



Bere Regis Neighbourhood Plan Habitats Regulations Assessment - Addendum

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1. Introduction

Context

- 1.1 This report is an addendum to the Habitats Regulations Assessment (HRA) of the Bere Regis Neighbourhood Plan, produced in 2017. This addendum to the HRA report has been prepared by Footprint Ecology, on behalf of Purbeck District Council. This addendum has been prepared as there has been a recent European Court Judgement of relevance, and this addendum provides confirmation that the findings of the HRA remain sound in light of the new Judgment.
- 1.2 A HRA considers the implications of a plan or project for European wildlife sites, in terms of any possible harm to the habitats and species that form an interest feature of the European sites in close proximity to the proposed plan or project, and which could occur as a result of the plan or project being put in place. The HRA undertaken on the Bere Regis Neighbourhood Plan followed on from and is consistent with HRA undertaken for the higher tier Purbeck Local Plan Part 1, adopted in November 2012, for which Purbeck District Council has now commenced a plan review. The review is also the subject of an ongoing HRA.
- 1.3 This section of the addendum summaries the more detailed introductory text that can be found within the main HRA report for the Bere Regis Neighbourhood Plan. This addendum should be read in conjunction with the main HRA report, which includes an explanation of the HRA assessment process at Appendix 1 of that report, along with detailed explanation of HRA work to date and the measures in place as part of the Local Plan to secure adequate protection of European sites alongside new growth. The relevant European sites are also explained, and maps of site boundaries provided.

European site Protection Measures in the Purbeck Local Plan

- 1.4 European sites of relevance to the Bere Regis Local Plan have been the subject of considerable HRA work in recent years, both specifically within the Purbeck District for the preparation and adoption of the Purbeck Local Plan Part 1, but also across Dorset as a whole. Collaborative working across authority boundaries has led to the development of agreed approaches to protecting European sites with specific regard for the potential impact of new housing on European sites. The strategic mitigation approaches that are of relevance to the Bere Regis Neighbourhood Plan are the Dorset Heathlands Planning Framework Supplementary Planning Document 2015-2020 and the Nitrogen Reduction

Poole Harbour Supplementary Planning Document, along with a recently adopted approach to mitigating for recreation disturbance on Poole Harbour.

1.5 Strategic mitigation schemes are those which are established at a plan or strategy level, for implementation across multiple development projects. The research, evidence gathering and assessment necessary to develop a mitigation approach that has the necessary level of certainty, and confidence in successful delivery is all undertaken upfront in order to develop a scheme that is fit for purpose, and applicable across the spectrum of development coming forward.

1.6 At the project level, individual developments can then comply with the adopted strategic approach and have confidence that mitigation is being secured, proportionate to the development and potential impact. This reduces delay and removes the need for lengthy assessment at each project. HRA at the project level can then be a simple check for compliance with the strategic approach, along with a check for any other potential impacts, not covered by the strategic approach.

Dorset Heathlands Planning Framework

1.7 This document is a Supplementary Planning Document adopted by Purbeck District Council (and all other relevant Dorset authorities) and is applicable to the period 2015-2020.

1.8 The result of a number of years of collaborative working is the Dorset Heathlands Planning Framework, which sets out a strategic solution in the form of two main mitigation opportunities; provision of offsite measures, referred to as 'Heathland Infrastructure Projects' and which can include Suitable Alternative Natural Greenspaces (SANGs) to deflect recreation pressure away from European sites, and Site Access Management and Monitoring (SAMM) to provide enhanced management of visitors on the European sites.

Nitrogen Reduction Poole Harbour

1.9 This Supplementary Planning Document adopted by Purbeck District Council ensures that the potential for increased nitrogen entering Poole Harbour as a result of new development is negated by projects that offset the additional nitrogen entering the European site via waste water discharges.

1.10 The scheme requires development to be 'nitrogen neutral,' preferably through the use of new/alternative technologies. Offsetting the nitrogen increase through treated waste water from residential development can be done through projects that reduce nitrogen input. Projects could include for example, taking farmland permanently out of active production, or by demonstrably reducing

nitrogen input through a permanent change from intensive to low level agricultural management.

- 1.11 Where a SANG is provided and part of the Dorset Heathlands Planning Framework, there may be the opportunity to also allow it to count towards nitrogen neutrality, if the creation of the SANG takes farmland out of production or moves the management from more intensive to low level.

