

EXECUTIVE

Leader: Cllr Gordon Hook

Portfolio Holder: Cllr Gary Taylor

DATE: 30th July 2019

REPORT OF: Business Manager – Strategic Place

SUBJECT: South Hams Special Area of Conservation: Habitats Regulations Assessment Guidance

Part 1

RECOMMENDATION

Executive is recommended to:

1. Resolve to approve the South Hams Special Area of Conservation Habitats Regulations Assessment Guidance with any other minor amendments of detail being delegated to the Business Manager Strategic Place in consultation with the Planning Portfolio Holder.
2. Note the Consultation Summary outlining comments to the consultation process.

1. PURPOSE

- 1.1 To consider and approve the proposed South Hams Special Area of Conservation Habitats Regulations Assessment Guidance (the 'Guidance'), attached as Appendix 1. The Guidance will be used to determine whether a Habitats Regulation Assessment (HRA) Screening is required on any application submitted within the South Hams SAC consultation area and provides advice on the information that applicants may need to submit with a planning application in order for the Local Planning Authority to undertake the HRA.
- 1.2 Once approved by all Local Planning Authorities affected by the South Hams SAC, the Guidance will update and replace the *South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance* published by Natural England in 2010. The Guidance takes on board feedback from applicants, consultants and planners as well as new data and knowledge on greater horseshoe bats since the 2010 guidance was introduced.

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2. BACKGROUND

- 2.1 The South Hams Special Area of Conservation (SAC), and associated Consultation Zone, cover an area which lies within five local planning authority areas: Dartmoor National Park Authority, Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Council. Management of the SAC is co-ordinated by an officer group of representatives from each of the above authorities and Natural England, forming the South Hams SAC Greater Horseshoe Bats Steering Group.
- 2.2 Local Planning Authorities (LPAs) have a legal duty (under the Habitats Directive and Habitats Regulations) to ensure that there will be no *adverse effect on the integrity* of the South Hams SAC population of greater horseshoe bats as a result of any plan or project. Any which will lead to an *adverse effect on the integrity* of the South Hams SAC will be refused, other than in exceptional circumstances.
- 2.3 Greater horseshoe bats are one of Britain's rarest bats with about 30% of the population found in South Devon. The South Hams Special Area of Conservation (SAC) has been designated (under the EC Habitats Directive and UK Habitats Regulations) by Natural England to help protect the bats and includes both maternity and hibernation roosts vital to the survival of the species. SACs form part of a network of designated sites across Europe and have the highest level of protection. Five greater horseshoe bat roosts are designated as part of the SAC, including the Chudleigh Caves and Woods SSSI within Teignbridge district.
- 2.4 This Guidance will update and replace the 'South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance' published by Natural England in 2010. It provides advice on which applications may have a *likely significant effect* on the SAC greater horseshoe bat population and which may therefore require the relevant LPA to carry out a Habitats Regulations Assessment (HRA). It also provides advice on the information that applicants may need to submit with a planning application in order for the LPA to undertake the HRA.
- 2.5 A draft version of the guidance was published for consultation from 16th April until 13th June 2018. It has since been amended to take into consideration comments raised during the consultation (see Section 4).
- 2.6 The draft version of the guidance was initially prepared with the intention of becoming a Supplementary Planning Document but its status and scope has since been revisited due to legal challenges taking place nationally on the legality of Supplementary Planning Documents (see Section 3).
- 2.7 The final version of the Guidance is provided at Appendix 1 and a summary of comments and responses is in Appendix 2. The original consultation draft is

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available at the following link <https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance/south-hams-sac-spd-consultation>

- 2.8 The Guidance has been prepared jointly by the authorities in partnership with Natural England. On a point of presentation, the cover page does not contain the agency logo, due to Natural England's protocol of excluding such from non-governmental guidance publications.
- 2.9 The new document will accord with the Teignbridge Corporate Plan in terms of the 'Great places to live and work' programme and in particular action; concerning protecting the most important habitats and investing in new wildlife areas.

3. MAIN IMPLICATIONS

Status of Guidance

- 3.1 The partner authorities originally consulted on a document envisaged to be a Supplementary Planning Document (SPD). However, following the receipt of consultation responses and a review of legal challenges taking place elsewhere in the country on the legality of SPDs, further consideration has been given to the scope and status of the document.
- 3.2 Case law has confirmed (in relation to the Planning & Compulsory Purchase Act 2004 Regulations and the Town and Country Planning (England) Regulations 2012) that it is not possible to provide SPD as the basis on which planning applications can be determined. Instead determinations can only be made on the parent policy to which the document relates (i.e. policies contained in the Local Plan).
- 3.3 It has never been the intention for the Guidance to introduce policy. Instead, the guidance will help inform which developments are likely to require a HRA at an early stage and provide advice on information applicants may need to submit with their planning application. The non-statutory guidance will be used primarily at validation stage for planning applications received by the partner authorities to determine whether an HRA is required.
- 3.4 It will be given the same weight as has previously been delivered by the *South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance* published by Natural England in 2010 (which itself was never SPD).

