

**TORBAY LOCAL PLAN - A landscape for success: The Plan for Torbay – 2012 to 2032 and beyond**

PROPOSED SUBMISSION PLAN (FEBRUARY 2014)

**PROPOSED MAIN MODIFICATIONS TO THE SUBMISSION LOCAL PLAN**

**LIST OF REPRESENTATIONS BY PERSON/ORGANISATION IN TOPIC & ALPHABETICAL ORDER**

| <b>Consultee ID</b> | <b>File No.</b> | <b>Person /Organisation Consultee</b> |
|---------------------|-----------------|---------------------------------------|
| 843585              | NO1             | Environment Agency                    |
| 400188              | NO2             | Natural England                       |
| 501495              | NO3             | Sport England                         |

494352 MD1

suggest that Paignton sea frontage be considered for inclusion in the Regulation 123 list given its critical sea defence function, the number of properties and business it protects, and ongoing redevelopment pressures.

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Torbay Council  
Planning & Development Services  
Town Hall Castle Circus  
TORQUAY  
TQ1 3DR

**Our ref:** DC/2012/112403/CS-  
02/PO1-L01  
**Your ref:**  
**Date:** 13 March 2015

Dear Sir/Madam

**TORBAY PROPOSED SUBMISSION PLAN FEBRUARY 2014 SCHEDULE OF PROPOSED MODIFICATIONS TO THE LOCAL PLAN**

Thank you for the recent consultation with regards to the above Schedule of Proposed Modifications.

We welcome the positive changes included in the document which reflect our continued partnership working. In addition we would like to offer some further modifications for your consideration.

We note that flood risk is not included within the CIL Draft Charging Schedule List of Key Infrastructure Projects (Section 18, Page 14).

We suggest that Paignton sea frontage be considered for inclusion on the list given its sea defence function, the number of properties it protects and the redevelopment pressures it faces.

In respect of the detailed Sustainability Appraisal of Proposed Sites, Paignton Harbor Car park should make reference to potential impacts of wave action.

In terms of the Station Lane/Great Western Car Park site we would recommend that reference to the impacts of sea level rise should be included. The same issue should also be addressed with the Victoria Car Park site.

Environment Agency  
Sir John Moore House, Victoria Square, Cornwall, Bodmin, PL31 1EB.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)

Cont/d..

Should you have any queries with regards to the above please do not hesitate to contact me.

Yours faithfully

**Shaun Pritchard**  
**Sustainable Places Technical Specialist**



400188 102

Date: 18 March 2015  
Our ref: 144495  
Your ref:



Mr Steve Turner  
Team Leader - Strategic Planning  
Spatial Planning  
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**BY EMAIL ONLY**

Dear Steve,

**Planning consultation: Torbay Local Plan - Modifications**

Thank you for your consultation on the above dated February 2015 which we were consulted upon on 09 February 2015. We welcome that our previous significant engagement with the Council before and at the examination has resulted in an improved Plan. As you will be aware, due to the special environment within Torbay, some proposals do need careful consideration and we are pleased to be able to advise the authority on these aspects and where proposals or the underpinning evidence base should be improved

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.

**Sustainability Appraisal (SA)**

Whilst the Sustainability Appraisal has considered the new sites individually, the updated Sustainability Appraisal is unfortunately incomplete as it does not assess synergies, cumulative and interrelationships between new policies and sites themselves and synergies, cumulative and interrelationships between the policies and sites and the proposed policies and sites in the submitted plan. This is a significant omission as this is a legal requirement of SA and necessary in this case, given the Plan's assessment of total environmental capacity. Our detailed comments regarding the proposed development site "South of White Rock" are set out below, but this proposed allocation illustrates where the SA must be improved to be legally sound.

The Northern Part of this site forms part of a "Countryside Access and Enhancement Scheme" (CAES) allocated in Policy SS9, SDP3 and to provide "high quality of design and appropriate landscaping to protect and enhance the rural backdrop to the area" as well as "resilience to the effects of climate change, particularly through the provision of green infrastructure, and adhere to planning guidance on Greater Horseshoe bats within the South Hams SAC. (SDP3)" This scheme is therefore clearly important for the sustainable development in Paignton and White Rock in particular. The SA also draws attention to the considerable landscape constraint in the Southern part of the site and its impact on the Area of Outstanding Natural Beauty (AONB), indeed an





application in 1997 was refused on appeal by the Secretary of State for B1 development chiefly on landscape grounds. The SA recommends that there is sufficient buffering and landscaping to mitigate against harm to the AONB. Clearly with a need to retain the CAES in the north and sufficient buffering to the south, the potential to deliver 460 houses as proposed in the modified policy and annex has a high risk of delivery, even more so since the SHLAA 2013 7.7.44 in consideration of the landscape impacts alone recommended *areas "at the north and south of the location might be developed and could deliver up to 350 dwellings, subject to detailed analysis."* The shortfall in delivery of 110 houses does not appear to have been assessed nor how this additional figure could be accommodated given the considerable environmental constraints

Another significant cumulative impact that has not been considered is the delivery of additional Sustainable Urban Drainage systems in Torquay to accommodate surface water which in flood events may adversely affect the reefs at Hope's Nose. Whilst it has been demonstrated that the originally proposed development can be accommodated, the evidence base has not been updated to take account of the additional development.

