

COMMITTEE: Planning North Committee

DATE: 13/8/2024

SUBJECT: Habitats Regulation Assessment Report –
Planning Application 41/23/00010

Planning North Committee

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 Clarkson and Woods Ecological Consultants dated 21 December 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 Clarkson and Woods Ecological Consultants on behalf of the applicant, has been accepted and adopted 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.
- 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 likely significant effects (LSEs) in the absence of mitigation, the report identifies the following potential impacts on the integrity of the SAC through the following LSEs:
 - Loss and degradation of bat foraging habitat (development pressures)
 - Loss and fragmentation of flyways (development and lighting)
 - Introduced street lighting or other lighting
- 3.3 The mitigation measures provided within the scheme comprising the retention and buffering of commuting features; provision of a net gain in replacement bat habitat; and the design of the external lighting scheme to control light spillage on dark corridors within the scheme on functional habitat associated with the SAC, means that favourable conservation status of the qualifying species of the SAC, Barbastelle and Bechstein’s bats, will likely be avoided.

- 3.4 A landscape and ecological management plan (LEMP) would also be required to ensure that replacement habitat is managed for the duration of the development to ensure that the mitigation is sustained and effective in its provision, so that an adverse effect does not occur in the medium and long term.
- 3.5 It is therefore concluded that, in view of the site conservation objectives, that the development proposals (taking into account the scheme's mitigation measures including suitable bat habitat and dark corridors on functional habitats) will not have an adverse effect on the integrity of the Exmoor and Quantocks Oak Woodlands SAC, either alone or in combination with other plans and projects; provided the mitigation (replacement bat habitat, dark corridors on functional habitat) is secured and delivered through planning conditions.
- 3.6 This '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, which should be subject to a construction environmental management plan (CEMP). It further suggests that a landscape environmental management plan (LEMP) is secured.
- 3.7 The Council's Ecologist is satisfied that the proposed mitigation is acceptable and that appropriate planting should be submitted as part of the reserved matters applications and has suggested a CEMP and a LEMP can be secured by appropriate conditions.
- 3.8 The HRA report concludes that provided such conditions are imposed 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 not objected to the HRA but made the following comments:

Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by the applicant. We note that in this case your authority, in consultation with Somerset Ecology Services, has chosen to adopt this HRA to fulfil your duty as the Competent Authority.

An appropriate assessment of the proposal has been undertaken, in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the

sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, it is the advice of Natural England that we concur with the conclusion of the HRA, provided all mitigation measures are adequately secured with any permission.

5. Recommendation

It is recommended that the Habitats Regulation Assessment Report dated January 2024 and associated provision be endorsed by the Development Committee, as the competent authority. In reaching the decision to accept the Habitats Regulation Assessment, the Council considers that the proposed development, if approved subject to appropriate conditions and mitigation, would not have an adverse impact on the integrity of a European site.

6. Appendices

Appendix 1 – Shadow Habitats Regulation Assessment – December 2023