Projects to mitigate for Poole Harbour recreation pressure

- 1.12 Purbeck District Council and the Borough of Poole have also worked together to co-ordinate and deliver a recreation disturbance SPD for Poole Harbour SPA/Ramsar site in their relevant plan level HRAs. Whilst this is a newly adopted addition to the suite of mitigation SPDs, there are now a number of projects being funded to mitigate for Annex 1 bird disturbance as a result of recreation activities.
- 1.13 The Poole Harbour Aquatic Management Plan¹ provides the delivery mechanism for much of the mitigation being taken forward to alleviate the impact of recreation and is overseen by a steering group of local authorities, government agencies and relevant industry organisations including the Poole Harbour Commissioners and Southern Sea Fisheries District Committee. Projects include permitting schemes for water-based activities, additional wardening resource and establishing monitoring.

Funding the strategic approaches in Purbeck

- 1.14 Purbeck District Council currently draws funding for the three strategic approaches described above from the Community Infrastructure Levy (CIL). This is a mechanism for funding infrastructure within a local authority's administrative area, that is required in order to support new development. The Community Infrastructure Levy is governed by legislation and a local planning authority needs to adhere to the legislation and guidance provided by government in establishing, drawing funds from and implementing projects for the Levy.
- 1.15 In order to have certainty that this multifunctional funding source is appropriately used to fund European site mitigation, Purbeck District Council has committed to prioritising the three strategic approaches over and above any other infrastructure requirements.

¹ <http://www.pooleharbouraqmp.co.uk/>

2. European Court Judgment and HRA Implications

- 2.1 Neighbourhood Plans should only be approved where it can be demonstrated that the plan will not result in any likely significant effects to European sites. This means that the HRA needs to be able to demonstrate that all risks have been adequately avoided. Where a higher tier Local Plan is in place, the Neighbourhood Plan is usually heavily reliant upon the higher tier mitigation measures in place in order to demonstrate compliance and that likely significant effects have therefore been ruled out.
- 2.2 At the time of preparing the HRA in 2017, reliance upon the HRA work already undertaken for the Local Plan, which has been the subject of considerable evidence gathering and assessment, enabled a conclusion of no likely significant effects for the Bere Regis Neighbourhood Plan.
- 2.3 The stages of HRA are explained in more detail in the main HRA report. Screening a plan for likely significant effects involves checking every part of the plan and assessing potential risks to European sites. The screening exercises seeks to identify any impact pathways, i.e. ways in which the plan could affect European sites. Any risks are checked to ensure that there is confidence that the plan does not contain anything that could lead to effects that may be significant for the European sites. Where significant effects cannot be ruled out, a more detailed appropriate assessment of the potential risks is carried out, to either demonstrate that those risks would not lead to adverse effects on the European sites in question, or that there are viable avoidance and mitigation measures that will be applied as part of the plan to ensure that the identified risks will not lead to adverse effects.
- 2.4 A likely significant effect could be concluded on the basis of clear evidence of risk to European site interest, or there could be a scientific and plausible justification for concluding that a risk is present, even in the absence of direct evidence. The latter is a precautionary approach, which is one of the foundations of the high-level of protection pursued by EU policy on the environment, in accordance with the EU Treaty.² The precautionary principle should be applied at all stages in the HRA process and follows the principles established in case law relating to the use of such a principle in applying the European Directives and domestic Habitats Regulations. In particular, the European Court in the 'Waddensee' case³ refers to "*no reasonable scientific doubt*" and the 'Sweetman' case⁴ the Advocate General identified that a positive conclusion on

² Article 191 of the Treaty on the Functioning of the EU. Previously Article 174 of the Treaty of the EC.

³ European Court of Justice case C - 127/02

⁴ European Court of Justice case C - 258/11

screening for likely significant effects relates to where there *“is a possibility of there being a significant effect”*.

- 2.5 There was confidence in reliance upon the strategic approaches described above and in more detail in the main HRA report for the growth in the Bere Regis Neighbourhood Plan to enable a conclusion of no likely significant effects in conformity with European case law.
- 2.6 However, an additional recent European Court of Justice Judgment in 2018 (Case C-323/17) clarified that there is need to carefully explain actions taken at each HRA stage, particularly at the screening for likely significant effects stage. The Judgment reminded of the need for clear distinction between the stages of HRA, and good practice in recognising the function of each. The screening for likely significant effects stage should function as a screening or checking stage, to determine whether further assessment is required. Assessing the nature and extent of potential impacts on European site interest features, and the robustness of mitigation options, should be done at the appropriate assessment stage.
- 2.7 Since the publication of this Judgment, it has been good practice to provide an analysis of strategic mitigation suitability for a plan or project within the appropriate assessment section of a HRA report. Whilst the reliance on previously undertaken HRA work including appropriate assessment, remains the case, to ensure that a HRA is fully compliant with the most recent European caselaw, it is advisable to set out any scrutiny of the applicability of pre-assessed mitigation within an appropriate assessment.
- 2.8 Additionally, consideration within an appropriate assessment section also provides confirmation that there are no other potential risks to European sites, over and above those that are mitigated for by the strategic approaches.
- 2.9 This addendum has therefore been produced to undertake and provide a formal record of these tasks.
- 2.10 The screening for likely significant effects in the main HRA report highlighted the following matters for further consideration. In the main HRA report, these matters were checked and explained as part of the screening for likely significant effects section. The checks and explanations have been revisited, and it is concluded that they remain valid, but for completeness the text is now provided here as an appropriate assessment.

