

Spatial Planning
Teignbridge District Council
Forde House
Brunel Road
Newton Abbot
Devon
TQ12 4XX

Bioscan (UK) Ltd
The Old Parlour
Little Baldon Farm
Little Baldon
Oxford
OX44 9PU

Tel: +44 (0) 1865 341321
Fax: +44 (0) 1865 343674
bioscan@bioscanuk.com
www.bioscanuk.com

26th September 2018
Our Ref: SW18/E1956/TDCL1

To Whom It May Concern,

NA3 Wolborough (Newton Abbot) – Review Of Habitats Regulations Assessment

In response to a request from the Abbotskerswell Parish Council and Wolborough Residents' Association I have carried out an initial review of the procedural adequacy of the Habitats Regulations Assessment¹ (HRA) of the Development Framework Plan for allocation - NA3 Wolborough. I have identified a number of areas where I consider that the assessment is deficient, and consequently do not consider that it represents the proportionately robust assessment of the likely impacts on greater horseshoe bats (GHB) *Rhinolophus ferrumequinum* needed at this stage in the planning process to adequately demonstrate that development within this allocation as proposed could be delivered in a manner that is unlikely to undermine the integrity of the South Hams Special Area of Conservation (SAC). I have set out the basis for this below.

Adequacy of the assessment process

Of greatest concern when reviewing the HRA is the apparent failure of the assessment to consider at any stage the impact of the loss of existing foraging habitat on GHB. It is not identified as an impact in Table 2 nor therefore are the potential implications of this in respect of impacts on the SAC considered. Section 5.2 of the HRA sub-divides the NA3 allocation into seven land parcels and "*their key characteristics and interest for greater horseshoe bats are described*" in turn. Area B is described at paragraphs 5.2.9 to 5.2.12 which state:

"5.2.9. Area 'B' lies on the western edge of NA3 and is bounded to the west by the A381. It has mature hedgerow-lined narrow lanes on the eastern and southern boundaries. Ogwell Cross cemetery lies immediately to the north of Area 'B' and the village of Abbotskerswell less than 500m to the south.

5.2.10. Land use within Area 'B' is predominantly arable, as recorded by SLR in their Phase I Habitat Survey (2015), and this has been confirmed by land-use data provided by the landowner. However, a semi-improved grassland field on the western edge of Area 'B' (adjacent to the A381) is cattle grazed from March to October annually.

¹ Greenbridge Ltd (March 2017) Habitat Regulations Assessment NA3 Wolborough. Newton Abbot. Teignbridge District Council Update (July 2018)

5.2.11. SLR (2015) static detectors have recorded greater horseshoe bat activity along a field boundary running east-west that connects to the grazed pasture discussed above. This activity was relatively high in May 2013 and April 2014 compared to later months of the year. Overall, this activity in Area 'B' was also relatively high compared to many other locations across NA3.

5.2.12. Area 'B' is the closest part of NA3 to the established greater horseshoe roost in Conitor Copse. Furthermore, the A381 - beside the above grazed pasture field - is in a deep cutting providing a potential safe high-level route across the road for horseshoe bats between NA3 and the roost in the Copse. Another highly likely additional flight line for horseshoe bats exists where Firestone Lane joins the A381, providing strong linkage with a tree-lined bridleway and cattle-grazed pasture on the western side of the road, south of Conitor Copse."

From this description it is clear that Area B contains a field of permanent pasture, being described as "semi-improved grassland...cattle grazed from March to October annually" with GHB activity in Area B "relatively high compared to many other locations across NA3". Paragraph 4.5.2 of the HRA provides details of Natural England's advice in respect of maintaining the integrity of the SAC and the GHB population at a favourable conservation status. Bullet vii) of these specifically identifies the importance of permanent pasture grazed by cattle as being one of the "most important types of habitats for feeding".

