

Report to Inform Habitats Regulations Assessment: Stage 1 and Stage 2

4 Hugh Street, St Mary's, Isles of Scilly

A Report To: Henry Riley
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Declaration of Compliance

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1. Introduction

1.1 Project Background

Middlemarch has been commissioned by Henry Riley to prepare a Report to Inform a Habitats Regulations Assessment (HRA) associated with a proposed development of land at 4 Hugh Street, St Mary's, Isles of Scilly (hereafter referred to as the 'site'). This report has been prepared in line with the Conservation of Habitats and Species Regulations 2017 (as amended) ('Habitats Regulations') to support a planning application for the re-development of the site.

Middlemarch was commissioned to prepare this report to provide a robust evidence base to support the competent authority (Isles of Scilly Council) in undertaking both Stage 1 (Screening) and Stage 2 (Appropriate Assessment) of their HRA. The assessment is required due to the proximity of the site to the Isles of Scilly Special Protection Area (SPA) and Potential Special Protection Area (pSPA), Isles of Scilly Complex Special Area of Conservation (SAC) and the Isles of Scilly Ramsar.

1.2 Context for HRA

The need for projects with the potential to affect European designated sites to be assessed is stated in Article 6 of the European Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (hereafter 'the Habitats Directive'). Articles 6(3) and 6(4) of the Habitats Directive state that an 'Appropriate Assessment' is required for any plan or project that is considered likely to have a significant effect on a European site, either individually or in combination with other plans or projects. The land and marine aspects of the Habitats Directive, as well as certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known collectively as the Nature Directives) are transposed into English and Welsh law through the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations 2017').

Regulations 63, 64, 65 and 66 of the Habitats Regulations transpose the requirements of Articles 6(3) and 6(4) of the Habitats Directive into domestic law, as regards a competent authority deciding to undertake, or give any consent, permission, or other authorisation for, a plan or project. Additionally, regulations 75, 76, 77 and 78 of the Habitats Regulations incorporate the requirements of Articles 6(3) and 6(4) of the Habitats Directive, regarding the competent authority's granting of a planning permission by a general development order (permitted development). The requirements of Articles 6(3) and 6(4) of the Habitats Directive are further transposed into regulations 105 and 106 of the Habitats Regulations regarding the requirements of a competent authority (plan-making authority) to undertake an appropriate assessment of implications of any land use plan before the plan is given effect.

Changes have been made to parts of the Habitats Regulations so that they operate effectively from 1st January 2021 following the UK's departure from the European Union ('EU') and the end of the Brexit transition period. The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('Habitats Regulations 2019'), among other things which transferred functions from the European Commission to the appropriate authorities in England and Wales.

All other processes and provision in the Habitats Regulations remain unchanged and existing guidance is still relevant. The obligations of a competent authority in the Habitats Regulations for the protection of designated sites or species do not change. A competent authority is a public body, statutory undertaker, minister or department of government, or anyone holding public office.

The Habitats Regulations 2019 have created a National Site Network on land and at sea, including both the inshore and offshore marine areas in the UK to replace the EU's Natura 2000 network. The National Site Network includes:

- Existing Special Areas of Conservation (SACs), which are designated due to their importance to the habitats and species listed in Annexes I and II of the Habitats Directive;
- Existing Special Protection Areas (SPAs), which are designated due to their importance for wild birds in accordance with the Wild Birds Directive; and
- New SACs and SPAs designated under these Regulations.

SACs and SPAs in the UK no longer form part of the EU Natura 2000 ecological network. Any references to Natura 2000 in the Habitats Regulations and in guidance now refers to the new National Site Network. However, guidance provided by Freeths (2020a)¹ recommends that existing SACs and SPAs in the UK can continue to be referred to as 'European sites' and 'European marine sites'.

Designated Wetlands of International Importance (known as Ramsar sites) do not form part of the National Site Network. Many Ramsar sites overlap with SACs and SPAs and may be designated for the same or different species and habitats. All Ramsar sites remain protected by national policy in the same way as SACs and SPAs and are treated, for planning purposes, as European sites.

Under Regulation 63 of the Habitats Regulations, the Competent Authority may only agree to a proposed plan or project which is likely to have a significant effect on a European site after having undertaken an appropriate assessment to ascertain that it will not adversely affect the integrity of any European site either alone or in-combination with other plans and projects. Where likely significant effects on a European Site are anticipated and/or cannot be ruled out, at the appropriate assessment stage the plan or project may only be permitted by the competent authority by grant of derogation where the plan or project meets the following three tests, namely (a) that there are no alternative solutions; (b) that the proposed development needs to be carried out for imperative reasons of overriding public interest; and (c) the necessary compensatory measures are secured.

1.3 Site Description

Table 1.1 below provides a brief summary of the site and its surroundings.

