

Isles of Scilly Local Plan Examination. Natural England response to Matter 1 Annex 1

Date: 03 December 2019
Our ref: 295636
Your ref: Isles of Scilly Local Plan Examination



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BY EMAIL ONLY

Dear Lisa

Planning consultation: draft statement of common ground between the Isles of Scilly Council and Natural England; Further addendum note on the Habitats Regulations Assessment (HRA) (Nov 2019) and Natural Environment Topic Paper amended November 2019.

Thank you for your email dated 20 November 2018 to which the three documents referred to above were attached.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Our comments on the three documents are set out below.

Draft Statement of Common Ground.

The revisions to policy set out in the Statement of Common Ground are welcomed. As it stands the only outstanding issue between us relates to the conclusion of the Habitats Regulations Assessment in relation to potential recreational disturbance associated with prospective occupants of housing allocated on St Mary's. A few detailed comments on the draft Statement of Common Ground are set out as tracked changes in the document attached.

Habitats Regulations Assessment (HRA)

We are still unable to concur with the conclusion set out in the HRA. However to some degree this reflects the confusion brought about by case law emerging part way through the HRA process.

The Feb 2018 version of the HRA (accompanying the regulation 18 version of the Plan) concluded no likely significant effects however that conclusion relied on avoidance/mitigation provided by Plan policy. The subsequent 'People over Wind' Judgement (*People over Wind & Sweetman v Coillte Teoranta Case C-323/17*) ruled that mitigation measures should be assessed within the framework of an appropriate assessment. In response the HRA accompanying the first regulation 19 version of the Plan (dated Jan 2019) concluded there **was** likely significant effect and addressed mitigation within an appropriate assessment. A conclusion was drawn that plan policy would provide adequate mitigation for recreational disturbance. Natural England in their response to the 1st Regulation 19 consultation (dated 1 April 2019) expressed the view that general plan policy for protection of biodiversity was not sufficient to ensure any potential impacts are mitigated. This view was reiterated in Natural England's response to the 2nd regulation 19 consultation (dated 10th Sept 2019)

although at that stage Natural England sought to clarify that it was the impact arising from occupants of the proposed housing allocations only which was the key point of concern.

We welcome the fact that the Council have sought to update the HRA to reflect the relatively small number of homes proposed. However the Further HRA addendum note (Nov 2019) (para 4.3) seeks to revert back to the findings of the initial HRA. The problem with this is a procedural one in that the finding of the initial HRA screening took into account avoidance/mitigation. We therefore advise that the HRA screening is undertaken afresh. Evidence to support that process should be clear on the level of housing proposed and the extent to which this is to cater for the needs of the existing population.

Detailed comments on the Further HRA addendum dated Nov 2019 are set out as tracked changes within the document attached with this letter.

Natural Environment Topic Paper (Nov 2019)

We note from the Topic Paper the conclusion that “the new housing – allocated and windfall – is only for local people and will not result in significant increase in recreational disturbance of the designated sites”. This conclusion needs to reflect the final conclusion of the HRA. Some specific comments are also provided as tracked changes to the Topic Paper. These reflect the need to ensure the assertion regarding provision of housing to meet local needs is linked to the appropriate evidence within the evidence base.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Carol Reeder on 0208 225 6245 / 07721 108902 or carol.reeder@naturalengland.org.uk. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

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