Features of the South Hams SAC

- 3.5 The South Hams SAC Consultation Area defines, as closely as possible, the geographical extent of the greater horseshoe bat population in the area. Within this Consultation Area, the 2010 *South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance* defines designated roosts, sustenance zones and strategic flyways as the main features used and populated by greater horseshoe bats. More recent evidence available from a wider source of

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datasets has, however, shown that many of the bats are also likely to travel through the South Devon landscape (outside of the Sustainance Zones and not confined to the strategic flyways) to access other smaller roosts at certain times of year (male bats can be found in small roosts during the summer and both males and females will fly to mating roosts in the autumn and spring). The bats may also travel between Designated Roosts (with stop overs at transitional roosts on the way).

- 3.6 All existing evidence (from research and records) indicates that the bats using this landscape are dispersed in low numbers, using a complex network of sheltered hedges, woodland edge, stream corridors etc. to move around the landscape. In order to maintain Favourable Conservation Status of the population it is therefore important to keep sufficient connectivity across the whole of this landscape (allowing landscape scale permeability), rather than just protecting a number of flyways.
- 3.7 The net result of this work has been a more robust delineation of an area within which greater horseshoe bats are known to use. The Guidance has therefore replaced the 2010 strategic flyways with a 'landscape connectivity zone' to protect the complex network of flight lines which link the designated roosts. This change affects interpretation of Local Plan Policy EN10, whereby reference to the strategic flyways can be waived and follows progression of guidance indicated in paragraph 5.29 of the plan.
- 3.8 A further change arising from the shift away from flyways and to the landscape connectivity zone is how applications are screened for HRA. Currently, any application affecting a flyway requires HRA. Once the Guidance is in place, HRA will be limited to those applications picked up by the flow chart shown on Page 11 of Appendix 1. This approach better reflects how different types of uses have different impacts on greater horseshoe bats, thereby reducing the burden for applications where there is likely to be no impact and ensuring that other applications which may have an impact will have an HRA, regardless of whether or not they fall within a tightly defined flyway.
- 3.9 A series of Advice Notes is being considered on such matters as greater horseshoe bat ecology, mitigation and lighting. They are intended to be best practice guidance to assist applicants when providing information to inform the HRA. The notes will be widely circulated to interested parties and placed on the Devon County Council Strategic Planning and Policy website with links to other useful guidance when available.

4. GROUPS CONSULTED

- 4.1 A full public consultation was held from 16th April until 13th June 2018 on a draft version of the Guidance which included statutory consultees, partners and the wider public. An invited stakeholder workshop session and public drop in was held at Dartmoor National Park Authority Offices, Bovey Tracey on 1st May. A summary of the comments received and officer responses are contained in Appendix 2.

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4.2 A number of refinements and changes have been made to the guidance following the public consultation process:

- amendments to SAC Consultation Area map
- addition of reviewing the guidance section
- revised landscape connectivity zone with explanation
- clarification to HRA requirement flowchart
- clarification of survey requirements for HRA
- addition of list of references

5. TIMESCALE

5.1 The Guidance will come into effect once all partner authorities have approved it. It is hoped this will be completed by September. The recommendation asks that minor amendments of detail arising from the different committees of partner authorities are delegated to the Business Manager Strategic Place in consultation with the Planning Portfolio Holder.

6. FINANCIAL IMPLICATIONS

6.1 The Guidance does not present new financial implications. Updated HRA requirements may lead to further assessment work commitments for the Planning Service which would be met from existing budgets.

Wards affected	Ambrook, Ashburton & Buckfastleigh, Bishopsteignton, Bovey Tracey, Chudleigh, Ipplepen, Kenn Valley Kerswell-with-Coombe, Kingsteignton, Newton Abbot & Teign Valley.
Contact for any more information	Trevor Shaw Senior Planning Officer 01626 215703
Background Papers (For Part I reports only)	Teignbridge Local Plan 2013 – 2033
Key Decision	Y
In Forward Plan	Y
In O&S Work Programme	N
Community Impact Assessment attached:	N
Appendices attached:	Y