Table 1.1: Summary of Site and Surroundings (continues on page 6)

Attribute	Description
Location	4 Hugh Street, St Mary's, Isles Of Scilly
National Grid Reference	SV 90233 10592
Site Area (ha)	0.1

¹ Freeths. (2020a). *The Habitats Regulations Assessment regime after 31 December 2020 – how will it look?* 22nd October 2020. Available at: <https://www.freeths.co.uk/2020/10/22/the-habitats-regulations-assessment-regime-after-31-december-2020-how-will-it-look/?cmpredirect>

Attribute	Description
Topography	Flat
Land Cover (on site)	The site is dominated by built environment, including an existing Co-operative supermarket, with offices, storage and accommodation above. A two-storey bank is present, separated from the supermarket by hard-standing. In addition, a three-storey maisonette is present to the rear of the supermarket. Overall, the site is largely devoid of vegetation, save for a small number of species growing through cracks in concrete.
Land Cover (site surrounds)	The site is bordered to the south, east and west by built environment. To the north, the site abuts Town Beach.

1.4 Development Description

A planning application will be submitted to the Isles of Scilly Council for the re-development of the existing Co-operative supermarket, adjacent storage units and disused bank facility. The proposed extension will be single storey. The re-development will not impact existing living accommodation or roof spaces above any of the operational areas.

2. Habitats Regulations Assessment Process

2.1 Stages of HRA

The current assessment is based on the best practice for HRA as outlined in The Habitats Regulations Handbook (DTA Publications, 2013² and subsequent updates). This document expands upon previous guidance published by the Impacts Assessment Unit at Oxford Brookes University (2001)³ and the Department for Communities and Local Government (2006)⁴.

Guidance published by the Department for Environment, Food & Rural Affairs (DEFRA), Natural England, the Welsh Government and Natural Resources Wales (2021)⁵ identifies that the HRA process is broadly divisible into three stages: Stage 1 (Screening), Stage 2 (Appropriate Assessment and Stage 3 (Derogation).

These stages are described in Table 2.1.

Table 2.1: Stages of HRA (continues on page 7)

Stage	Description
1 – Screening	Evidence is collected regarding those parts of the National Site Network (SACs and SPAs) that have the potential to be impacted by a project or plan, either alone or in combination with other projects or plans. Where no significant effects are perceived, sites may be screened out of the need for further assessment.
2 – Appropriate Assessment	<p>Where it is considered (or else cannot be discounted) that a European site may experience likely significant effects from a project or plan, directly or indirectly, either alone or in combination with other projects or plans, an Appropriate Assessment of the likelihood and severity of the perceived effect on the integrity of the European site and the National Site Network is undertaken. This is based on a detailed review of the proposed project or plan in conjunction with the structure, function and conservation objectives of the designated European site(s). This stage may also include a preliminary assessment regarding the potential for the identified impacts to be mitigated.</p> <p>The April 2018 decision by the Court of Justice of the European Union (CJEU) in the case of <i>People Over Wind and Sweetman v Coillte Teoranta</i> (C-323/17) ('People Over Wind') means that mitigation measures intended to avoid or reduce the harmful effects of a proposed project on a European site may no longer be taken into account by competent authorities at the HRA Screening stage when judging whether a proposed plan or project is likely to have a significant effect on the integrity of a European site. This is a reversal of a previously settled principle in English and Welsh law. As such, where a proposed development is proximate to a SAC or SPA and could give rise to likely significant effects, even if these effects can be effectively mitigated for, an Appropriate Assessment (Stage 2) is still required.</p>

² DTA Publications (2013 and subsequent updates). *The Habitat Regulations Assessment Handbook*. DTA Publications, Nottingham.

³ Oxford Brookes University. (2001). 'Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodological Guidance on the provisions of Article 6(3) and 6(4) of the 'Habitats' Directive 92/43/EEC. European Commission DG Environment.'

⁴ Department for Communities and Local Government (2006). *Planning for the Protection of European Sites: Appropriate Assessment. Guidance for Regional Spatial Strategies and Local Development Documents*.

⁵ Department for Environment, Food & Rural Affairs, Natural England, Welsh Government, and Natural Resources Wales (2021). *Guidance: Habitats regulations assessments: protecting a European site*. Available at: <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#follow-hra-principles>

Stage	Description
3 – Derogation	<p>Where adverse effects on the integrity of the European site and the National Site Network cannot be ruled out, the work can only proceed if three legal tests are passed and it is granted an exception, or 'derogation of the law'. These three legal tests are applied in the following order (DEFRA, Natural England, the Welsh Government and Natural Resources Wales, 2021)⁵:</p> <ol style="list-style-type: none"> 1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site. 2. The proposal needs to be carried out for imperative reasons of overriding public interest. 3. The necessary compensatory measures can be secured.

The need to complete each stage is determined by the results of the previous stage. This report focuses on Stages 1 and 2 of the HRA process.