This illustrates why the updated SA needs to consider the new sites in conjunction with those already proposed. The Plan will need to take account of the findings of the SA report, test and include the proposed deliverable mitigation measures to ensure delivery of them and therefore that the Policies are both sustainable and effective. For example mitigation measures proposed in the SA at "South of White Rock" do not appear to be deliverable. Neither are these proposed mitigation measures either included in the modified policy or reasons given in the SA report why they are not included.

Due to the incomplete nature of the updated Sustainability Appraisal and that the SA does not appear to have informed the Plan, the Plan is not yet legally sound.

### **Schedule of Proposed Main Modifications**

#### **South of White Rock**

This site was considered in the previous Sustainability Appraisal. Whilst a full assessment is not included in that Appraisal, the summary states *"The area lies within AGLV and it is highly sensitive to change. Most of the area is open to views from the AONB to the west and south. Development of the area will involve loss of large areas of Grade 1, 2 and 3a agricultural land. The northern part of the area is designated as Long Term Environmental Monitoring Program (LEMP). There are other significant negative impacts concerning environmental objectives. There are positive scores, the most significant being for affordable housing and accessibility; however the quantity of significant negative impacts for this area by far outweighs the positive impacts."*

The recent sustainability appraisal suggests mitigation measures to reduce these significant negative impacts. However, some of these appear to be extremely difficult to deliver:

1. The National Planning Policy Framework paragraph 115 states that *"Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty (AONB), which have the highest status of protection in relation to landscape and scenic beauty."* This site was previously refused planning permission at Appeal for B1 development on the grounds that it would harm the AONB to the South West and that harm could not be mitigated against. The previous SA noted most of the site was open to views from the AONB and therefore it must be considered within the AONB setting. We therefore advise if this site is to be considered for allocation, a Landscape and Visual



Impact Assessment must be undertaken **before allocation** to show that this site can be delivered without harm to the AONB for the development proposed. This LVIA must consider the Special Qualities of the AONB in assessing any environmental harm.

2. The additional appraisal in respect of effects on the Greater Horseshoe Bats is noted, including the presence of semi-improved grassland and substantial areas of cattle grazed pasture on the site. The lack of recent sufficiently robust existing survey results for the site (which conforms to the South Hams SAC guidance) is also noted, although even this provides useful *confirmation that Greater Horseshoe Bats are using at least some features across the site, especially along the southern and western boundaries*. This site lies well within the Sustenance Zone for the Berry Head roost. In the light of the Chursten Appeal, Natural England is re-considering the potential for off-site foraging as a potential mitigation measure. It is acknowledged that as an active agricultural management regime, probably reliant on a third party, this is a difficult scheme to secure in perpetuity. That difficulty could potentially equate to uncertainty. Whilst it is potentially possible, a key part of the evidence base that Natural England needs to consider in coming to a professional judgement on any adverse effect and the proposed mitigation proposals is how the site is presently used by the Greater Horseshoe Bats. This evidence gathering which is not yet complete should be in accordance with the 2010 South Hams SAC guidance and must include bat surveys.
3. The Local Plan should give appropriate weight to the roles performed by the area's soils. These should be valued as finite multi-functional resources which underpin our wellbeing and prosperity. Decisions about development should take full account of the impact on soils, their intrinsic character and the sustainability of the many ecosystem services they deliver,

The total site area including the proposed *Countryside Access and Enhancement Scheme* is 41 ha approx. The developable area outside this northern area is 35ha. According to our records, **the entire** proposed site (including the CEAS) constitutes "best and most versatile soils (BMV soils)", and a significant proportion of the higher grade land (Grade 1) is in the southern area. The conservation and sustainable management of soils also is reflected in the National Planning Policy Framework (NPPF), particularly in paragraphs 109 and 112. When planning authorities are considering land use change, the permanency of the impact on soils is an important consideration. Particular care over planned changes to the most potentially productive soil is needed, for the ecosystem services it supports including its role in agriculture and food production. Plan policies should therefore take account of the impact on land and soil resources and the wide range of vital functions (ecosystem services) they provide in line with paragraph 17 of the NPPF, for example to:

- Safeguard the long term capability of best and most versatile agricultural land (Grades 1, 2 and 3a in the Agricultural Land Classification) as a resource for the future.
- Ensure soil resources are conserved and managed in a sustainable way.

The SA has not considered alternatives to this site to avoid the BMV soils and avoiding BMV soils on site is not a realistic mitigation option as they appear to cover the whole site.

In conclusion, Natural England advises there is a high risk to delivery of this Strategic Site which is identified in MM3 as a new Future Growth Area. This is due to the lack of a sufficiently robust evidence base to show the site is deliverable in respect of landscape and the South Hams SAC. There are significant environmental effects which have not yet been shown to be capable of mitigation. The Policy is therefore not justified.



## **Other Brixham Sites**

Main Modification 12 now increases the numbers of housing in the Brixham area from 800 to 1320, including 460 at South of White Rock (SWR) site in MM2 (commented on above), leaving 60 to be found elsewhere (including at Churston and St Mary's Park (both commented on below)). However, if 350 houses is a more realistic figure at SWR then sites for 170 houses will need to be identified from the Brixham peninsular, and it would seem that both sites, Churston and St Mary's Park, would be required to be considered in a neighbourhood plan or site allocations document, as now included in Appendix D to the Plan as Main Modification 14. Therefore to meet the proposed revised spatial distribution for Brixham as a whole, the evidence base for both these sites will need to be sufficiently robust to show that these sites are deliverable. This includes assessment for effects on the European Site and Assessment on effects on the AONB.

