

# EXAMINATION OF THE ISLES OF SCILLY LOCAL PLAN

## MATTERS AND QUESTIONS

### RESPONSE by NATURAL ENGLAND

17 December 2019

#### **MATTER 1 – Legal compliance and overarching issues**

The one outstanding issue between the Council and Natural England (NE) relates to the potential impact of recreational disturbance arising from occupants of allocated housing. Natural England's position on this is set out in response to Inspectors Questions under Matter 1. All other matters raised in Natural England's response to consultation at the 2<sup>nd</sup> Regulation 19 stage have now been resolved with the Council. Where the inspector has raised questions relating to these resolved matters these are addressed under Matter 4. The agreed position between the Council and Natural England is set out in a statement of common ground agreed between the two parties (SD04) which is attached to Natural England's response to the Inspectors matters and questions.

The Inspector's questions addressed in this document are shown in bold.

#### **Matter 1 – Legal Compliance and Overarching Issues**

##### **Matter 1a: Legal Compliance**

#### **1.5 Are the Habitats Regulations Assessment Screening and Appropriate Assessment Report (January 2019) and Addendum Report (July 2019) robust and credible in their conclusions? In particular:**

- **Do the assessments give adequate consideration to the likely effects resulting from recreational disturbance by occupants of new dwellings allowed for in the plan, including:**
  - **windfall/staff accommodation housing; and**
  - **tourist accommodation?**

In Natural England's response to the 2<sup>nd</sup> regulation 19 version of the Plan (SD04, Appendix 2, letter dated 10<sup>th</sup> September 2019), Natural England raised concerns regarding the Habitats Regulations Assessment (HRA) in relation to the level of housing allocated in the Plan. The HRA (version dated Jan 2019, para 4.6 (SD13)) stated that mitigation for recreational

disturbance would be provided by general plan policies (OE2 & OE3 being cited as relevant). NE do not consider that general policies cited would provide adequate mitigation for recreational disturbance as it is not clear how these policies, applied at the application stage, will be able to ensure development will not have an adverse effect on the integrity of the European sites (Isles of Scilly Ramsar, Special Protection Area (SPA) and Special Area of Conservation (SAC)). This view was set out in our response to the regulation 19 stage (SD04, Appendix 2, letter dated 10 September 2019).

The HRA ((SD13) dated Jan 2019, para 4.6) states that the level of housing proposed is small and that it will be used for local people already using the island for recreational activity. However in stating that plan policy will help mitigate impacts it also infers the need for mitigation of impacts to address likely significant effects.

In a subsequent topic paper prepared by Council to help address this issue (Natural Environment Topic Paper dated September 2019, EB044) the Council sought to emphasise that the housing proposed was primarily aimed at meeting a housing need for those already resident on the island (para 63) and that provision was made within a background trend showing population decline (EB044, Table 2 – population change 2008 – 2017). Para 63 of the topic paper (EB044) states there will be not significant effects of the housing proposed as a result of recreational pressure as the housing is already intended for local people already using the Islands. NE were invited to comment on the topic paper. In response (dated 14<sup>th</sup> October, see SD04, Appendix 3) NE pointed out that this conclusion (no likely significant effects) did not concur with the conclusion of the HRA as the latter states that there will be a likely significant effect. NE therefore advised the Council that clarity was required on which decision applies.

The issue, as yet unresolved, focuses on the extent to which proposed housing is likely to give rise to a significant effect. The Council have said that housing is to meet the needs of the existing population. NE (in a letter dated 3 December 2019, Annex 1 attached) asked the Council to provide/refer to evidence that supports and clarifies this assertion and consider whether this has a bearing on the conclusion that may be drawn by a fresh HRA screening exercise. A revised Natural Environment Topic Paper (EB 051, Dec 2019) clarifies (para 69) that Plan seeks to stem the flow of out migrating population by making provision for those on the island already in housing need and to retain newly forming households. It is understood that the HRA will be revisited in the light of this most recent Topic Paper (EB051, Dec 2019).

- **Do the assessments give adequate consideration to the likely effects resulting from infrastructure needed to support the development proposed in the plan?**

NE raised a query regarding transport infrastructure identified in SS9. NE understand that policy SS9 is seeking to safeguard existing transport infrastructure rather than make proposals for new/improved infrastructure. On that basis we have no further comments as expressed in the statement of common ground (SD04).

- **Are the assessments' assumptions about the likelihood/effectiveness of mitigation measures required by policies SS1, OE2, OE3 and OE4 credible?**

If a finalised HRA concludes that mitigation for recreational disturbance is necessary NE is not convinced that OE2 provides adequate mitigation because it is not clear from this general policy that mitigation for recreational disturbance will be required to ensure no adverse effect on integrity. In addition there is no supporting evidence about how mitigation could be delivered at the project level on a site by site basis.

- **Is a SAC Site Improvement Plan necessary to ensure no significant effects on European sites? Is it necessary for the plan to be sound for it to require new housing development to contribute towards habitat protection mitigation measures?**

If the HRA confirms that mitigation is required to ensure there is no adverse effect on integrity as a result of recreational disturbance then NE consider that mitigation for this impact would need to be a requirement of specific Plan policy in order for the Plan to be sound. At the project level, how this mitigation is achieved would be a matter for the developer to address.

If the HRA establishes that mitigation is required the Council need to consider the mitigation measures likely to be needed and how these could be delivered.