2.2 The Precautionary Principle

Oxford Brooks (2001) Methodological Guidance on Articles 6(3) and 6(4) Habitats Directive states that “*Implicit in the habitats directive is the application of the **precautionary principle**, which requires that the conservation objectives of Natura 2000 should prevail where there is uncertainty*”. The European Commission’s Final Communication from the Commission on the Precautionary Principle (European Commission, 2000a⁶) states that the use of the precautionary principle presupposes:

- Identification of potentially negative effects resulting from a phenomenon, product or procedure; and
- A scientific evaluation of the risks which because of the insufficiency of the data, their inconclusive or imprecise nature, makes it impossible to determine with sufficient certainty the risk in question (CEC, 2000).

According to best practice guidance, this means that the emphasis for assessment should be on objectively demonstrating, with supporting evidence, that there will be no significant effects on a European site. The publication ‘Managing Natura 2000 Sites: The Provision of Article 6 of the ‘Habitats’ Directive 92/43/EEC’ (European Commission, 2000b⁷) provides explanatory guidance regarding this point, which is paraphrased below.

It is clear from the context and from the purpose of the directive that the ‘integrity of the site’ relates to the site’s conservation objectives. For example, it is possible that a plan or project will adversely affect the integrity of a site only in a visual sense or only habitat types or species other than those listed in Annex I or Annex II. In such cases, the effects do not amount to an adverse effect for the purposes of Article 6(3), provided that the coherence of the network is not affected.

The expression ‘integrity of the site’ shows that focus is here on the specific site. Thus, it is not allowed to destroy a site or part of it on the basis that the conservation status of the

⁶ European Commission (2000a). *Final Communication from the Commission on the Precautionary Principle*.

⁷ European Commission. (2000b). *Managing Natura 2000 Sites: The Provision of Article 6 of the ‘Habitats’ Directive 92/43/EEC*.

habitat types and species it hosts will anyway remain favourable within the European territory of the Member State.

As regards the connotation or meaning of ‘integrity’, this can be considered as a quality or condition of being whole or complete. In a dynamic ecological context, it can also be considered as having the sense of resilience and ability to evolve in ways that are favourable to conservation. The ‘integrity of the site’ has been usefully defined as ‘the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or levels of populations of the species for which it was classified’ (IEEM, 2006).

The integrity of the site involves its ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the site’s conservation objectives.

Conservation objectives for the European sites considered in this assessment are presented in Chapter 3.

3. Stage 1: Relevant European Sites

3.1 Identification of European Sites

A search for European statutory sites within a 5km radius of the works area was completed, using Natural England's Multi-Agency Geographic Information for the Countryside (MAGIC) website. Given the nature of the proposed development, a radius of 5km was considered most appropriate.

An initial review of the proposals has been undertaken to determine whether the project has the potential to affect any European site. The assessment takes into account a range of factors including the location, proximity, type, scale, extent, duration, frequency, and timing of the proposals. The justification for scoping these European sites in or out for further consideration is provided in Table 3.1.

Table 3.1: Summary of European Sites (continues on page 11)

European site	Distance from Application Site	Justification for Scoping In/Out of Further Assessment
Isles of Scilly SPA and pSPA extension	Adjacent, north	<p>The SPA is designated for its seabird assemblage and breeding populations of storm petrel <i>Hydrobates pelagicus</i>, great black-backed gull <i>Larus marinus</i>, lesser black-backed gull <i>Larus fuscus</i> and shag <i>Phalacrocorax aristotelis</i>.</p> <p>No habitats within the site are suitable for the qualifying species of the SPA for shelter or breeding. This makes any direct impact to the qualifying species highly improbable. This impact pathway can therefore be scoped out from further consideration.</p> <p>The qualifying features of the SPA and pSPA are vulnerable to the impacts of water pollution. Given the proximity of the site to the SPA and pSPA, the potential for accidental pollution events during the construction phase of the development is scoped in for further consideration.</p>
Isles of Scilly Complex SAC	60m, north	<p>The SAC is designated for the presence of mudflats and sandflats, reefs, shore dock <i>Rumex rupestris</i> and grey seal <i>Halichoerus grypus</i>.</p> <p>No habitats within the site are suitable for, or could support, the qualifying species of the SAC, therefore this impact pathway can be scoped out from further consideration.</p> <p>The qualifying features of the SAC are vulnerable to the impacts of water pollution. Given the proximity of the site to the SAC, the potential for accidental pollution events during the construction phase of the development is scoped in for further consideration.</p>

