

Report to: **Executive**

Date: **18 July 2019**

Title: **South Hams Special Area of Conservation:  
Habitats Regulations Assessment Guidance**

Portfolio Area: **Cllr J Pearce – Strategic Planning**

Wards Affected: **Marldon, Littlehempston, Dartmouth and  
East Dart, West Dart, Blackawton and Stoke  
Fleming, Totnes, Dartington and Staverton,  
Allington and Strete, Loddiswell and Aveton  
Gifford, South Brent, Ermington and  
Ugborough, Ivybridge East, Charterlands,  
Salcombe and Thurlestone, Kingsbridge,  
Stokenham**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **After the call in  
period ending  
29<sup>th</sup> July 2019**

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**Recommendations: That Executive Resolves to:**

1. Approve the South Hams Special Area of Conservation Habitats Regulations Assessment Guidance (as attached at Appendix 1) with any other minor amendments of detail being delegated to the Specialist (Place Making and Assets) in consultation with the Strategic Planning Portfolio Holder.
2. Note the Statement of Community Involvement (as attached at Appendix 2) summarising comments to the consultation process.

**1. Executive summary**

- 1.1 The proposed South Hams Special Area of Conservation (SAC) Habitats Regulations Assessment Guidance (the 'Guidance' – see Appendix 1) 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 (LPA) to undertake the HRA.

- 1.2 Once approved by all LPAs 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.

## **2. Background**

- 2.1 The South Hams SAC, and associated Consultation Area, lies within five local planning authority areas: Dartmoor National Park Authority, Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Council. An officer group of representatives from each of the above authorities and Natural England, forming the South Hams SAC Greater Horseshoe Bats Steering Group, seek to ensure legal duties associated with the Conservation of Habitats and Species Regulations (2017) are met with regards to development and the South Hams SAC.
- 2.2 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 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 Bulkamore Iron Mine SSSI and High Marks Barn SSSI within the South Hams administrative boundary.
- 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 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 16<sup>th</sup> April until 13<sup>th</sup> June 2018. It has since been amended to take into consideration comments raised during the consultation.
- 2.6 The draft version of the guidance was initially prepared with the intention of becoming a Supplementary Planning Document (SPD) but its status and scope has since been revisited due to legal challenges taking place nationally on the legality of SPD.

- 2.7 The final version of the Guidance is provided at Appendix 1 and a summary of comments and responses is provided at Appendix 2. The original consultation draft is 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. The new document will accord with the Council's 5 Year Corporate Strategy in terms of the 'Environment' theme and protecting and conserving our natural environment.

### **3. Outcomes/outputs**

- 3.1 The guidance will help inform which developments are likely to require HRA screening 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 HRA is required.
- 3.2 The joint guidance approach will enable clarity and consistency across the five LPAs assisting planners, developers, planning applicants and consultant ecologists. By providing clarity and consistency on HRA requirements, the guidance aims to reduce costs and unnecessary delays to both applicants and LPAs.

### **4. Options available and consideration of risk**

- 4.1 The partner authorities originally consulted on a document envisaged to be a SPD – this forming the basis of the report brought to Executive Committee in March 2018. 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.
- 4.2 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 Joint Local Plan).
- 4.3 It is not the purpose of the Guidance to introduce policy and accordingly it has been agreed that it is most appropriate that the document is a Guidance document not SPD.
- 4.4 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.
- 4.5 A full public consultation was held from 16<sup>th</sup> April until 13<sup>th</sup> 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 1<sup>st</sup> May 2018. A summary of the comments received and officer responses are

contained in the Statement of Community Involvement (Appendix 2).

- 4.6 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 a '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. Proposed Way Forward

- 5.1 The South Hams SAC Consultation Area defines (as shown within Appendix 1 and as a high-resolution version at Appendix 3), as closely as possible the geographical extent of the greater horseshoe bat population associated with the SAC component roosts in the area. The 2010 *South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance* had previously defined Designated Roosts, Sustenance Zones and Strategic Flyways as the main features used and populated by greater horseshoe bats.
- 5.2 More recent evidence collected from a wider source of datasets has, however, shown that many of the bats are also likely to travel through the South Devon landscape (outside of the Sustenance 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).
- 5.3 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 that we keep sufficient connectivity across the whole of this landscape (allowing landscape scale permeability), rather than just protecting a number of flyways.
- 5.4 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 wider 'Landscape Connectivity Zone' to protect the complex network of flight lines which link the Designated Roosts.
- 5.5 A further change arising from the shift away from flyways and to the Landscape Connectivity Zone is how applications are screened for 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.

- 5.6 A series of Advice Notes are being prepared on such matters as greater horseshoe bat ecology and mitigation (current best practice and lighting issues) to help clarify further more detailed/technical aspects and assist with designing developments and assessing proposals. These 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.
- 5.7 Each LPA is now going through due process to approve the guidance, and the joint Guidance will be fully adopted once all partner authorities have confirmed approval. The recommendation asks that minor amendments of detail arising from the different Committees of partner authorities are delegated to the Specialist (Place Making and Assets) in consultation with the Strategic Planning Portfolio Holder.
- 5.8 Once approved by the Council, the Guidance will hold interim status until agreed by all partner authorities in the South Hams SAC Consultation Area.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The LPA is required to consider whether proposed developments are likely to have a significant effect on the South Hams SAC (by HRA screening) taking account of new data and knowledge on greater horseshoe bats. Where there is likelihood of significant effect, a proposed development can only be permitted if it would not adversely affect the integrity of the South Hams SAC taking into account impact avoidance and reduction measures, other than in exceptional circumstances (by Appropriate Assessment).</p> <p>This new Guidance will assist the LPA with a consistent HRA screening approach, contributing to meeting the requirements upon the LPA under the Conservation of Habitats and Species Regulations (2017).</p>
Financial implications to include reference to value for money	Y	<p>The new Guidance may result in more HRA screenings to be undertaken by existing staff due to the increased size of the Consultation Area, this will be met by existing staff and budgets. This is offset to a degree by the increased clarity of types of proposed development that require HRA screening in the flowchart within the Guidance.</p>

		Without the new Guidance, the potential for cost associated with challenge/appeal/JR of planning decisions may increase based on new data and knowledge on greater horseshoe bats.
Risk	Y	The new Guidance will reduce risk, particularly in terms of the LPAs legislative compliance with the Habitats Regulations when considering development proposals.  The approach reflects the Duty to Cooperate, by applying consistency to the approach to the South Hams SAC across five LPAs.
Supporting Corporate Strategy	Y	The new Guidance supports the Environment theme, by contributing to protecting and enhancing the natural environment.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

### **Supporting Information**

#### **Appendices:**

- 1 - South Hams Special Area of Conservation: Habitats Regulations Assessment Guidance
- 2 - Statement of Community Involvement: Consultation Summary
- 3 - High resolution map of South Hams SAC Consultation Area

#### **Background Papers:**

Report to SHDC Executive Committee, 15<sup>th</sup> March 2018 - *South Hams Special Area of Conservation – Joint Supplementary Planning Document – Approval for consultation*, Item E.74/17 at:

<http://mg.swdevon.gov.uk/ieListDocuments.aspx?CIId=149&MIId=498&Ver=4>

### **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed/sign off	<b>Yes</b>
SLT Rep briefed/sign off	<b>Yes</b>

Relevant Head of Practice sign off (draft)	<b>Yes</b>
Data protection issues considered	<b>Yes</b>
Accessibility checked	<b>Yes</b>