

26 June 2020

Our ref: 318910

Your ref: 60823



Mrs. Jean Watkins
Senior Planning Officer
Strategic Development & Planning
North Devon Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
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BY EMAIL ONLY planning@northdevon.gov.uk

T 0300 060 3900

Dear Jean,

Planning consultation: Hybrid planning application (a) full application for the access, scale & layout of site including raising of the ground levels, site access works & highway infrastructure to site, together with purpose built bat building. (b) outline application for 250 dwellings (use class c3). Space of up to 3000sqm employment (use class b1). Space of up to 250sqm (a1) gross floor space; space of up to 2000sqm (a3). Gross floor space; space of up to 250sqm (d1). Gross floor space; space of up to 250sqm (d2). (c) all the associated infrastructure including removal of any contamination, roads, footpaths, cycleway, drainage (including attenuation works), flood defence works, landscaping & appearance, public open space, utilities & vehicle parking & including demolition of buildings (amended scheme & supporting documents). at Former Yelland Power Station Lower Yelland Yelland Barnstaple Devon EX31 3EZ

Thank you for your email consultation received on 5th June 2020 regarding the above amended proposal.

Further to our advice of 14th February 2020 (306311) and based on the information provided we have the following advice relating to the Taw Torridge Estuary SSSI only¹.

SUMMARY OF NATURAL ENGLAND'S ADVICE

- **The Taw Torridge Estuary Site of Special Scientific Interest (SSSI) - no objection** subject to conditions. Details are provided below.
- Please note that our advice in our consultation response of 14th February 2020 (306311) and 18th February 2019 (ref 269685) for **Braunton Burrows SAC, Biodiversity Net Gain; the North Devon Area of Outstanding Natural Beauty; Caen Valley Bats SSSI; South West Coast Path National Trail (SWCP NT)/Tarka Trail; Local Sites; Priority habitats and species; Protected species; Soils** and the **England Coastal Path** remains current and relevant to the amended application. I have attached copies for ease of reference.

Nationally designated sites

Taw Torridge Estuary Site of Special Scientific Interest (SSSI)

Natural England's advice is that without mitigation this application has the potential to damage or destroy the interest features for which the Taw Torridge Estuary Site of Special Scientific Interest has been notified.

¹ This reply comprises our statutory consultation response under the provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995, Section 28 of the Wildlife and Countryside Act 1981 (as amended), the Habitat Regulations 2017 (as amended).

The Local Authority needs to ensure that sufficient design measures to avoid and mitigate noise disturbance are incorporated into the proposal to be certain there would not be significant adverse impacts during construction and operation.

Without mitigation, the increase in activity on and around the site during construction (up to 15 years) and operation (recreational activity impacts from residents and visitors to the site) is likely to lead to disturbance and displacement of the overwintering estuary birds on the adjacent high tide roosting sites identified within the SSSI.

The data gathered through the [Taw Torridge Estuary High Tide Roost and Recreational Impacts study](#)², of which your Authority is a partner, suggests this sector is of particular importance for providing quiet refuge to wintering wetland birds in the context of the estuary. This is confirmed by the applicant's own over wintering bird surveys of 2016/17 and 2018/19.

A strategic approach to mitigation is the ideal outcome with all development adding to recreational impacts making a financial contribution to measures that avoid impacts. Paragraph 6.10.1 of the ES confirms that the proposed development would contribute towards such a strategic solution.

Advised Conditions:

Natural England advised that the proposed site based mitigation in the Environmental Statement should be secured as legally binding conditions on any permission.

We also raised concerns regarding elements of the mitigation strategy and welcome the fact that the applicant and EAD has sought to address these:

