

**COMMITTEE:** Planning North Committee

**DATE:** 13 February 2024

**SUBJECT:** Supplementary Report – Planning Application  
45/20/00019

## **1. Purpose of the Report**

1.1 The purpose of this report is to seek the endorsement of the Committee, as competent authority of the shadow Habitats Regulation Assessment Report prepared by Richard Green Ecology dated September 2023 (attached as Appendix 1). This is on the basis that the Committee considers that the proposed development would not have an adverse impact on the integrity of a European site.

## **2. Background**

2.1 In accordance with the EU-UK Withdrawal Agreement and the European Union (Withdrawal Agreement) Act 2020, the transitional provisions under which European law such as the Habitats Directive and the Wild Birds Directive had effect in Great Britain ended on 31 December 2020.

2.2 Although neither the Habitats or Birds Directives now have the force of law in England, they will remain relevant in the interpretation and application of the Habitats Regulations 2017 unless and until Parliament otherwise modifies those Regulations.

2.3 The Local Planning Authority has a duty under Regulation 9 (1) of the Conservation of Habitats and Species Regulation 2017 (“2017 Habitat Regulations”). This duty is for all "competent authorities" (including Local Planning Authorities and other public bodies) to "exercise their functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directives".

2.4 Regulation 63 (1) of the 2017 Habitats Regulations states the following: “A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which:  
a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

*b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives".*

2.5 There are effectively five stages to this assessment:

- Stage 1 – is the assessment of the likelihood of a plan or project having a Likely Significant Effect on a European site or its features and is the trigger for the need for ‘Appropriate Assessment’
- Stage 2 – the ‘Appropriate Assessment’ is the detailed consideration of the potential effects of the plan or project in relation to the conservation objectives for the European Site to determine if there is likely to be an adverse effect on its integrity. Providing it can be demonstrated that with appropriate mitigation measures the plan or project would not have an adverse effect it can proceed.
- Stage 3 – where an adverse effect cannot be demonstrated to be mitigated or where there is uncertainty the assessment would need to consider if there were other alternatives to the plan or project that would not give rise to an adverse effect on the integrity of the European Site
- Stage 4 – where there are no alternatives any imperative reasons of overriding public interest and compensatory measures would need to be considered, and if so -
- Stage 5 - consider whether all necessary compensatory measures have been secured to fully compensate for the negative effects of the proposal. The compensatory measures must not have a negative effect on the national network of European sites as a whole.

### **3. Current Position**

3.1 The attached shadow Habitats Regulations Report, prepared by Richard Green Ecology on behalf of the applicant, has been accepted and endorsed by the Council outlines whether there would be any significant effect on the conservation objectives of the Exmoor and Quantock Oakwoods Special Area of Conservation (SAC) an international/European designated site. The application site is located within Band A Consultation Zone of the Exmoor and Quantock Oakwoods SAC.

- 3.2 The HRA report sets out the assessment of the implications of the proposed development on the qualifying features of the SAC and its conservation objectives. In considering potential significant effects in the absence of mitigation, the report identifies the potential significance of the loss or degradation of habitat and commuting lines and the impact of artificial lighting.
- 3.3 Whilst the report concludes the project would not result in the loss of habitat that is functionally linked to the SAC, or optimal for foraging or a key flight line, it does not rule out light spill from artificial lighting that could displace light sensitive species including barbastelle bats. As a result an Appropriate Assessment is required and forms Part 4 of the HRA report.
- 3.4 The Appropriate Assessment identifies the need for mitigation measures to ensure that lighting is appropriately designed to avoid any potential effects from light spill, including through the construction phase. It also identified the need to protect the retained hedges during construction.. The application is supported by an External Lighting Strategy that seeks to limit and avoid light levels at the sensitive boundaries of the site. The Council's Ecologist is satisfied that this Strategy illustrates that an effective and ecologically sensitive lighting design can be achieved and can be suitably controlled by an appropriate conditions relating to:
- (1) the implementation of appropriate construction phase lighting and hedgerow protection within a Construction Ecological Environmental Management Plan, and
  - (2) an appropriately designed sensitive external lighting scheme.
- 3.5 The HRA report concludes that provided such conditions are imposed on any approval of application 45/20/00019 (which follows this item) there would be no effects on the integrity of the Exmoor and Quantock Oakwoods SAC by the development 'alone' or 'in combination' with other development(s).

#### **4. Consultation with Natural England**

- 4.1 Natural England have confirmed that they agree with the conclusions of the HRA report, stating:

*No objection subject to securing mitigation  
Natural England agrees with the conclusions of the HRA and considers  
that harm to the Exmoor and Quantocks Oakwoods SAC will be avoided*

*provided that the mitigation identified is secured through appropriate planning controls.*

**5. Recommendation**

**It is recommended that the Habitats Regulation Assessment Report dated September 2023 and associated provision be endorsed by the Development Committee, as the competent authority. In reaching the decision to agree the Habitats Regulation Assessment, the Council considers that the proposed development, if approved, would not have an adverse impact on the integrity of a European site.**

**6. Appendices**

Appendix 1 – Shadow Habitats Regulation Assessment – September 2023