Moreover, the Neighbourhood Plan regulations 2012 specifically prevent Neighbourhood Plans allocating sites or including policy which cannot not rule out Likely Significant Effects on European sites. We therefore advise that not only should the evidence base consider if mitigation for European Sites is necessary but also if that mitigation is deliverable, that mitigation must then be set out as a policy in the Plan.

## **Churston Golf Course**

The Clubhouse site itself is surrounded by development and is highly likely to be of little interest as a foraging area for Greater Horseshoe Bats. However, we note that this site also includes the fairways for the 1<sup>st</sup> and 18<sup>th</sup> holes which would need replacing if the golf course were still to function. Before this site could be identified as a potential development site, the evidence base will need to show that such replacement fairways could be identified without any loss of significant foraging areas for horseshoe bats, To show certainty of no effects, the new fairways would need to be on land which is presently not suitable for bat foraging, as off-site foraging may be too difficult to deliver in perpetuity in this location. These mitigation measures would need to be identified at this stage to show the Spatial Distribution was deliverable and the site included in Annex 2 and Appendix D of the Plan. Without this evidence the Policy is not justified

## **St Mary's Campsite**

This is a very sensitive area. The present use of the site as a campsite is of low risk to commuting bats. Housing and its necessary infrastructure would increase lighting which in this area is unlikely to be capable of mitigation and would have an adverse effect on the bats. . This site is very close to other development sites where some recent bat survey work is available. That survey work shows that the lane immediately south of the site separating it from the rest of the Park is a route used by bats commuting along the coast from Berry Head to foraging areas. This may therefore be a significant "pinch point" as defined in the 2010 South Hams SAC Guidance. The existing survey work does not inform how significant this route may be to ensure integrity of the Special Area of Conservation. Additional survey work will be required to show the Spatial Distribution can be delivered and the site included in Annex 2 and Appendix D of the Plan. This will include bat surveys south of St Mary's Park to determine how significant this route along the lane is.

This site also lies within the Area of Outstanding Natural Beauty. Development within the AONB should only be permitted in exceptional circumstances and where there will be no environmental harm. This site is a prominent one on higher ground. The Brixham Urban Fringe Study states that the present single storey caravans are well concealed but permanent higher buildings are more



prominent. Therefore housing in that location may cause unacceptable environmental harm and be contrary to paragraph 116 of the National Planning Policy Framework. Therefore, given the strategic necessity for this site due to Main Modification 12 this site will require a Landscape and Visual Assessment before being included in Appendix D (Main Modification 14) to show there would be no environmental harm. This policy is therefore not justified.

### **Sladnor Park, Maidencombe**

This is a large site of 22 ha for a relatively small number of houses (25) to be included for the Spatial Distribution for Torquay. Whilst this site was granted planning permission in 2006, it cannot be assumed that the environmental information that would have accompanied that application will be sufficient to include this site within Appendix 6 of the Plan. The majority of the site is a priority habitat consisting of wood pasture, parkland and deciduous woodland including veteran trees. Any proposal / allocation should avoid these environmentally sensitive areas and development should be within the brownfield area, this should be clearly stated in the Annex. The additional information on the site also highlights a potential Greater Horseshoe Bat roost. This may be significant and may affect any necessary access improvements to the site. Alternatively it might necessitate an access through the Priority Habitat to avoid the bat roost. The bat roost should be located and its significance assessed before the site is included in Appendix 6 so that options should be investigated. Alternatively if this site is not considered strategic, reference to it could be removed entirely from the Annex 1.

### **Other Torquay Sites**

The majority of additional sites in Torquay are brownfield sites –generally car-parks. The additional proposed spatial distribution for the Town is significant and these sites would make an important contribution to the total development. The present combined sewage system means that without deliverable mitigation there would be harm to the marine candidate Special Area of Conservation. The revised policy and text has recognised this issue. However, it is unclear whether these sites can deliver additional housing with the necessary mitigation as proposed due to viability restrictions on the creation of Sustainable Urban Drainage systems as many of these sites are in areas where SUDs will not be achievable due to the geology and the topography to create viable, appropriate SUDs. This is amplified in AM169 but not addressed in the policy. Given these sites are proposed by the Authority and are considered essential to provide sufficient growth in the Plan, the Authority must show that this policy is effective and can be achieved without adverse effect on the cSAC.

Therefore Main Modification 9 (MM9) is not yet justified nor is effective

### **Additional Modifications**

We have the following advice:

AM17 should be re phrased to reflect the AONB constraints of the South of White Rock site and that the SA has drawn attention to this as a significant constraint.

AM19 should include the following. Mitigation strategies will be informed by bat survey evidence using standards set out in the 2010 South Hams SAC guidance. Masterplans will be informed by mitigation strategies.