European site	Distance from Application Site	Justification for Scoping In/Out of Further Assessment
Isles of Scilly Ramsar	2.3km, south-west	<p>The Ramsar is within the Isles of Scilly archipelago and mainly consists of many small uninhabited islands and parts of some inhabited islands, with habitats including coastal cliffs, boulder beaches, heathland, and some dune grassland. The site qualifies by virtue of Criterion 6, for during the breeding season some 2.9% of the population of Lesser Black-backed Gull <i>Larus fuscus</i> is supported. The sea cliffs, rocky islets, and boulder beaches are relatively devoid of plant communities except for a sparse crevice vegetation with <i>Crithmum maritimum</i> and <i>Armeria maritima</i>.</p> <p>No habitats within the site are suitable for the qualifying species of the Ramsar for foraging, shelter or breeding. This makes any direct impact to the qualifying species highly improbable. This impact pathway can therefore be scoped out from further consideration.</p> <p>Given the small and localised nature of the proposed development and the distance between the site and Ramsar, it is considered highly improbable that the proposed development will result in harm to the interest features of the Ramsar. Therefore, the Ramsar is scoped out from further consideration.</p>

The location of the proposed development site in relation to the Isles of Scilly SPA and pSPA, the Isles of Scilly Complex SAC and Isles of Scilly Ramsar is presented on plan C180243-01-01 in Appendix 1.

3.2 Isles of Scilly SPA and pSPA

The following information is taken from the Natural England's (no date)⁸ Designated Sites website, the Natura 2000 Standard Data Form for the SPA⁹.

Country:	England
Administrative Region:	Cornwall and Isles of Scilly
Latitude:	49.55
Longitude:	-6.211
Site Code:	UK9020288
Area (ha):	13,332.68

3.2.1 Qualifying Features

The site qualifies under Article 4.1 of the Birds Directive (2009/147/EC) as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:

- European storm-petrel *Hydrobates pelagicus* (breeding) – 2,636 individuals (2015/2016) representing 5.07% of the GB population.

The site qualifies under Article 4.2 of the Directive (79/409/EEC) as it is used regularly by 1% or more of the biogeographical populations of the following regularly occurring migratory species (other than those listed in Annex I) in any season:

- Lesser black-backed gull *Larus fuscus graellsii* (breeding) – 4,922 individuals (2015/2016) representing 1.37% of the biogeographic population;
- European shag *Phalacrocorax aristotelis aristotelis* (breeding) – 2,028 individuals (2015/2016) representing 1.46% of the biogeographic population; and
- Great black-backed gull *Larus marinus* (breeding) – 1,882 individuals (2015/2016).

The site qualifies under SPA selection stage 1.3 as it is used regularly by over 20,000 seabirds in any season: In the breeding season, the site regularly supports at least 26,478 (1999) individual seabirds.

In February 2019 Natural England launched a formal consultation with owners, occupiers and interested parties on proposed amendments to the Isles of Scilly SPA. The proposed amendment recommended the extension of the SPA to extend protection for qualifying breeding seabirds while they are at sea. The pSPA will incorporate 12,900ha of inshore waters around the islands which the seabirds use for feeding and maintenance behaviours such as resting and preening.

The Minister approved the proposals, and the extended site was classified on 17th November 2020.

⁸ Natural England (no date). *Designated Sites*. Available at: <https://designatedsites.naturalengland.org.uk>

⁹ <https://jncc.gov.uk/jncc-assets/SPA-N2K/UK9020288.pdf>

3.2.2 Conservation Objectives

Conservation objectives for the Isles of Scilly SPA are detailed within the document 'European Site Conservation Objectives for Isles of Scilly Special Protection Area'¹⁰. The conservation objectives for the SPA are as follows:

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features'...), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- *The extent and distribution of the habitats of the qualifying features*
- *The structure and function of the habitats of the qualifying features*
- *The supporting processes on which the habitats of the qualifying features rely*
- *The population of each of the qualifying features, and*
- *The distribution of the qualifying features within the site.*

3.2.3 Issues Affecting the Qualifying Features

The Site Improvement Plan for the Isles of Scilly SPA and Isles of Scilly Complex SAC (Natural England, 2016)¹¹ highlights the following issues affecting the qualifying features:

- Invasive species;
- Fisheries: Commercial marine and estuarine;
- Habitat fragmentation;
- Public access/disturbance; and
- Water pollution.

3.3 Isles of Scilly Complex SAC

The following information is taken from Natural England's (no date) Designated Sites website and the Natura 2000 Standard Data Form for the SAC (JNCC)¹².

Country:	England
Administrative Region:	Cornwall and Isles of Scilly
Latitude:	49.91833333
Longitude:	-6.343055556
Site Code:	UK0013694
Area (ha):	26848.62

¹⁰ <https://publications.naturalengland.org.uk/publication/5846031572926464>

¹¹ <https://publications.naturalengland.org.uk/publication/5804521016000512>

¹² <https://sac.jncc.gov.uk/site/UK0013694>

3.3.1 Qualifying Features

The following Annex I habitats are the primary reasons for selection of this site:

- 1110 - Sandbanks which are slightly covered by sea water all the time;
- 1140 - Mudflats and sandflats not covered by seawater at low tide; and
- 1170 – Reefs

The following Annex II species is a primary reason for the selection of this site:

- 1441 – Shore dock *Rumex rupestris*.