Whilst it is difficult to identify to which hedgerow the GHB activity recorded by SLR pertains (none of the data points identified on Map 2 appear to fit with this description), the only conclusion that can be reached is that the pasture in Area B is used by GHB for foraging and that within the NA3 allocation as a whole, this pasture could represent a resource of elevated importance compared to other parts of the wider NA3 area. Such areas should therefore be of highest priority for protection. It is a flaw of the HRA then that the loss of approximately half of this pasture due to its allocation for employment (see Aerial Photo 3) and with the balance to provide "allotment/Community growing space" (see Map 5) has not only been overlooked as a potential impact in its own right but that the impact of habitat loss more generally on GHB and consequently the integrity of the SAC has been not considered at any stage in the HRA.

Impact on flyways

In addition to the above, I would question if the extent of the baseline data on which the assessment is based is sufficient to have the required level of confidence in the suitability and effectiveness of the design principles proposed to operate as mitigation – the details of which are to be worked up at a later stage. There is at best scant data shown on Map 2 and none of the data points fall within the allocation site itself. It is perhaps unavoidable then that Photo 3 of the HRA identifies just one 'established flight line' (a short, c370m route through Area B) with the other routes, including importantly the only 'predicted flight line' that crosses the allocation from west to east, being little more than guess work.

Design principles for future development within the allocation have been set at paragraph 5.5.3 and include at bullet ii. the need to "maintain and optimise existing, and also provide new, bat commuting and foraging habitat through and around NA3 to achieve overall connectivity in accordance with the proposed flyways shown on Aerial Photo 3". I fail to see how this can be achieved if there is insufficient data on which to accurately predict the location and relative importance of current flyways such that these can be maintained across the allocation as a whole.

In addition, the only 'predicted flight line' that connects the east and west sides of the allocation is along the very southern edge of the allocation parcel. There is no existing or predicted flight line through the wider allocation. In the absence of sufficient data on which to identify such a route(s), I do not believe due regard has been had to the scope for development within the allocation to affect existing routes. Furthermore, in the absence of adequate protection for other flyways through the allocation, this predicted route has the potential to be a longer route from one side of the allocation to the other, a specific impact identified in Table 2 for which there appears to be no avoidance or mitigation measures proposed and which is also contrary to the aims identified at 5.5.1. which amongst others specifically include the need to help GHB conserve energy.

Conclusion

In light of the above concerns I would disagree with the conclusion at paragraph 8.4 of the HRA that *'it is possible to conclude that the allocation and the current Development framework Plan will not result in adverse effects on the integrity of the South Hams SAC.'* It would appear that this is little more than an HRA screening assessment 're-badged' in the wake of the People Over Wind judgment² in order to claim that it is a fully regulatory compliant Appropriate Assessment. Consequently, an insufficient level of evidence is being relied upon to support the conclusions about the efficacy of the proposed mitigation. Insufficient information has been provided to demonstrate to the requisite level of 'certainty' (having regard to applicable case law) that development of NA3 achieves the threshold of 'in-principle acceptability' in the context of it needing to be able to be delivered in a manner compliant with the Habitats Regulations and the parent Habitats Directive.

In the absence of a fuller understanding as to how this site is used by GHB, the contribution it makes through functional linkage to the integrity of the SAC cannot be determined to the required degree. While such shortfalls can in theory be overcome by maintaining sufficient flexibility in the development proposals to allow for all eventualities, in this case the Council is placing great reliance on this site for delivery of a minimum number of residential units pursuant to its housing delivery targets. This sets up a situation where future unresolvable conflict between development objectives and due protection of the European Site is a distinct possibility. This is not consistent with the requirement for the Council to 'ascertain' that the allocation would not trigger a process that cannot avoid impacting on the designated European Site.

Regards

FOR AND ON BEHALF OF BIOSCAN (UK) LTD



Samuel Watson MCIEEM
Senior Ecologist

² Case c-323/17 People Over Wind, Peter Sweetman v Coillte Teoranta [2018]