AM29 and AM30. As competent Authority for Habitat Regulations Assessment, the Authority has screened the proposed development at Brixham and concluded that Likely Significant Effects



cannot be ruled out for additional recreational pressures on calcareous grasslands at Berry Head, a feature of the SAC. As these effects would result from development throughout the Brixham development area, the authority propose to instigate a strategic solution for developer funded mitigation for any effect over and above that which cannot be managed by an updating of the management plan for the European site to enable the site to be in a favourable condition. If mitigation measures require funding, it must have certainty of being collected and therefore must be specifically included in policy SS7 and regarded as a "critical" measure. This has significant implications on how the Authority proposes to introduce Community Infrastructure Levy (CIL) and this is set out in more detail in our response to that consultation. However, if CIL is not to be used to ensure certainty of funding, then the authority must ensure this by another means. Given the limitations to the pooling of s106 money after 1 April 2015, it is highly unlikely that that will be a suitable means for certainty of funding. We do not accept the Authority's suggestion of individual applications funding individual elements of the total necessary funding as all applications where LSE cannot be ruled out are likely require some funding for all elements. Alternatively it is conceivable that some larger applications might be able to justify no or limited LSE due to the provision of additional on-site Green Infrastructure. Where LSE are determined, with mitigation being uncertain of delivery (in this case due to funding uncertainties) then the Plan cannot be said to be sound until there is sufficient certainty of funding.

Since this policy is required to allow development without having an adverse effect on a European site we do not consider that this amendment is an Additional Modification nor should it be included in text in paragraph 4.3.27 since it would follow that this goes to the soundness of the Plan and is therefore a Main Modification and should be in policy SS7 as such.

AM34 Amended policy SS8 is designed amongst other things to protect the setting of Protected Landscapes from inappropriate development and protect supporting features associated with the European Site especially greater horseshoe bat roosts. It will also protect rare birds, the ecosystem including wildlife corridors and enhance biodiversity. It is therefore an important change which we welcome. However, since this policy protects habitat supporting the European site it is necessary to make the Plan legally sound and therefore is appropriate as a Main Modification and not additional modification.

AM64. This is also a modification which amongst other things will protect supporting habitat for European sites. The modification to policy SDT1 should specifically state that surveys will be undertaken in accordance with the 2010 South Hams Bat Guidance and not just "*during a suitable time of year*" As this modification is one to make the Plan legally sound we consider it a Main Modification.

AM70 Following from our comments re AM19 above, the mitigation strategy for Collerton St Mary will need to be informed by a sufficiently robust evidence base including bat surveys in compliance with the 2010 Guidance. Additional modifications required as a result of the HRA should be regarded as Main Modifications.

AM76 The mitigation measures recorded as for the wider SDB1 area were only requested for St Mary's industrial site and King's Barton, Summer Lane. This is still the case. However, confirmation is still required to ensure that such measures would be deliverable without affecting the viability of the site.

AM99 Whilst we welcome the reference to the sea caves and reefs which are the features of the European Site, we advise that the additional text is not legally sound. The regulations state that only



development for reasons of imperative overriding public interest and where there is no alternative to the proposal can the development be permitted and compensation required. The text "*and the public benefit it generates overrides the ecological impact, appropriate compensatory measures should will be sought*" must be removed for the text to be legally sound.

AM100 We advise the final sentence should be changed from "may be" to "will"

AM104. We welcome the additional wording to protect the European sites but we would highlight that the Authority in identifying additional significant strategic sites within the South Hams sustenance zone and in the sensitive corridor south west of Berry Head has not complied with its own revised policy to assess cumulative effects.

AM113 We welcome the amendment to policy C4. We advise that additional wording should be added that for some development such as at St Mary's Industrial site and Summer Lane this will be essential to maintain the integrity of the South Hams SAC and could affect the quantity of development possible.

AM116 We advise that traditional orchards are a priority habitat that under the Natural Environment and Rural Communities Act 2006 section 41, the Authority has a duty to conserve and enhance priority habitats in regard to any of its functions.

AM119 We consider the revisions to this policy to be a Main Modification as it is required for legal soundness. We also advise that in regard to Sites of Special Scientific Interest the wording should make it clear that in line with the National Planning Policy Framework, that permission should normally be refused and only permitted where the development clearly outweighs both *the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest*;

AM120 We advise whilst we agree that the NPPF requires Plans to identify designated sites and features of ecological value, we cannot locate such a Plan. If this is not included in the document itself then there should be a clear reference in the Plan to where it is located.

AM121 Torbay Council is the competent authority for Habitat Regulation Assessment for the screening of proposals for Likely Significant Effects on European sites. The Authority has determined that this is the case for additional recreational pressures at Berry Head. The Authority proposes that an SPD should examine the effects and propose the mitigation solution. This would be to assess increased pressure over and above that from existing pressures which the Authority, as owners of the Site, already has a duty to manage through the current and future management plans. Therefore bullet point (i) *the development of a detailed management plan addressing habitat management and visitor use* is an existing duty arising from other legislation and should not be confused with development arising from the Plan.

AM122 We welcome this additional text to protect the South Hams SAC. However, clarification is required regarding the last sentence "*Where appropriate, developer contributions will be sought towards mitigating these effects.*" Development within sensitive areas as set out in the Guidance will require Habitat Regulation Assessment alone and in –combination with other development. Individual developments and masterplans will need to design development to include protection and as appropriate mitigation for bats including retention of hedges, dark corridors and enhancements. Developer contributions are unlikely to be appropriate. Where off-site foraging is offered as a mitigation measure, Natural England will need to consider whether this is deliverable and whether the certainty required by the legislation is achievable. Again developer contributions are unlikely to



be appropriate as any off site foraging will need to identified and retained in perpetuity within a legally binding agreement.

