

OVERVIEW & SCRUTINY COMMITTEE

CHAIRMAN:

DATE: 28 May 2019
REPORT OF: Principal Delivery Officer
SUBJECT: Called in decisions of the South East Devon Habitat Regulations Executive Committee.

PART I

RECOMMENDATION

That the following decisions of the South East Devon Habitat Regulations Executive Committee are reviewed and agreed:

- 1) Adjustment of the Habitat Mitigation Officers contracts to permanent status to align with the funding allocated in the mitigation strategy be approved;**
- 2) Retention of the Devon Loves Dogs project Coordinator for 5 years from November 2019;**
- 3) Funding for a used vehicle from May 2019 as outlined in Section 2 be approved.**

1. PURPOSE

- 1.1 To consider specific decisions made by the South East Devon Habitat Regulations Executive Committee on 29 April 2019, which have been called in.
- 1.2 Sections 2 to 4 of this report revisit the background to the Habitat Regulations and the joint Executive Committee. The subsequent sections address the called in decisions of 29 April.

2. THE HABITAT REGULATIONS

- 2.1 The European Habitats Directive has been transposed into UK law through the Conservation of Habitats and Species Regulations (the 'Habitat Regulations').
- 2.2 The Habitat Regulations protect European Sites of the highest level of international importance. Councils are required to ensure no adverse impact on Sites, including their habitats and wildlife. This includes managing pressures of a growing population and, therefore, housing development projects within the vicinity of the Sites.
- 2.3 Exiting the European Union is not expected to alter the relevance of the Habitat Regulations and the provisions of the Habitats Directive will continue to be reflected in UK law.

3. THE EUROPEAN SITES

- 3.1 The relevant European Sites are shown at Appendix 1 and comprise:
- Dawlish Warren Special Area of Conservation
 - Exe Estuary Special Protection Area
 - East Devon Pebblebed Heaths Special Area of Conservation
- 3.2 In the case of the Exe, for example, the area qualifies as a European Site for regularly supporting at least 20,000 waterfowl, including Avocet and Brent Goose, that rely on being able to rest and feed over winter in order that they have the energy to migrate and breed in Spring. This is a finely balanced situation where human disturbance can result in mortal consequences for the protected species. If the frequency of disturbance might increase as a result of new development, the Habitat Regulations require that the associated implications for the protected wildlife must be mitigated.

4. A JOINT STRATEGY AND JOINT COMMITTEE

- 4.1 Natural England are the Government's statutory nature conservation body. They are responsible for advising councils on how to apply the Habitat Regulations. Local authorities must have regard to their advice.
- 4.2 The consistent advice of Natural England has been that Teignbridge, Exeter and East Devon's councils should respond to the combined impacts of their development growth on the European Sites together and through a single strategy.
- 4.3 In 2014 a joint South East Devon European Site Mitigation Strategy (SEDESMS) was finalised for Teignbridge, Exeter and East Devon. This drew together the scientific evidence that had already been prepared. At the same time it harnessed international expertise and real-world examples in order to arrive at a suite of mitigation measures whose implementation would prevent the condition of the European Sites from worsening as new development came forward. The Mitigation Strategy and associated evidence are available at the following web link:

<https://www.teignbridge.gov.uk/planning/biodiversity/exe-estuarydawlish-warren-habitat-mitigation/evidence-base/>

- 4.4 By 2015 the three Councils had joint evidence and a joint strategy. Each was collecting funds from development in order to meet the entire costs of projects identified in the Mitigation Strategy. A structure for implementing the joint approach was required. Building on the experiences of other local authorities managing similar cross-boundary issues, the three authorities delegated authority to form a new South East Devon Habitat Regulations Executive Committee (HREC) but local scrutiny has been retained by the individual councils.

- 4.5 Across the three European Sites the Mitigation Strategy identified 60 measures (See Table 26 from p218). HREC decisions on how to deploy the funds that are being collected from new development are guided by the Mitigation Strategy and confirmed through five year Delivery Plans and annual Business Plans.
- 4.6 The South East Devon Habitat Regulations Partnership is the operational arm of the HREC and responsible for implementing decisions of the Committee. Further information about the European Sites and the work of the partnership is available from a new website at: <https://www.southeastdevonwildlife.org.uk/>

5. CALLED IN DECISIONS

- 5.1 The latest HREC meeting was held on 28 April 2019 and each of the decisions that have been called in are addressed below. The relevant officer report is at Appendix 2 and draft minutes from the meeting are available elsewhere within the Overview and Scrutiny Committee agenda.

Two Habitat Mitigation Officer Permanent Positions

- 5.2 The HREC approved making the two current temporary Habitat Mitigation Officer (HMO) posts permanent. These positions are currently fixed term and due to end during October 2019.
- 5.3 The call in of this decision was on the grounds that no performance reviews or job evaluation changes had been evidenced, and ongoing funding may not have been secured or agreed.
- 5.4 The HMOs help to promote the importance of the European Sites working to educate and inform members of the public on a daily basis. The partnership approach of the HMOs also includes close work with the Wetland Bird Survey (WeBS) team, the Exe Estuary Management Partnership, the Royal Yachting Association Green Blue, and liaison with conservation/land management teams across the region (EDDC, TDC, RSPB, DWT and Pebblebed Heaths Conservation Trust).
- 5.5 The two HMO roles are identified in the Mitigation Strategy, which refers to the positions as 'two wardens' and identifies a need for the roles to continue on a permanent and ongoing basis. On the basis of that evidence developer contributions continue to be collected in order to fund the roles on a permanent basis. Sufficient funding is available.
- 5.6 East Devon District Council is the host authority responsible for employing all South East Devon Habitat Regulations Partnership Officers. In the first instance temporary positions were created in order to trial the effectiveness of the roles. This has been successful, hence the decision to make the HMO positions permanent. The roles have not changed however and no job evaluation is required.

