

## Wiltshire Council Planning Consultation Response

### ECOLOGY

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### **TISBURY AND WEST TISBURY NEIGHBOURHOOD DEVELOPMENT PLAN 2017-2030 PRE-SUBMISSION VERSION FOR CONSULTATION JULY – SEPT 2017**

#### **Habitats Regulations Assessment (HRA)**

Under Regulation 102 of the Habitats Regulations 2010 (as amended), a competent authority must consider whether a relevant plan is likely to have a significant effect on any European sites before deciding to give any consent, permission or other authorisation to the plan. Although the Council has no power to authorise neighbourhood plans, it is obliged to consider them under the Habitats Regulations in order to inform the EiP process. The Council has therefore undertaken the screening assessment reported here to determine whether significant effects are possible on specific European sites. Where this is the case, recommendations have been made for modifications to policies or further explanation in supporting text to ensure impacts are avoided and/or mitigated. If such changes cannot be made the Council will be obliged to undertake a further “appropriate assessment” to examine the effects of the plan on the conservation objectives of the European Sites in question. Both the screening and the full appropriate assessment, which singly or jointly are often referred to as a Habitats Regulations Assessment (HRA), must consider the impacts of the plan “alone and in combination” with other plans or projects.

Where appropriate assessment is undertaken, the competent authority may only authorise the plan having ascertained that it will not adversely affect the integrity of the European site. Otherwise various other statutory tests must be met.

There is a considerable body of case law to guide interpretation of the Habitats Regulations. Of particular relevance to the current assessment is the principle that likely significant effects should be identified at the earliest possible opportunity and at every relevant stage of the planning process to the extent possible on the basis of the precision of the plan. Otherwise there is a risk that the ecological constraints cause a project to fail in the final stages when it could otherwise have been designed acceptably.

I have undertaken this screening of the neighbourhood plan area following the steps taken in the HRA for the Wiltshire Housing Site Allocations Plan Submission Draft (21 June 2017).

In that assessment 11 European sites were initially screened out of HRA either because current threats / pressures were not development related or, where public access / disturbance was considered to pose a threat, because the visitor catchment lay outside the

administrative area of Wiltshire. The criteria for excluding these sites apply equally to the current neighbourhood plan.

The Housing Site Allocations HRA then applied specific geographic criteria to identify whether any of the remaining European sites could be affected by the Plan. Applying these criteria to the NP area of Tisbury and West Tisbury, it emerges that two European sites could potentially be screened into this HRA; the River Avon SAC and Chilmark Quarries SAC. The relevance of these sites to the neighbourhood plan is discussed broadly below.

### River Avon SAC

The whole of the neighbourhood plan area falls within the catchment of the River Avon SAC. There are four key means by which development can affect the special features of this designated site:

1. direct physical effects on the banks and river channel itself
2. surface water runoff and groundwater pollution during the construction phase
3. increased phosphate discharges from sewage treatment works or package treatment plants
4. increased water abstraction

The SAC designation only extends into a small part of the neighbourhood plan area at Upper Chicks Grove and therefore the scope for causing harm through item 1 above is limited and most appropriately dealt with at the planning application stages as and when development arises here.

The risks of pollution arising through item 2 are generally limited to development sites which lie relatively close to the SAC designation and is most appropriately addressed at the planning application stages when details of specific developments are known. The promotion of the Station Works site which is known to be contaminations is considered later in this assessment.

In relation to item 3, the conservation objectives for the River Avon SAC include a target for phosphate. This is currently being exceeded and a nutrient management plan (NMP) has been put in place to demonstrate how phosphate inputs will be reduced to ensure compliance with targets in the Water Framework Directive in the long term. In the short term the plan seeks to achieve “ambition reduction targets” by 2021. New housing contributes to river phosphate loadings through increased discharges to sewage treatment works. The Council is therefore modelling the effect of housing allocations in the Wiltshire Core strategy and Wiltshire Housing Site Allocations Plan to determine whether these could exceed the reductions that are anticipated through catchment sensitive farming and thereby compromise the NMP ambition reduction targets. The modelling assumes that 200 dwellings will be delivered at Tisbury up to 2026 and so far, the model only takes account of development which will discharge to Tisbury sewage works. Future iterations of the NMP will consider amongst other changes, the effect of package treatment plants in the wider catchment and it is possible therefore, that constraints will be placed on the location of non-mains development in due course.

The River Avon suffers from excess abstraction and it is unlikely that the EA will agree to existing abstraction permits being increased. The Wessex Water Integrated Water Grid is intended to provide flexibility to source water out of catchment at times of high demand. I am

unclear how much development beyond that proposed in the core strategy can be accommodated by the grid in Tisbury.

Although the River Avon SAC is recognised in the NP's Strategic Environmental Assessment, the specific implications of the NMP and the potential constraints it imposes on growth in the catchment are not raised.

