Schedule 5, v (ii) of the 2010 DMPO). The requirement to consult Natural England on “*Development in or likely to affect a Site of Special Scientific Interest*” remains in place (Schedule 4, w). Natural England’s **SSSI Impact Risk Zones** are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments *likely to affect a SSSI*. The dataset and user guidance can be accessed from the [gov.uk](#) website.

### **Local sites and priority habitats and species**

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraph 113 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)<sup>4</sup>. Natural England does not routinely hold species data, such data should be collected

<sup>3</sup> <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

<sup>4</sup> <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

## Annex A – Additional advice

when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).