- 5.7 The extract from another item on the April 2019 HREC agenda at Appendix 3 provides data on the extent to which the HMOs and the Dog Project Coordinator interact with members of the public.
- 5.8 Standard East Devon District Council human resources policy where a fixed term contract over two years is extended, is to make the contract permanent. This is because after two years the employee has the same statutory rights as a permanent member of staff anyway. There is no difference in the fundamental terms or conditions of the contracts and no difference to the employees' rights as they relate to redundancy.
- 5.9 All South East Devon Habitat Regulations Partnership Officers participate in annual 'performance excellence reviews' and have done so since their employment started. They also meet with their line manager on a monthly basis in order to review ongoing performance.

Devon Loves Dogs Project Coordinator – 5 Year Contract Extension

- 5.10 Call in of the decision to extend the Devon Loves Dogs Project Coordinator role principally related to the purchase of a new vehicle but it is sensible to review both aspects, which are closely linked.
- 5.11 The Devon Loves Dogs Project Coordinator position is about communicating positive messages to dog owners; highlighting the breadth of dog walking alternatives to the European Sites and promoting responsible dog walking.
- 5.12 The HREC Report at Appendix 2 explains at Section 3 that duplicate visitor survey monitoring funding is available and can be redirected to an extension of the post for a further five years from November 2019.
- 5.13 The Mitigation Strategy anticipated that this work would continue indefinitely but sought to assign it to the Habitat Regulations Delivery Manager in the longer term. Practical experience since the Mitigation Strategy was prepared has shown that the time and resource implications of this arrangement would not be manageable. Best practice observed through the Habitat Regulations Partnership's national networks and the Dorset Dogs programme has highlighted the importance of employing a dedicated Dog Project Coordinator.
- 5.14 Funding of the Project Coordinator post for five years will leave time for a review of the Mitigation Strategy as part of Greater Exeter Strategic Plan process. The updated Strategy will be able to take into account whether to collect developer funding for the Devon Loves Dogs Project Coordinator position beyond 2024.

Funding for a used vehicle

- 5.15 The duplicate visitor survey funding from new development would also cover the estimated £18,000 cost of purchasing, running and maintaining a vehicle that would be used to transport the Devon Loves Dogs Project Coordinator to the European Sites as well as to community engagement events across the

area over a five year period. It would also be used to store and transport the large branded gazebo which is used at events along with other display material.

5.16 Call in of the decision to purchase and maintain the vehicle was on the basis that the need for it had not been evidenced and other potential solutions had not been evaluated. Section 2 of the HREC report at Appendix 2 considers the alternative options and need for the vehicle to some extent but an expanded explanation is set out below.

5.17 The current position is that:

- The officer is an essential car user.
- Loading and unloading the officer's own vehicle takes around 1 hour each day there is an event
- There is an implicit expectation that the officer needs to make storage available at home.

5.18 This approach places a strong reliance on the good will of the Devon Loves Dogs Project Coordinator in making a lot of storage space at home available. The combined cost of the current approach, as well as travel to appropriate alternative storage facilities, is estimated at around £4,500 per annum.

5.19 The proposed budget for running and operating a new vehicle over five years is less at £3,000 per annum. This arrangement would also free up Project Coordinator time to spend with the community rather than loading vehicles. This is because the vehicle would also provide storage and would not require loading and unloading at each end of the day. The calculated cost of the vehicle excludes the residual value that it might attract at the end of the five year period.

5.20 The working area of the Devon Loves Dogs Project Coordinator extends across and beyond the 'zone of influence' shown at Appendix 1. Besides the current arrangement and the proposed purchase of a used van, three other alternatives have been considered.

- 1) Public transport to travel to the various Devon Loves Dogs events would not be feasible owing to the weight and bulk of the equipment carried by the officer.
- 2) Because of the distance and range of apparatus involved it would not be possible for the officer's duties to be undertaken on foot or by bike.
- 3) Hiring a vehicle over five years would cost approximately £20,000, excluding fuel and insurance and would not address storage requirements.

6. NEXT STEPS

6.1 Overview and Scrutiny Committee is recommended to agree the three decisions that are described in this report.

6.2 If the Committee disagrees it should make and justify alternative recommendations to the HREC. The next HREC meeting is due on 16 July 2019.

Fergus Pate
Principal Delivery Officer

Wards affected	<i>All outside Dartmoor</i>
Contact for any more information	<i>Fergus Pate</i>
Background Papers (For Part I reports only)	<i>Described in report</i>
Key Decision	<i>No</i>
In Forward Plan	<i>No</i>
In O & S Work Programme	<i>Yes</i>