AM124 We welcome the protection for cirl bunting and the future production of Supplementary Planning Guidance for this. We advise this should be implemented as soon as possible.

AM156 This change to policy ER1 is to protect the Marine cSAC from adverse harm resulting from increased pressure on the Combined Sewage Outfall ant Hope's Nose (a feature of the cSAC) We welcome the revised wording but as this wording makes the Plan legally sound and in limited circumstances only allowing development when appropriate measures are provided upstream, we consider this a major modification to make the Plan legally sound.

AM163 This change to policy ER2 also protects the Marine cSAC from adverse harm resulting from increased pressure on the Combined Sewage Outfall ant Hope's Nose (a feature of the cSAC) We welcome the revised wording but as this wording makes the Plan legally sound and in limited circumstances only allowing development when appropriate measures are provided upstream, we consider this a major modification to make the Plan legally sound.

AM167 Natural England previously objected to proposals in the Torquay area that could not be shown to not have an effect on the features of the cSAC (primarily at the CSO at Hope's Nose). This was resolved by the changed wording in policy ER2 (AM163). The authority is now proposing additional development on Brownfield sites, mainly car-parks. It should be noted that Hope's Nose CSO is only used for emergencies and in times of flood. Changes in climatic effects and urban creep means that, without mitigation, the CSO could be used more frequently. Given the strategic nature of these sites, it is not sufficient to rely on consultation responses at the project stage if these cannot be shown to be deliverable at the Plan stage as this is contrary to the Habitat Regulations

We advise that the change to policy W5 should not be considered an Additional Modification.

AM171 We advise the wording should state that the Council will ensure that development will enable the Authority to continue to meet Water Framework Directive obligations and not "*seek to ensure no deterioration*" which is not sufficiently robust wording.

AM177 Additional evidence to assess landscape and biodiversity impacts should include: LVIA for any allocations within or in the setting of the AONB; any additional landscape assessments by applicants, the Authority or neighbouring authorities; the 2010 South Hams Greater Horseshoe Bat Guidance. Any additional information from applications and masterplanning regarding bat activity. Site Condition Assessments for Sites of Special Scientific Interest and European Sites; Site Improvement Plans for European Sites; Marine Protection Zone Management Plans.

### **Habitat Regulations Assessment Revisions**

We welcome that many of the objections Natural England had to the original Pre-submission document have now been addressed by the HRA and additional evidence and policy wording. However, the new proposed allocations and spatial distributions to accommodate additional development have not yet been adequately addressed. The Habitat Regulations Assessment does not appear to consider the additional information regarding the effect of some proposals on Greater Horseshoe bats at South of White Rock, Churston and St Mary's campsite. This is a significant omission.

In addition the HRA does not address the effect of additional development on brownfield sites in



Torquay and any effect on the Combined Sewer Outfall at Hope's Nose. The bulk of additional development in Torquay is proposed on car parks. Whilst these are brownfield, they slow the migration of surface water into the combined sewers. It is noted that the HRA has recommended that all new development on previously developed land should introduce SUDs to ensure that they do not exacerbate sewer flooding and CSO spills. However, we understand from previous negotiations that the car-parks in Torquay are situated in an area where due to the clay geology, SUDs will very unlikely to be delivered. The Water Framework Directive will also ultimately control the quantity of Highway drain water entering the bathing waters to a set quality. We also understand from previous negotiations, the viability of engineered SUDs i.e. tanks would also be questionable in some cases. Previously, a small proportion of the total planned development in Torquay fell into the category where development needed to be delayed pending completion of the River Fleet Flood Alleviation Scheme. It is not clear whether the River Fleet Alleviation scheme could accommodate the additional capacity and how much of the newly proposed development would be delayed pending its completion and therefore whether there is any risk to delivery of some development, some of which may be strategic. Whilst the new policy wording in ER2 as an additional modification may be sufficient to protect the environment, the issue of the strategic nature of the development and its delivery does not appear to have been addressed by the Authority in the Main modification MM9

### **Habitat Regulations Assessment Omissions**

The HRA will need to consider the cumulative effect of development particularly the loss of Greater Horseshoe foraging areas and the importance of "pinch points" in bat commuting routes on Berry Head in the light of the additional proposed sites at "South of White Rock"; Churston and St Mary's campsite. Given the greater potential pressures on the SAC by the additional proposed sites, the HRA will need to use a sufficiently robust evidence base including the results of actual bat surveys and not rely on habitat surveys alone. This is because of the following reasons:

1. In the light of the Inspector's reasons for the Churston Appeal regarding the difficulties of managing off-site foraging mitigation measures, we are considering the implications of this for other proposals. Where mitigation measures require active agricultural management of land (as opposed to a more passive mitigation scheme such as habitat management) by generally a third party, this is always more challenging to deliver in perpetuity and have the confidence required to ensure that mitigation is deliverable and that there will not be an adverse effect to a European site.

An important consideration will be the value of that site to foraging bats which will depend on the extent of optimal cow-pasture; its present use; its history and the number of bats foraging at that site (which can only be determined by survey to 2010 Guidance standards).