The following Annex II species is present as a qualifying feature, but is not a primary reason for site selection:

- 1364 – Grey seal *Halichoerus grypus*.

3.3.2 Conservation Objectives

Conservation objectives for the Isles of Scilly Complex SAC are detailed within the document 'European Site Conservation Objectives for Isles of Scilly Complex SAC (UK0013694) (Natural England, 2014)¹³.

The conservation objectives for the SAC are as follows:

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features'...), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- *The extent and distribution of qualifying natural habitats and habitats of qualifying species*
- *The structure and function (including typical species) of qualifying natural habitats*
- *The structure and function of the habitats of qualifying species*
- *The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely*
- *The populations of qualifying species, and*
- *The distribution of qualifying species within the site.*

¹³ <https://publications.naturalengland.org.uk/publication/6399318084812800>

3.3.3 Factors affecting the Qualifying Features

The Site Improvement Plan for the Isles of Scilly Complex SAC and Isles of Scilly SPA (Natural England, 2016)¹⁴ highlights the following issues affecting the qualifying features:

- Invasive species;
- Fisheries: Commercial marine and estuarine;
- Habitat fragmentation;
- Public access/disturbance; and
- Water pollution.

3.4 Isles of Scilly Ramsar

The following information is taken from the JNCC Information Sheet on Ramsar Wetlands for the Isles of Scilly Ramsar¹⁵.

Country:	England
Administrative Region:	Cornwall and Isles of Scilly
Latitude:	49 57 46
Longitude:	N 06 20 42
Site Code:	UK11033
Area (ha):	402

3.4.1 Qualifying Features

The site qualifies under Ramsar criterion 6, supporting species/populations at level of international importance.

Qualifying species/populations (as identified at designation)

Species regularly supported during the breeding season:

- European storm-petrel *Hydrobates pelagicus* - 71 apparently occupied sites, representing an average of 0.2% of the GB population (Seabird 2000 Census); and
- Lesser black-backed gull *Larus fuscus graellsii* – 3603 apparently occupied nests, representing an average of 2.4% of the breeding population (Seabird 2000 Census).

Species/populations identified subsequent to designation for possible future consideration under criterion 6

Species regularly supported during the breeding season:

- European shag *Phalacrocorax aristotelis* – 1091 apparently occupied nests, representing an average of 1.3% of the breeding population (Seabird 2000 Census).

¹⁴ <https://publications.naturalengland.org.uk/publication/5804521016000512>

¹⁵ <https://jncc.gov.uk/jncc-assets/RIS/UK11033.pdf>

3.4.2 Factors affecting the Qualifying Features

The Information Sheet on Ramsar Wetlands for the Isles of Scilly Ramsar does not report any specific factors adversely affecting the Ramsar.

4. Stage 1: Screening

4.1 Identification of Potential Impacts and Effects Alone and In-combination

Following a review of the proposed development and consideration of the wider issues which are recognised as affecting the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC, the following potential impact pathway has been identified:

- Accidental water pollution during the construction phase.

The impact pathway above, by which the development could result in likely significant effects on the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC, is discussed further in Section 4.2.

4.2 Construction Phase - Accidental water pollution

The Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC are noted to be vulnerable to the impacts of water pollution. Poor water quality can have a range of environmental impacts on the qualifying features of a European Site. At high levels, toxic chemicals and metals can result in immediate death of aquatic life and have detrimental effects even at lower levels, including increased vulnerability to disease and changes in wildlife behaviour. Eutrophication, the enrichment of plant nutrients in water, increases plant growth and consequently results in oxygen depletion. Algal blooms, which commonly occur due to eutrophication, increase turbidity and decrease light penetration. The decomposition of organic wastes that often accompanies eutrophication deoxygenates water further.

During the construction phase of the proposed development there is the potential for pollution events (e.g. via chemical spills, contaminated surface water run-off, and the improper storage of environmentally harmful materials), to occur which, in the absence of mitigation measures, could result in pollutants entering Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC.

In the absence of mitigation, the likelihood of harm to the qualifying features of the SAC cannot be ruled out, which could undermine the conservation objectives of the SPA and SAC and harm their overall integrity. As detailed within Section 2.1 of this report, mitigation measures intended to avoid the harmful effects of a project on the SPA, pSPA and SAC cannot be taken into account at this stage.

It is therefore considered that this potential impact pathway cannot be screened-out by the Competent Authority at Stage 1 of their HRA, therefore an Appropriate Assessment must be undertaken.

4.3 In-Combination Assessment

4.3.1 Other Projects and Plans Considered In-Combination

In accordance with the legal requirement in the Habitats Regulations and best practice methodology, the potential for a project or plan to impact upon a European site must be considered '*either alone, or in combination with other projects or plans*'. As such, it is necessary to consider

the potential for the proposed development to impact upon the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC, both alone and in combination with other plans and projects.

