

In the matter of an appeal under section 78 of the Town and Country Planning Act 1990 by Abacus Projects Limited/Deeley Freed Limited, relating to:

**LAND TO THE SOUTH OF WHITE ROCK ADJACENT TO BRIXHAM ROAD
AKA INGLEWOOD PAIGNTON, TQ4 7BQ**

**POSITION STATEMENT ON:
ECOLOGY**

BRIXHAM TOWN COUNCIL [RULE 6 PARTY]

1. Background

1.1 In its statement of case the Rule 6 Party set out its 3 concerns on ecology matters related to the Greater Horseshoe Bat:

- whether the measures constitute mitigation or compensation;
- lack of sufficient detail on implementation; and
- uncertainty resulting from the reliance on legal agreements over work which is due to take place many years in the future and for which no precedent has been identified.

1.2 The Rule 6 Party also set out its concerns on ecological matters related to the grassland and dry heaths at Berry Head.

1.3 This position statement expands on these points.

2. Compensation vs Mitigation

2.1 The main parties submit in their Statement of Common ground at paragraph 1.20 that:
“The measures designed to avoid impacts will be in place before those impacts arise and there is no direct loss to a European Protected Site. This means they are properly

considered under Article 6(3) procedure (mitigation) rather than the Article 6(4) procedure (compensation)''.

- 2.2 In simple terms these measures involve enhancing one area of substitute habitat to make up for the loss of another separate area of habitat which would become developed land.
- 2.3 The implied rationale is that the environmental asset being considered when making the assessment is the Special Area of Compensation (SAC) itself, not the functionally linked habitat of the Sustainance Zone.
- 2.4 We are aware of no legal case where this very important issue has been determined and refer to the submissions of Greg Jones QC on behalf of Farrer and Co.
- 2.5 It is submitted there are conceptual problems in the main parties' position. Specifically, it would logically follow that provided there was (i.) a sufficiently large differential between the size of the substitute land and the developed land; and (ii.) an opportunity to increase the carrying capacity of the substitute land, a site could never be rejected at Plan making stage or refused at Project stage on environmental grounds.
- 2.6 This would appear to artificially increase the planning merit of sites which are part of larger land banks under control of a single party and not those which are the least environmentally sensitive. We do not consider this to have been the intention of Parliament.

3. Lack of sufficient detail on implementation

Doubt over the enhanced carrying capacity of substitute land

- 3.1 The main parties argue that the substitute land proposed will provide for any losses arising from the development.
- 3.2 We can find no evidence to show with certainty that the carrying capacity of the substitute land can be enhanced sufficiently to ensure there is no net loss to the bats either in terms of foraging or roosting.

Wider area surveys

- 3.3 The main parties argue that sufficient survey evidence has been obtained.

- 3.4 However, we were unable to find survey evidenced from outside the curtilage of the development site so as to understand the importance of the site in the bats wider landscape. Given the scale of this strategic site this is considered unfortunate.
- 3.5 For example, while we do have information about foraging and roosting on site, we do not know with any reasonable certainty about how bats are arriving at the site and how it integrates into their communing landscape. If a reasonable proportion bats commuting journeys lead from the maternity roost in Brixham along the coast towards Broadsands and then cut inland where the residential development is relatively narrow the impact could reasonably be expected to be worse than if bats journeys favour cutting inland in the Churston or the Clennon Valley areas.
- 3.6 The Brixham Peninsula Neighbourhood Plan provides in the explanatory text to Policy E8 that:

*5.41 In relation to the Greater Horseshoe Bat, survey evidence as set out in the South Hams SAC guidance may be required to inform any development proposal, to allow it to be determined whether there is no likely significant adverse effect, either alone or in combination with other development on the integrity of the SAC. **Proper application of this policy in the case of a major development could see survey evidence being collected from beyond the boundaries of a proposed development site.** (emphasis added)*

4. Uncertainty resulting from the reliance on legal agreements over work which is due to take place many years in the future and for which no precedent has been identified.

- 4.1 The Rule 6 Party is concerned there may not be a sufficiently robust process to ensure legal agreements made deliver the ecological outcomes assumed.
- 4.2 It is considered the provision of further information could assist. Please could the main parties kindly direct us to:
- precedents where the enhancement proposed has been used before.
 - evidence to demonstrate how actual enhanced carrying capacities achieved elsewhere, and documented in post implementation monitoring, support those projected here.

- evidence to demonstrate that Torbay Council holds on file, and keeps under periodic review, the results of any post implementation monitoring, of any consented development, anywhere within its administrative area, relating to any protected species.
- evidence to demonstrate that Torbay Council has successfully managed schemes relating to protected species, e.g., that it has successfully used Section 106 monies to create new areas of wildlife habitat. Alternatively, has the funding for such schemes simply accrued in reserves awaiting deployment.

5. Grassland and dry heaths at Berry Head..

5.1 The Rule 6 Party is concerned about the additional recreational pressure caused by such a large step-change increase in housing provision within the peninsula area and the pressure this will place on pressure on public amenity facilities which include the grassland and dry heaths at Berry Head.

5.2 It is considered the provision of further information could assist. Please could the main parties kindly direct us to:

- evidence to demonstrate how the Section 106 funding requirement has been arrived at and how the funding provided will flow through to the planned delivery of measures to offset harms.
- evidence to demonstrate that Torbay Council has successfully managed schemes relating to protected habitat.