Both the Churston Site and the new growth area "South of White Rock" are sites where off-site foraging is proposed as mitigation for the site. Both lie well within the sustenance zone. We strongly advise at this stage that additional information is obtained to establish the proportion of improved and unimproved cow pasture and its likely desirability for bat foraging based on sufficiently robust evidence base including bat surveys (to 2010 Guidance standards) to establish the level of bat activity on the proposed site at "South of White Rock" and on any identified new replacement fairways for the golf course.

At this stage, in the light of the current assessment Likely Significant Effects cannot be ruled out and mitigation is uncertain of being deliverable for both of these sites. A full Appropriate



Assessment supported by a robust evidence base is required.

2. The cumulative effects of development at Berry head and along the coastal strip south of Brixham need to be examined in the light of additional proposed development at St Mary's campsite.

The change of use from campsite to housing has the potential to have an adverse effect on bats due to significant changes in lighting which may not be capable of mitigation in this location. Whilst we are aware from previous recent survey work that bats frequent the lane running south west north east of the site., we cannot yet establish the importance of this route as there is no comparative evidence for bats further south of this lane.

In the absence of firm evidence to the contrary, we must therefore conclude that firstly LSE cannot be ruled out and due to the pinch point nature of the location of the proposed development site, disruption of which may cause adverse harm, this needs to be fully examined using a robust evidence base (to include bat surveys to 2010 guidance standard south of the site) before proceeding with this allocation. As there are LSE which cannot be ruled out, a full Appropriate Assessment supported by sufficiently robust evidence base is required.

As there are outstanding Likely Significant Effects which have not yet been shown to be capable of mitigation, the HRA must be considered through Appropriate Assessment stage which must be supported by a sufficiently robust evidence base. The HRA is presently not complete and therefore the Plan modifications are not legally sound.

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 Laura Horner on [REDACTED] or 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).

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Mrs Laura Horner  
Lead Advisor Plans Devon, Cornwall and Isles of Scilly Area Team

Date: 31 October 2012



Thames Basin Heaths SPA  
Local Planning Authorities

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SO23 7BT

**By email only, no hard copy to follow**

Dear all,

This letter summarises Natural England's position regarding the Community Infrastructure Levy and the Thames Basin Heath SPA. This follows on from the recent TBH Officers meeting which was held in Camberley on the 8<sup>th</sup> October 2012.

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 aim to provide advice to Local Planning Authorities, with a solutions focus to enable delivery in line with national and international legislation.

### **1. Natural England's Position**

Under the Conservation of Habitats and Species Regulations 2012 (as amended) ("Habitats Regulations"), LPA's have clear legal duties. These include the duty under regulation 9(3) that a '*...competent authority, in exercising any of their functions, must have regard to the requirements of the [Habitats and Wild Birds] Directives so far as they may be affected by the exercise of those functions*'.

Furthermore, under regulation 61(5) of the Habitats Regulations, a competent authority may only agree to a plan or project after having "ascertained" that it will not adversely affect the integrity of a European site. This means having the sufficient level of confidence and certainty of delivery in the avoidance and mitigation package.

The consideration of mitigation measures is covered in regulation 61(6) of the Habitats Regulations. This states that:

*'In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given'.*

Therefore when considering adverse affects on the integrity of a European site a competent authority can consider 'conditions' and 'restrictions' which can be imposed on a plan or project. The words 'conditions' and 'restrictions' imply, in Natural England's view, legally enforceable obligations.

Natural England continues to have concerns about the use of the Community Infrastructure Levy (CIL) to effectively deliver Suitable Alternative Natural Greenspace (SANGs) as a mitigation measure for adverse impacts on European Sites. Natural England's key concern is that the use of



CIL to secure SANG provision may not provide the certainty of funding needed to ensure that SANGs will be secured and maintained in perpetuity. Natural England is continuing discussions with DCLG and Defra on this issue.

To ensure compliance with the Habitats Regulations, we consider that each LPA will need to demonstrate, in advance of adopting a CIL charging schedule, that there is sufficient certainty of the required financial commitment to deliver SANGs to the required quality and in perpetuity. If such security can be demonstrated, we consider there is no need for a local authority to undertake an HRA assessment of its Charging Schedule. We would be happy to support such an approach at plan examinations.

Whilst it is for a local authority to determine which is the best approach to adopt to secure compliance with the Habitats Regulations, Natural England would be happy to advise on any option being considered.

At its meeting with the Thames Basin Heaths local authorities on 8 October 2012, Natural England discussed the use of a specific policy in a Development Plan Document (DPD). Natural England was also asked to consider whether a Supplementary Planning Document (SPD) approach would be suitable, and to consider the use of an approach under the Localism Act proposed by Bracknell Forest Council. Our response to each of these proposed approaches is detailed below.

## **2. Development Plan Document (DPD) Approach (the 'Poole Approach')**

The use of a specific policy in a DPD (in this case an Infrastructure DPD) to prioritise Habitats Regulations mitigation spending was considered at the Examination of Poole Council's CIL Charging Schedule, in June 2012. In the Inspector's report (PINS/Q1255/429/10), she noted that the authority had included in its DPD '*a clear policy that placed mitigation at the top of the infrastructure hierarchy.*'

Whilst recognising that concerns about the compliance of CIL with the Habitats Regulations fell outside the remit of the examination, the Inspector nevertheless concluded that the authority had '*done everything within its power to ensure that the CIL receipts will be prioritised to fund Habitats Regulation mitigation.*' In Natural England's view, the Inspector's comments are helpful and can help inform decision making in other areas.