The scope of an in-combination assessment is restricted to plans and projects which are 'live' at the same time as the assessment being undertaken (Natural England, 2018)¹⁶. These types of plans include:

- The incomplete or non-implemented parts of plans or projects that have already commenced;
- Plans or projects given consent or given effect but not yet started;
- Plans or projects currently subject to an application for consent or proposed to be given effect;
- Projects that are the subject of an outstanding appeal;
- Ongoing plans or projects that are the subject of regular review and renewal;
- Any draft plans being prepared by any public body; and
- Any proposed plans or projects that are reasonably foreseeable and/or published for consultation prior to application.

Additionally, the guidance from Natural England makes it clear that plans or projects deemed to cause significant impact within their own right (and so have either incorporated methods of avoidance or proportional mitigation within the proposed plan or scheme) should be dealt with in isolation within their own individual Habitats Regulations Assessment and not be considered in combination with other schemes where impacts (individually) were considered insignificant. Likewise, where a plan or project is considered to result in an insignificant impact in isolation it should not be considered in combination with plans or projects already determined to be significant.

The evidence available demonstrates that the proposed development has the potential, in isolation, to result in a likely significant effect upon the qualifying features of the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC as a result of accidental water pollution during the construction phase. As such, this impact pathway is not required to be considered in-combination with other plans or projects which are, by themselves, considered insignificant.

¹⁶ Natural England. (2018). *Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations*. Version 1.4. Available at: <http://publications.naturalengland.org.uk/publication/4720542048845824>

4.4 Summary of Screening Assessment

Table 4.1 provides a summary of the potential impacts and effects arising from the project, either alone or in-combination with other projects and plans.

Table 4.1: Screening Summary

Site	Potential Impacts and Effects – Project Alone	Significance of Effects – Project Alone	Potential Impacts and Risk from In-Combination Effects	Appropriate Assessment Required?
Construction Phase				
Isles of Scilly SPA and pSPA	Accidental water pollution	Determined to result in a significant effect alone	Not appropriate to consider in combination as it has been determined beyond reasonable doubt to likely result in a significant effect alone.	Yes (mitigation measures need to be considered at the 'Appropriate Assessment' stage).
Isles of Scilly Complex SAC	Accidental water pollution	Determined to result in a significant effect alone	Not appropriate to consider in combination as it has been determined beyond reasonable doubt to likely result in a significant effect alone.	Yes (mitigation measures need to be considered at the 'Appropriate Assessment' stage).

5. Stage 2: Appropriate Assessment

The Stage 1 Screening exercise identified that the proposed development has the potential to, in the absence of mitigation, result in likely significant effects upon the interest features of the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC as a result of water pollution.

5.1 Water Pollution - Construction Phase

As detailed in Section 4.2, the proposed works have the potential to result in harm to the qualifying features of the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC as a result of accidental pollution events during the construction phase. Certain substances that may be used during the construction phase can be highly toxic to aquatic life and habitats and some (oils and other petrochemicals) can be readily transported on the surface of even small amounts of water, potentially being transported a significant distance within the SPA, pSPA and SAC.

Despite the temporal span of the construction phase being short and the likely scale of any accidental pollution event being both small and localised, it is still possible that, if even moderate amounts of these substances were to enter the local environment, they could significantly reduce the water quality and result in alterations to plant communities, impeding the delivery of the conservation objectives for the qualifying features of the SPA, pSPA and SAC. This could in turn lead to a reduction in the suitability of the watercourse to support the qualifying species, all of which rely on clean water for breeding and/or foraging. Animal mortalities due to ingestion of toxic substances and/or a reduction in breeding success due to a decline in water quality would likely lead to a reduction in the population size and distribution of qualifying species within the site, impeding the delivery of the conservation objectives for the European sites.

Therefore, mitigation measures must be put in place to address these potential significant impacts by:

- Reducing the likelihood of toxic substances being accidentally spilt or incorrectly stored and subsequently entering the waterbody;
- Reducing the likelihood of these substances (if accidentally released into the environment) from being transported to the European sites; and
- If an accidental pollution event were to occur ensuring that it is contained, and the contaminants are removed following best practice methodology.

These mitigation measures and best practice methods of working are outlined in Chapter 6. If adhered to, these mitigation measures are considered sufficient to reduce the scope of harm to no likely impact.

6. Stage 2: Mitigation Measures and Residual Effects

This section of the report presents the mitigation to be delivered to ensure that any adverse effects on the integrity of European sites which could occur as a result of the proposed development can be controlled to an acceptable level to allow the works to proceed.

It has been identified that the proposed development, in the absence of mitigation, could potentially impact on the integrity of the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC as a result of water pollution during the construction phase of the development.

