

Date: 14 February 2023
Our ref: 421032
Your ref: P/22/078/FUL



Liv Rickman
Planning & Development Management
Council of the Isles of Scilly
Town Hall
The Parade
St Mary's
Isles of Scilly
TR21 0LW
Olivia.Rickman@scilly.gov.uk
planning@scilly.gov.uk

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Liv,

Planning consultation: P/22/078/FUL, Marine Conservation Zone (MCZ) Assessment, Lower Town Beach Habitat Regulations Assessment (HRA), and Interim Response to NE Objection.
Location: St Martins.

Thank you for your consultation on the above dated 08 February 2023 which was received by Natural England on the same day. The following advice from Natural England is for the application for St Martins (reference P/22/078/FUL) only.

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

SUMMARY OF NATURAL ENGLAND'S ADVICE

OBJECTION MAINTAINED - INSUFFICIENT INFORMATION

Natural England objects to this proposal. As submitted we consider it could:

- have an adverse effect on the integrity of the Isles of Scilly SPA
- have an adverse effect on the integrity of the Isles of Scilly Complex SAC

Natural England's advice is set out below.

The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017

Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

We note that the follow information is provided at 5.4 Assessment of Likely Significant Effects.

Brown rats pose a threat to nesting birds within the Isles of Scilly and therefore biosecurity measures will be put in place to ensure the proposed works do not facilitate the spread of Brown rats across the site. Measures include the use of rope guards on the vessel transporting construction material and ensuring food and waste onboard are all contained in rodent proof containers.

The assessment of Brown rats and the threat posed to nesting birds is a welcome addition to the HRA however, this information is in the incorrect section of the HRA (assessment of Likely Significant Effect on the SAC habitats) and furthermore concluding No Likely Significant Effect Alone with the addition of mitigation is not compliant with regulations. Therefore regarding this risk, your assessment concludes that it can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination. This conclusion has been drawn having regard for the measure built into the proposal that seeks to avoid the potential impact.

Measures intended to avoid or reduce the likely harmful effects on a European site(s) cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires appropriate assessment (following the *People Over Wind* ruling by the Court of Justice of the European Union).

These measures, and any additional measures that can avoid or reduce any likely harmful effects, can be considered as part of the appropriate assessment, to determine whether a plan or project will have an adverse effect on the integrity of the European site.

Within your appropriate assessment for the Isles of Scilly SPA the following mitigation is proposed:

Coastal works will be timed, where possible, to avoid the winter period in order to avoid visual and noise impacts to wintering birds.

This statement infers an impact to the features of the SPA if these works are carried out during the winter period and therefore it is not appropriate to include the reference 'where possible' as this does not provide enough certainty in this mitigation measure to demonstrate that adverse effects cannot be ruled out. Also, consideration should be given to the proposed works inhibiting recovery potential (the SPA currently has a recover objective for its features as advised in our previous response).

An appropriate assessment of a plan or project considered likely to have a significant effect is to reach a conclusion as to the effects on site integrity. A high and thorough standard of assessment is therefore expected and necessary, supported in authoritative case law which confirms that an assessment should only be considered 'appropriate' if it avoids gaps and contains complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed' (see C-404/09 ECJ vs Spain 'Alto Sil' 2011).

Marine and Coastal Access Act 2009

Natural England notes that your authority, as competent authority, has undertaken a Marine Conservation Zone (MCZ) Assessment.

Having reviewed the evidence relating to the site and on the basis of the information provided, Natural England concurs with the view of the assessment and believes that the works will not hinder the conservation objectives of the Marine Conservation Zone (MCZ); so long as they are undertaken in strict accordance with the mitigation measures detailed and these are included within the Construction Environmental Management Plan (CEMP) and appropriately secured in any licence/planning permission issued, and provided in addition to the standard pollution prevention measures detailed, the below mitigation is included with the CEMP.

Advice on mitigation

These measures should be implemented through the Construction Environmental Management Plan (CEMP).

Measure	Reason
Disturbance to the foreshore should be restricted to the smallest possible footprint, and any disturbance to the ground surface must be restored to previous condition on completion of the works.	To prevent unnecessary damage to the foreshore in designated sites and the wider marine environment; and to return the habitat to the condition it was in prior to the commencement of works.
There should be no storage of plant or materials on the foreshore.	To minimise the potential for pollution to enter designated sites and the wider marine environment.
An appropriate plant recovery protocol should be put in place to ensure plant can be recovered from the intertidal area.	To minimise the potential for pollution to enter designated sites and the wider marine environment.

Wildlife and Countryside Act 1981 (as amended)

Natural England note the response provided within the submitted *Interim Response to NE Objection* letter for the proposed works at St Martin's and the potential impacts highlighted in our previous response to St. Martin's Sedimentary Shore SSSI. Based on this further information provided we advise that the proposal, if undertaken in strict accordance with the details submitted, is not likely to damage the interest features for which the site has been notified via increased pollution and/or recreational disturbance during the operational phase of these works.

For any queries relating to the content of this letter please contact me using the details below.

For further consultations please email consultations@naturalengland.org.uk.

Yours sincerely,

Gareth Townsend

Lead Adviser
Devon, Cornwall and Isles of Scilly
Natural England
Email: Gareth.Townsend@naturalengland.org.uk