With an adopted DPD in place which clearly states that sufficient contributions will be taken from the CIL pot for Habitats Regulations mitigation measures, before funding is used for other types of infrastructure, Natural England would be confident that funding for mitigation will be secured and that SANGs can be a viable form of mitigation.

However, Natural England's confidence that the SANGs mitigation is viable would rest on the fact that CIL spending on SANGs is prioritised in both the Charging Schedule and the DPD. This confidence would be sustained only for as long as those documents remain in force with those provisions intact. Any changes to the DPD during its lifespan would need to be consulted on afresh. Furthermore Natural England considers that suitable wording would need to be included in the DPD to explain that the mitigation prioritisation would need to be carried forward into any reviews of the DPD to ensure the provisions remain in perpetuity.

## **3. Supplementary Planning Document (SPD) Approach**

A SPD is a non-statutory document that gives guidance on how policies or proposals in DPDs will be implemented. They do not have development plan status.

Natural England would not therefore accept non-statutory SPDs as a secure mechanism for assuring Habitats Regulations compliance with regards to CIL.

## **4. Localism Act Approach (as proposed by Bracknell Forest Council)**

Sections 1 to 8 of the Localism Act 2011 provide for local authorities a 'General power of competence'. We have considered the approach put forward by Bracknell Forest Council.

Bracknell Council consider that the problems identified with CIL could be overcome by a combination of:

*Firstly, a planning condition which provides that the development shall not be occupied until the LPA has confirmed that adequate SANGs arrangements have been put in place;*

*And secondly, an agreement between the LPA and the applicant under the general power of competence in the Localism Act whereby the LPA would agree to expend money on SANGs provision within a specified period.*

In Natural England's view, this approach appears to be acceptable because it would require the local authority to enter into an agreement to spend CIL money in a certain way. Failure to comply with that agreement would lead to a breach which would be enforceable by the various parties to it, in accordance with the terms of the agreement. Therefore this appears to be another mechanism which could help provide the certainty that the mitigation will be provided for the duration that it is needed.

## **5. No Secure Approach**

It is Natural England's view that failure to provide a secure mechanism by which avoidance and mitigation measures will be delivered once the CIL charging schedule has been implemented, would be a failure to comply properly with the purpose of the Habitats and Wild Birds Directives. This would be a breach of both national and European law. Such a breach could lead not only to a successful judicial review challenge being brought against the relevant local authority, but also to a breach of European law obligations which could ultimately lead to the European Commission taking infraction proceedings against the UK Government.

This would be on the grounds of the Government's failure to ensure that European law was properly implemented in the UK. Should infraction proceedings commence and a fine be imposed on the UK Government as a result of these infraction proceedings, then under section 48 of the Localism Act 2011, the Government has the power to require public authorities to make payments, determined by the Government, in respect of that EU financial sanction.

In addition, there would be a number of options open to Natural England or any other objector if it was felt that sufficient certainty to secure compliance with the Habitats Regulations was not provided;

- 1) Appearance at the examination of the CIL Charging Schedule.
- 2) Representations made against the soundness of the next Local Plan Document, which leads to a net increase of dwellings, with appearance at examination. For example, Natural England has made representations on this matter to the Bracknell Forest Council Site Allocations DPD. Without a secure approach to CIL, then Natural England is of the opinion that there would be a likely significant effect in combination with a local authority's housing allocations.
- 3) Objection to any planning application which came forward during the period without a secure mechanism for securing CIL and seeking call in of the application by the Secretary of State where necessary.

As stated at the beginning of this letter, Natural England is committed to working with the Thames Basin Heaths Local Planning Authorities to secure positive outcomes for the SPA. We want to help resolve this issue for each of the authorities, so that the steps outlined above in section 5 are not necessary.

I hope that this information is helpful to you. If you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely

Marc Turner



Senior Adviser  
Land Use Ops Team - Winchester

*Natural England is here to conserve and enhance the natural environment, for its intrinsic value, the wellbeing and enjoyment of people and the economic prosperity that it brings*

**Pickhaver, David**

**From:** Gary Parsons [REDACTED]  
**Sent:** 20 March 2015 15:12  
**To:** Planning, Strategic  
**Subject:** Proposed Modifications to the submission Torbay Local Plan  
**Importance:** High

Thank you for consulting Sport England on the above Local Plan Proposed Modifications submission.

Sport England is the Government agency responsible for delivering the Government's sporting objectives. Maximising the investment into sport and recreation through the land use planning system through CIL/S106 is one of our priorities. You will also be aware that **Sport England is a statutory consultee on planning applications affecting playing fields.**

The new Sport England Strategy 2012-17 sets a challenge to:

- See more people taking on and keeping a sporting habit for life
- Create more opportunities for young people
- Nurture and develop talent
- Provide the right facilities in the right places
- Support local authorities and unlock local funding
- Ensure real opportunities for communities

Sport England has assessed the Proposed Modifications in the light of Sport England's **Planning for Sport: Forward Planning** guidance. It can be found on our Planning for Sport section of the website <http://www.sportengland.org/facilities-planning/planning-for-sport/>

The overall thrust of the statement is that a planned approach to the provision of facilities and opportunities for sport is necessary, new sports facilities should be fit for purpose, and they should be available for community sport. To achieve this, our objectives are to:

- PROTECT** sports facilities from loss as a result of redevelopment
- ENHANCE** existing facilities through improving their quality, accessibility and management
- PROVIDE** new facilities that are fit for purpose to meet demands for participation now and in the future.