Mitigation measures to address potential effects on qualifying habitats and species as a result of pollution during construction are provided in the following section. These mitigation measures are considered sufficient for the Isles of Scilly Council to conclude that, if enacted, there is no reasonable likelihood that the proposed development will result in significant harm to the qualifying habitats or species of the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC or impede the delivery of the conservation objectives for these European sites.

6.1 Outline Mitigation Proposals

6.1.1 Construction Ecological Management Plan (CEMP)

Best practice measures will be implemented throughout the works avoid pollution of qualifying/supporting habitats during the construction phase of the proposed development. These measures should be incorporated into the Construction Ecological Management Plan (CEMP), which should be prepared with ecological input. This document should be agreed with Natural England and the Isles of Scilly Council prior to any works commencing.

As a minimum, the following measures will be implemented to reduce the risk of harm to qualifying features, including:

- Environment Agency's Pollution Prevention Guidelines will be adhered to by all site personnel, including:
 - PPG1: Basic good environmental practices.
 - PPG5: Works in, near or over watercourses.
 - PPG6: Construction and demolition sites.
- CIRIA C532 'Control of water pollution from construction sites. Guidance for consultants and contractors' will be adhered to by all site personnel;
- Measures to limit dust deposition will accord to the Institute of Air Quality Management (IAQM) guidance;
- Biosecurity measures and action plan with regards to Invasive Non-native Species (INNS), will be implemented to avoid the spread and/or the contamination of the site;
- All chemical/fuel storage areas and site offices are to be 20m from any waterbody;
- Storage of fuel, oils and any chemicals are to be in double-skinned containers, locked, clearly labelled as to contents, in a secure compound, stood in an impervious bund that is 110% of the volume of the tank and that all static plant should have a drip tray underneath;

- Re-fuelling should be carried out only at designated points with an absorb spill kit adjacent, at least 20m from any waterbody;
- Plant, equipment and wheel washing to be carried out in a designated area of hardstanding at least 20m from any waterbody, with no way of draining into waterbodies;
- Site personnel to ensure boots and equipment are dry and disinfected prior to entering the waterbody or areas in proximity to any waterbody;
- Spill kits are to be placed in strategic areas and be clearly visible. Operatives working close to the waterbodies are to be trained to use the spill kits;
- All substances to have full COSHH assessment. Operatives using these substances will be experienced in their use and fully briefed on the COSHH assessment;
- No piles of debris or sharp materials stored within 20m of any waterbody;
- Use of debris netting to catch debris blown during the works, with any tears, holes or damage noticed repaired immediately;
- A toolbox talk will be delivered by a Suitably Qualified Ecologist to all contractors prior to commencement of construction works to detail the required mitigation measures;
- Vehicles, equipment and materials to be stored in designated areas, agreed by the Ecologist and/or site manager;
- The Ecologist will be employed on watching brief/on call for the duration of work to ensure that the agreed mitigation and avoidance measures are carried out;
- Any open pipework with an outside diameter of greater than 150mm to be covered at the end of each work day to prevent animals entering/becoming trapped;
- Any open excavations will have ramps/battered edges to allow any animals to escape; and
- No works to result in the illumination of any waterbody during the night. If night working is required, then lighting to be directional to prevent illumination of the waterbody.

The CEMP will be agreed with the Isles of Scilly Council prior to works commencing. Should any issues be identified during the course of works, all works will cease temporarily, and the Isles of Scilly Council will be contacted for advice on how to proceed.

6.2 Residual Effects

Mitigation to address potential effects on qualifying habitats and species, as a result of accidental water pollution during the construction phase, on the Isles of Scilly SPA and pSPA and the Isles of Scilly Complex SAC is detailed above. The mitigation is considered sufficient for the Isles of Scilly Council to conclude that, if enacted, there is no reasonable likelihood that the proposed development will result in significant harm to the qualifying habitats or species of any European sites, nor impede the delivery of the conservation objectives for any European site.

7. Conclusions and Recommendations

7.1 Conclusions

Evidence has been collected and an assessment has been undertaken to assist the Competent Authority (Isles of Scilly Council) in conducting its Habitats Regulations Assessment as per the requirement placed upon it by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). The evidence provided is deemed sufficiently robust (being determined by use of the best scientific evidence available) to allow the authority to determine if it can be certain that there will be no adverse effect on the integrity of any European sites as a result of the proposed development.

Potential impacts on several different European sites have been detailed and considered. It has been displayed that, with appropriate mitigation, the proposed development will not result in a likely significant impact upon qualifying habitats and species, supporting habitats upon which qualifying species rely, or the delivery of the conservation objectives of the European sites under consideration.

Recommendations regarding the necessary actions to deliver mitigation proportional to the determined scope of impact are provided below in addition to appropriate mechanisms by which the mitigation can be secured by the competent authority.

7.2 Recommendations

R1 Submission of the Construction Environmental Management Plan (CEMP)

Prior to the commencement of works a Construction Environment Management Plan (CEMP) should be created for the proposed scheme and submitted to the Local Planning Authority. The avoidance and mitigation measures within the CEMP will adhere to appropriate national guidelines and best practice principles.