3. Appropriate Assessment - Checking the Validity of Strategic Mitigation

- 3.1 This text has been taken from the main HRA report at the screening for likely significant effects section. It now forms the appropriate assessment.
- 3.2 The mechanism for securing contribution to the three strands of strategic approaches to mitigation, established at the Purbeck Local Plan level, is through CIL. Purbeck District Council manage this, and each development is simply required to make the appropriate CIL contribution for their development. The proposals within the Bere Regis Neighbourhood Plan are therefore not affected by this, as each will make the necessary CIL payment and the Council will ensure that a 'per house' contribution' is allocated to the three strategic approaches. This should include accounting for those houses that have not individually made a CIL contribution due to being a type of development that is except from CIL payment.
- 3.3 With this mechanism already in place and established, there is certainty that the housing proposals will be adequately mitigated for. However, at various points throughout the plan, the need to mitigate, and the mitigation secured via the strategic approaches is not clear, and in some instances only one or two of the three is mentioned.

Recommendations for legislative clarity

- 3.4 It is recommended that at some point in the plan, a brief explanation is given to give clarity and certainty that the plan meets the requirements of the legislation and conforms with the Purbeck Local Plan Part 1 on this matter. This would then enable the partial explanations in various parts of the plan to be removed, to aid the flow of the plan text.
- 3.5 For example, in some places reference is made to the provision of a SANG. However, Purbeck District Council will also need to make the necessary provision for SAMM funding, in order to comply with the Dorset Heathlands Planning Framework.

Checking housing numbers and locations for likely significant effects

- 3.6 An important part of this HRA of the Bere Regis Neighbourhood Plan is to check that the housing allocations and housing numbers are such that they conform with the three strategic approaches. The locations of development do not have any influence over compliance with the approach for nitrogen reduction and Poole Harbour recreation. However, given the close proximity of Black Hill, part of the Dorset Heaths SAC and Dorset Heathlands SPA, to the immediate south of Bere Regis, some additional consideration needs to be given, in order to have confidence that the

strategic approach in the Dorset Heathlands Planning Framework is fit for purpose in these circumstances.

- 3.7 Map 4 shows the five housing allocations in relation to the Dorset Heathland sites, along with the 400m Local Plan buffer (within which residential development is to normally be excluded due to proximity to the European site). Map 5 provides an illustration of the footpath network in relation to the greenspaces and proposed SANG.

Housing numbers

- 3.8 The number of houses proposed by the Bere Regis Neighbourhood Plan is 105, which is an increase from the 50 houses proposed in the Purbeck Local Plan Part 1. However, whilst the Dorset Heathlands Planning Framework was developed on the basis of housing numbers within each local planning authority's plan it has some flexibility in that it provides for a rolling programme of SANG and SANG projects that continue in line with housing delivery. The Framework is regularly reviewed, and the programme of projects updated accordingly. The magnitude of the increase is such that it should be accommodated, subject to the recommendations below in relation to allocation locations. The potential magnitude of housing increases for the Purbeck District as a whole does require more detailed assessment in terms of the ability of the Framework to accommodate such levels of additional growth, and that is being assessed through the HRA for the Local Plan review.
- 3.9 There are no therefore further recommendations in relation to housing numbers.

Housing locations

- 3.10 The five housing locations are spread around Bere Regis, with the largest allocation, Back Lane, being to the north and close to the proposed SANG that will be delivered by this development. There are two allocations to the south of Bere Regis; White Lovington and Former School, which together propose to deliver 35 houses. These two allocations have been made with full regard for the 400m buffer and lie immediately outside that exclusion zone.
- 3.11 To the immediate south of Bere Regis is Black Hill, a privately owned but publicly accessible part of the Dorset Heaths SAC and Dorset Heathlands SPA. This is a popular site for walking and dog walking, particularly given the panoramic views that can be gained from the top of the hill. There is a good footpath network leading from Bere Regis to Black Hill. This footpath network is very easily accessible from the White Lovington and Former School sites.
- 3.12 Bere Regis benefits from an attractive network of open spaces, and there is a focus on open space along the Bere Stream. There are number of other accessible areas around the periphery of Bere Regis, and most of these open spaces have an attractive landscape, a natural feel and provide a range of wildlife habitats for people to enjoy.