Sport England believes that sport has an important role in modern society and in creating sustainable and healthy communities. Sport and physical activity is high on the Government's national agenda as it cuts across a number of current topics that include health, social inclusion, regeneration and anti social behaviour. The importance of sport should be recognised as a key component of development plans, and not considered in isolation.

The following comments are provided within the context of:

- The National Planning Policy Framework (DCLG, 2012).
- Sport England's Planning for Sport webpages (2015).

## **MAIN MODIFICATIONS**

1. **MM14 Appendix D – Proposed Housing Site at Steps Cross Playing Field, Moor Lane, Torquay**



***the size of the playing area of any playing pitch or the loss of any other sporting/ancillary facility on the site."***

**E4**

***"The playing field or playing fields which would be lost as a result of the proposed development would be replaced by a playing field or playing fields of an equivalent or better quality and of equivalent or greater quantity, in a suitable location and subject to equivalent or better management arrangements, prior to the commencement of the development."***

**E5**

***"The proposed development is for an indoor or outdoor sports facility, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss of the playing field or playing fields."***

The Government has enshrined the playing fields policy above in the National Planning Policy Framework which states (paragraph 74):

***Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:***

- ***An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus of requirements; or***
- ***The loss resulting from the proposed development would be replaced by equivalent or better provision in term of quantity and quality in a suitable location; or***
- ***The development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.***

You will be aware that the National Planning Policy Framework (NPPF) requires each local planning authority to produce a Local Plan for its area. Local Plans should address the spatial implications of economic, social and environmental change. Local Plans should be based on an adequate, up-to-date and relevant evidence base. In addition, para 73 of the NPPF requires that:

***"Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessment should identify specific needs and quantitative deficits or surpluses of open space, sports and recreational facilities in the local area."***

The emerging Playing Pitch Strategy for Torbay is seeking to retain and enhance the playing field stock and it identifies the site as a site used by community sport. Improvements to the playing field site have been identified. The site was also recently improved for community sport as part of the mitigation for playing field land lost to the school development proposals at Cockington School.

From the information that we have seen there would appear to be a lack of evidence of any exceptional circumstances that justifies the permanent loss of these playing fields. We would strongly support the retention of these playing fields, unless one of the five exceptions to our nationally adopted Playing Field Policy applies.

In light of the above, Sport England **objects** to the proposal on the grounds that the development will lead to the permanent loss of part of the existing playing field and conflicts with current Government Guidance and our Playing Field Policy.



It is our view that the loss of playing fields at this site has not been analysed, discussed and addressed in the Local Plan document. Sport England strongly recommends a review of the retention of these playing fields to meet current and future needs.

**RECOMMENDATION - Delete the proposed housing allocation. Retain the playing fields in line with the emerging Playing Pitch Strategy and implement those playing field improvements.**

MM14

## **ADDITIONAL (MINOR) MODIFICATIONS**

### **2. AM139/DE1 Active Design - SUPPORT**

AM139 sup

Sport England believes that being active should be an intrinsic part of everyone's life pattern. The master planning of new housing proposal has a vital role in providing easy access to a choice of opportunities for sport and physical activity to suit all age groups for making new communities more active and healthy.

Sport England commissioned David Lock & Associates to investigate the contribution that masterplanning can make to create new environments that maximise opportunities for participation in sport and physical activity. This work including a **developer's checklist** has been completed and can be accessed via <http://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/active-design/>

Through an analysis of the current health agenda and urban design principles and good practice, the term ACTIVE DESIGN has been adopted to describe ways in which master planning can promote healthy environments through creating healthy environments through creating conditions for participation in sport and physical activity and the use of active travel modes (walking and cycling). Three overlapping Active Design objectives have been identified that should be promoted by master plans: improving accessibility; enhancing amenity and increasing awareness.

**Sport England would encourage new development be designed in line with the Active Design principles to secure sustainable design. Use of the checklist could be a way of ensuring that design principles of Active Design are informing the design and being implemented.**

The Active Design work is currently under review with possibly a new 'version' to be considered when published that meets the health / physical activity agenda too.

### **3. AM150/SC2 Protection of Sports Facilities - SUPPORT**

Sport England acknowledges that the NPPF is promoting "sustainable development" to avoid delays in the planning process (linked to economic growth). That said, the NPPF also says that for open space, sport & recreation land & buildings (including playing fields) paragraph 74:

***Paragraph 74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:***

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or***
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location;***
- or***



***the size of the playing area of any playing pitch or the loss of any other sporting/ancillary facility on the site."***

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In light of the above, Sport England **objects** to the proposal on the grounds that the development will lead to the permanent loss of part of the existing playing field and conflicts with current Government Guidance and our Playing Field Policy.



- ***the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.***

Sport England would be very concerned if any existing playing pitches or sports facilities (land or open space) would be affected by development proposals without adequate replacement in terms of quality, quantity, accessibility, management & maintenance and prior to the loss of the existing facility.

If you would like any further information or advice please contact me at the address below.



WC1B 3HF



**Creating a sporting habit for life**



Ashlands House, Ashlands, Crewkerne, Somerset, TA18 7LQ

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