#### Chilmark Quarries SAC

This site lies about 500m outside the Tisbury parish boundary and is designated as a hibernation site for four species of bats; Bechstein's, barbastelle, lesser horseshoe and greater horseshoe. The bats rely on habitat outside the quarries for most of their needs including foraging, maternity roosts and a variety of other roost types as well as vegetated flight corridors which they use to commute between these areas. Unlike other bats, the SAC bats species are largely intolerant of urban lighting and therefore tend to be restricted to rural areas including rural settlements such as Tisbury. Most of the habitat on which they rely is unrecorded but these species may occur in any suitable habitat within a radius of up to 6km from core hibernation and maternity roosts. The whole of the neighbourhood plan area falls within 6km of core roosts at Chilmark Quarries SAC and Fonthill Grottoes SSSI.

Development can potentially lead to the loss of roosts as well as loss of hedgerows and other vegetation which bats use to commute through the landscape. Greater and Lesser horseshoes prefer to have maternity roosts in large enclosed spaces which they can fly directly into and therefore can often occur in older commercial and historic buildings, especially if they have fallen into disrepair.

Where a development site is shown to contain habitat or roosts used by SAC bats, the planning authority is obliged to consider the effect of the proposed development not just on the bats present but also on the integrity of the whole SAC. The bar for the latter assessment is high and needs to be taken into consideration at the earliest stages of planning a development if it is to be successful.

This SAC is not identified in the NP's Strategic Environmental Assessment.

#### **Preliminary Screening of Policies under the Habitats Regulations**

Each element of the plan has been screened in the table below using categories of justification described fully in the DTA Habitats Regulations Assessment Handbook.

<b>Policy No</b>	<b>Screening conclusion</b>	<b>Justification</b>
Housing and buildings vision	Screened in for River Avon SAC**	Policy or proposal with an effect on a site but not likely to be significant alone so need to check for likely significant effects in combination
BL.1	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
BL.2	Screened out	Policy or proposal that could not have any conceivable effect on a site
BL.3	Screened out for Chilmark Quarry **	General statement of policy / general aspiration
BL.4	Screened in for Chilmark Quarry and River Avon SACs*	Policy or proposal with a likely significant effect on a site alone
BL.5	Screened out**	General statement of policy / general aspiration
BL.6 – BL.9	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
Transport Vision	Screened out	General statement of policy / general aspiration
TR.1	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
TR.2	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
TR.3	Screened out	Environmental protection / site safeguarding policy
TR.4	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
TR.5	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
Employment and enterprise vision	Screened out	General statement of policy / general aspiration
EM.1	Screened out	General statement of policy / general aspiration Policy listing general criteria for testing the acceptability / sustainability of proposals
EM.2	Screened out	General statement of policy / general aspiration Policy listing general criteria for testing the acceptability / sustainability of proposals

Leisure, community and wellbeing vision	Screened out	General statement of policy / general aspiration
LCW.1	Screened out	Environmental protection / site safeguarding policy
LCW.2	Screened out**	General statement of policy / general aspiration
LCW.3	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
Countryside and environment vision	Screened out	General statement of policy / general aspiration
CT.1	Screened out	Environmental protection / site safeguarding policy
CT.2	Screened out	Policy listing general criteria for testing the acceptability / sustainability of proposals
CT.3	Screened out	General statement of policy / general aspiration Environmental protection / site safeguarding policy

\* recommendations for amendments to policy wording

\*\* recommendations for amendments to supporting text

## **Discussion of elements of the plan “screened in” to this preliminary screening**

### The Housing and Buildings Vision – River Avon SAC

While development promoted by the plan would not cause significant effects on the features of the River SAC alone, an in-combination assessment needs to be made of proposed development throughout the catchment, taking the existing situation into account.

The NMP demonstrates that the Middle Nadder catchment which the Tisbury sewage works discharges into is currently at a low risk of not meeting its ambition reduction targets. However the Council’s modelling indicates that downstream stretches may already be failing their targets due in part to inputs from upstream catchments. While currently there is agreement that housing allocations in the core strategy will not compromise the NMP, the neighbourhood plan indicates an intention to exceed the core strategy allocation of 200 dwellings for Tisbury in the period 2017-2030. It is important therefore that details of the maximum proposed number of dwellings and the delivery trajectory are provided so this can be taken account of in HRA modelling before the plan is adopted.

If modelling demonstrates that the ambition reduction targets will be compromised, some form of offsetting will be required. New buildings may be required to meet more stringent water usage targets or developers may be required to contribute to specified offsite measures. It is also possible that restrictions on growth could be necessary in some areas.

Depending on the relative progress of the NP and the modelling, it may be possible to give a firm indication of whether or not offsetting measures will be required before the NP is

considered by an inspector. In this case, text should be inserted to include specific details of what developers will be required to provide. The plan should in any case recognise the potential for the NMP to constrain development and I have recommended wording to ensure due recognition of these issues below.

#### Policy BL.4 – Chilmark Quarries SAC

This policy makes comprehensive redevelopment of the Station Works a priority for the plan. The site comprises brownfield land lying within the rural corridor of the River Nadder and could therefore potentially support SAC bat species. Development may lead to the loss or modification of buildings which the bats use for roosting, and disrupt flight routes through removal of vegetation or installation of new lighting. The SAC therefore represents a constraint to development and I therefore recommend this is recognised in the wording of the policy.