The addition of 4.5 ha of SANG, as discussed below, will complement the existing open space network and importantly will create a larger expanse of open space.

Recommendations for local delivery of the strategic mitigation

- 3.13 It is therefore concluded that having regard for all these points, the strategic approach provided for by the Dorset Heathlands Planning Framework should provide adequate mitigation for the new housing. However, the concern that Black Hill is readily accessible, a popular location for dog walking and particularly close to the White Lovington and Former School sites leads to the recommendation that the Framework should include an access management project for Black Hill.
- 3.14 This does not affect the housing allocations, but rather it is a recommendation that Purbeck District Council and its partners overseeing the approval and delivery of SAMM projects as part of the Framework should secure a project that enhances access management at this location. It is suggested that such a project may include, for example, some focussed wardening time, school/local resident awareness raising events, provision of additional dog waste bins or provision of interpretation. The detail of such a project could be determined in response to local knowledge and understanding of what may deliver the most benefits.

Checking the SANG provision

- 3.15 In accordance with the Framework, the Back Lane allocation is identified within the Bere Regis Neighbourhood Plan as needing to deliver a SANG (as the allocation is for 50 or more houses). This SANG is 4.5 hectares in size and located to the north of Bere Regis. This SANG has been identified for some time, and the Bere Regis Community, Purbeck District Council, the potential developer, landowner and Natural England have all been involved in discussion to some extent to date. A check of the SANG proposal for this HRA enables a conclusion that it conforms with the Framework, and this has also been confirmed with Natural England. The additional consideration given to future access from the SANG to the north is very positive, providing the potential for visitors to extend their walk by crossing the main road.
- 3.16 The SANG subject to an appropriate management plan being prepared; this will be developed when the Back Lane development is being taken forward as a planning proposal. Purbeck District Council will then follow agreed protocol of agreeing a detailed management plan (in-perpetuity, which is established as at least 80 years) that covers both SANG establishment, provision of all visitor infrastructure and long-term management. The necessary legal agreements will be made between the Council, developer and landowner as appropriate.

3.17 These procedures are an established means of securing SANG, and for this HRA it can therefore be concluded that implementation of the Bere Regis Neighbourhood Plan will proceed in conformity with the Dorset Heathlands Planning Framework.

3.18 There are no therefore further recommendations in relation to SANGs provision.

Project level checks

3.19 Plan level HRA, both at the higher tier Purbeck Local Plan Part 1 and at this Bere Regis Neighbourhood Plan level, provides measures to protect European sites. For a number of aspects of the Bere Regis Neighbourhood Plan, the screening table above highlights matters that may be pertinent to a project level HRA. This is for information only, highlighting where the Council may need to make additional checks, and does not affect the outcome of this plan level assessment.

Recommendations for project level HRA

3.20 There remains a requirement for Purbeck District Council, as competent authority, to be certain that each individual development project is meeting the requirements of the Habitats Regulations. The District Council needs to be sure that there aren't any additional risks that are not fully mitigated for by the plan level measures.

4. Conclusions

- 4.1 This addendum to the main HRA for the Bere Regis Neighbourhood Plan has provided clarity in relation to the steps undertaken as part of the HRA process. Text previously provided in the screening for likely significant effects section in the main HRA report has now been provided as an appropriate assessment. This exercise does not alter the conclusions drawn, but ensures that the HRA in full, with both the main report and this addendum, is compliant with up to date European Court caselaw.
- 4.2 The Neighbourhood Plan remains compliant with both planning and designated site legislation, as this record confirms that the strategic mitigation is fit for purpose and applicable to the Neighbourhood Plan. No further assessment is required, and this addendum also confirms that there are no additional impacts, over and above those mitigated for by the strategic approaches, that require further assessment.
- 4.3 The recommendations above are summarised here:
- **Legislative clarity and conformity with strategic approaches** - A brief explanation is given to give clarity and certainty that the plan meets the requirements of the legislation and conforms with the Purbeck Local Plan Part 1. The final plan includes a section on impacts on wildlife habitats, which gives an explanation of the need to adhere to the three strategic approaches.
 - **Local delivery of strategic mitigation** - Purbeck District Council and its partners overseeing the approval and delivery of SAMM projects as part of the Dorset Heathlands Planning Framework should secure an access management project for Black Hill. This recommendation does not require action for the plan but is an additional measure to be added into the Framework.
 - **Project level HRA** - Purbeck District Council, as competent authority, to be certain that each individual development project is meeting the requirements of the Habitats Regulations. This recommendation does not require action for the plan but is a flag for future determination of development project proposals in Bere Regis.
- 4.4 Officer confirmation of acceptance of this HRA addendum at an appropriate delegated level, on behalf of the District Council as competent authority, should be made here with a signature on a hard copy of this HRA addendum.