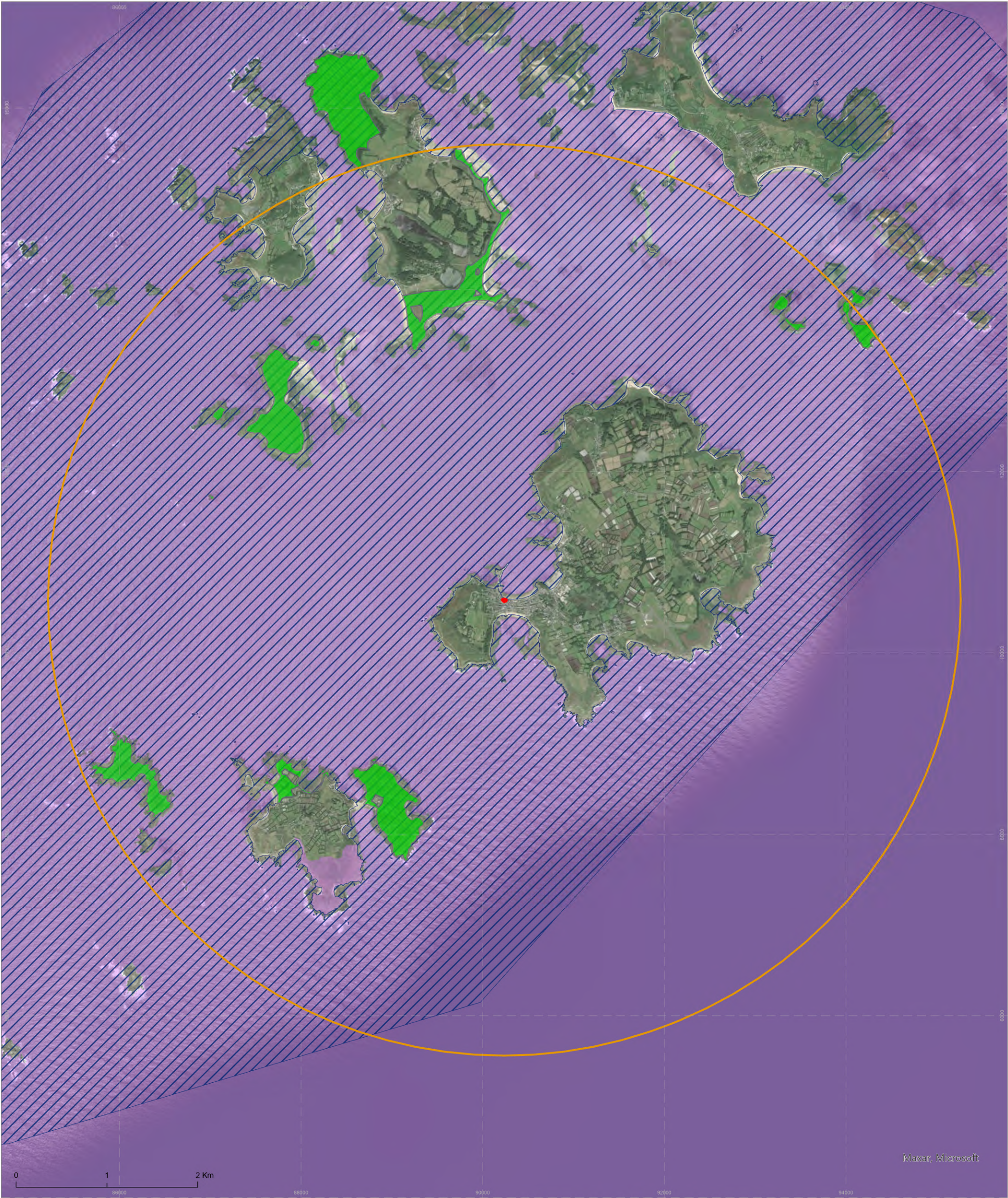
The submission of the CEMP to the Local Planning Authority prior to commencement and its enactment thereafter could be secured via an appropriately worded planning condition.

R2 Re-Assessment if Material Change

All future material revisions to the development proposals should be subject to an updated assessment to determine whether they could give rise to a likely significant effect on any European site, either alone or in-combination with other plans and projects.

8. Drawings

Middlemarch Drawing C180243-01-01 – Location of European Sites



Legend

Ramsar

SPA (Special Protection Areas)

SAC (Speacial Areas of Conservation)

Site boundary

5 Km radius from Site boundary

Project

4 Hugh Street, St Mary's, Isles of Scilly

Drawing

Location of European Sites Map

Client

Henry Riley

Drawing Number

C180243-01-01

Revision

00

Scale @ A3

1:40,000

Date

June 2024

Approved By

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