#### Policy BL.4 – River Avon SAC

Redevelopment of the Station Works, presents a risk to the features of the River Avon SAC due to the scale of potential contamination and the sites close proximity to the river, despite it lying some 2 km upstream from the SAC. Site remediation to the satisfaction of the Council's Environmental Health team and the EA can be expected to remove any risks. I recommend that this issue is recognised in the wording of the policy.

#### Policies BL.3, BL.5 and LCW.2 – Chilmark Quarries

These are statements of policy and general aspiration for the redevelopment of brownfield sites, the former Sports Centre adjacent to St John's School and sites on the Community Asset Register to provide facilities for the school and local community. Given the proximity to the Chilmark Quarries SAC, redevelopment of sites such as agricultural, large or traditional buildings and former mines could reasonably be expected to provide suitable roost sites for these bats whose presence would present a constraint for development. As no specific plans are being proposed through the NP at this stage, I do not consider it necessary to amend the policies to make reference to the SAC and we can rely on later stages of the planning process to ensure that the Habitats Regulations are adhered to. However, no reference has been made to this SAC in the plan and consequently there is a risk that developments progress to an advanced stage without any knowledge of the restrictions that could potentially arise through a later HRA. The implications could be costly, cause significant delay and potentially lead to an application refusal. Therefore, I strongly recommend that wording is inserted into the explanatory text for these policies to bring to developers' attention that bat surveys should be undertaken before design work commences.

### **Recommendations**

#### The Housing and Buildings Vision – River Avon SAC

Housing numbers and a housing trajectory needs to be provided and included in the Council's phosphate model before the plan is adopted.

The following wording inserted in the Executive Summary, About the TisPlan Area or Background and Rationale to the Housing and Buildings Vision would enable the Housing and Buildings Vision to be scoped out of further HRA.

*“Although this plan’s vision is for modest growth it should be noted that the River Avon Special Area of Conservation (SAC) currently presents a constraint to development where further sewage inputs would result in the government’s target for phosphate levels in the river being exceeded. All new development must be in line with the assumptions in the Nutrient Management Plan that has been prepared for the river together with any revisions following phosphate modelling undertaken by Wiltshire Council. Planning permission will be subject to the favourable outcome of an assessment made under the Habitats Regulations. New development may be required to meet more stringent water efficiency standards than prevail at the time or offset phosphate inputs by some other means. In addition new constraints may be imposed on developments which discharge to package treatment plants.”*

#### Policy BL.4 – Chilmark Quarries SAC

The following wording inserted into policy BL.4 would enable this policy to be scoped out of further HRA for this SAC

*“xii) Sufficient survey is undertaken to determine whether the development would affect bat species which are features of the Chilmark Quarries SAC and appropriate measures taken to avoid and mitigate impacts if these species are present.”*

#### Policy BL.4 – River Avon SAC

The following wording inserted into policy BL.4 would enable this policy to be scoped out of further HRA for this SAC

*“xiii) Any contamination study should take account of the potential for future development to impact the River Avon SAC, especially during the decontamination and construction phases.”*

#### Policies BL.3, BL.5 and LCW.2 – Chilmark Quarries SAC

The following wording inserted in the Executive Summary or About the TisPlan Area or in supporting text to the policies themselves would enable these policies to be scoped out of further HRA.

*“The Chilmark Quarries Special Area of Conservation (SAC) lies just outside the NP area and is designated to protect Bechstein’s, Barbastelle, greater horseshoe and lesser horseshoe bats all of which are rare at a European level. While the bats hibernate in the SAC, they rely on the woodlands, hedgerows, river valleys and traditional buildings which are a special feature of the Tisbury area, for foraging and breeding. While the presence of these bats does not generally prevent development, it is an important to take account of their requirements at the earliest stages of master planning as the design will need to demonstrate the bats can continue to thrive to ensure a positive outcome of any Habitats Regulations Assessment undertaken by the planning authority. A number of bat surveys spread through the year may be required and developers will need to seek advice from a professional ecologist before embarking on a scheme in a sensitive area.”*

## **Conclusion**

This plan should be re-screened before it is adopted. Provided that the proposed housing numbers do not compromise the River Avon SAC NMP and the above recommendations for additional wording are incorporated, it should be possible for the plan to be screened out of

an appropriate assessment assuming no new significant changes are introduced to the policy proposals.

While it may seem more appropriate to discuss the SAC's and the constraints they pose under *Countryside and the Environment CT.2 Biodiversity*, rather than at the locations recommended, I would be concerned that the significance of the constraints to development could be overlooked there as unlike other biodiversity interests, the protection of SACs is absolute and cannot be balanced against other social, economic or other environmental gains.

If any of these recommendations are not implemented, I advise it could be unlawful for the Neighbourhood Plan to be adopted unless a further appropriate assessment has been undertaken and has concluded that the plan would not have an adverse effect on the integrity of the relevant SACs.