1. The proposed post and wire fencing along the estuary frontage now extends to include that along RSPB land (to where the frontage joins the Tarka/cycle Trail) to prevent access from the ashbeds to Isley Marsh and is included on *Drawing Y029 18 205N Infrastructure delivery plan*. This must be secured via condition.
2. Noise and lighting mitigation will be included in the CEMP to cross reference with the CECoMP/LEMP etc. This must be secured via condition.
3. In addition, as previously outlined, Natural England's advice is that noise contour maps of background noise levels and predicted construction noise levels are provided to indicate more clearly where the significant impacts are likely to be and when. A noise management plan can then be produced to ensure that construction and operational noise levels are within background levels and where any significant increases are predicted at ecological receptors, with the 2.5m high acoustic screen in place, then additional measures may be required. This must be secured via conditions.
4. The most sensitive period for the overwintering birds is September to March inclusive. *Drawing Y029 18 205N Infrastructure delivery plan* suggests April to August inclusive for timing of works for the lagoon, land raising, screen and rock armour. This must be secured via condition. The Construction period for the ground raising, rock armour and lagoon and relevant building phases are likely to require additional mitigation to that proposed if carried out during September to March inclusive. This would include use of the jetty to bring in materials during construction.
5. Employment of the proposed warden will be implemented as soon as people are living in the dwellings rather than post construction. This must be secured via condition.
6. The creation of a new pedestrian route from the development to link with the south west coast path to the west of the site will be re-routed to the landward side of and below the embankment adjoining the estuary which would bring people on and off the route further away from the roost. Although we would prefer new access to the SWCP NT here to be removed from the plans, the amended route will help to reduce potential disturbance in the area immediately to the west of the roost. Drawing Y029 18 204R Proposed Site Plan still shows the original access point directly onto the SWCPNT as well as the new route behind the embankment. The drawing should be amended to remove the original access point and be secured via condition.

² <https://www.northdevon.gov.uk/media/379527/final-report-identification-of-wintering-wildfowl-high-tide-roosts-and-recreational-disturbance-impacts-on-the-taw-torridge-estuary.pdf>

7. SuDS will be used to maintain water quality/manage surface water runoff from the site and consideration has been given to minimising impacts on the SSSI mudflats at the existing outfall in to the estuary by restricted discharge via on site attenuation. The Surface water management plan which will be provided at RM should include detail of the maintenance and management of the SuDS and how it will be funded. We would advise that a condition should be included on any permission or through S106 obligations as appropriate to secure the various ecological management plans.
8. The developer has no objection to working with the LPA regarding the number, location and wording of signage to ensure a consistent message. This can be secured via a condition.

In addition, we were concerned about the level at which enhancement features are being delivered:

9. The number of nest boxes proposed is significantly below the level recommended by the RSPB. The applicant is happy to adjust the provision which should be secured via condition.
10. Biodiversity net gains offsite have been identified as necessary but with no detail or certainty of delivery. We would recommend that this is not left to conditions. Any net gains should also be linked to North Devon's Local Nature Reserve Strategy.

Additional Advice:

We would recommend that consideration is given to amending the proposed landscaping in the fields south of the Tarka Trail so that the trees are planted along the new access road rather than the eastern and southern field boundaries. This would help to maintain the open aspect/sight lines required by the water birds identified as using the fields opportunistically for foraging. We note that the proposed landscape planting in this area will be the subject of a Reserved Matters Application but that the applicant has no objection in principle to this change.

In conclusion, your Authority should ensure a comprehensive package of effective robust mitigation measures is secured before determination.

Should the application change, or if the applicant submits further information relating to the impact of this proposal on the Taw Torridge Estuary SSSI, Natural England will be happy to consider it, and amend our position as appropriate. Following submission of this advice to the LPA we are able to consider offering advice to the developer through our [Discretionary Advice Service](#)

Please do not hesitate to contact me on the details below if you wish to discuss anything further.

Yours sincerely

Clare Guthrie
Lead Adviser
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14 February 2020

Our ref: 306311

Your ref: 60823



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Dear Keith,

Planning consultation: 60823 Hybrid planning application (A) full application for the access, scale & layout of site including raising of the ground levels, site access works & highway infrastructure to site, together with purpose built bat building. (B) Outline application for 250 dwellings (use class C3). Space of up to 3000sqm employment (use class B1). Space of up to 250sqm (A1) gross floor space; space of up to 2000sqm (A3). Gross floor space; space of up to 250sqm (D1). Gross floor space; space of up to 250sqm (D2). (C) All the associated infrastructure including removal of any contamination, roads, footpaths, cycleway, drainage (including attenuation works), flood defence works, landscaping & appearance, public open space, utilities & vehicle parking & including demolition of buildings (amended scheme & supporting documents). Former Yelland Power Station, Lower Yelland, Yelland, Barnstaple, Devon, EX31 3EZ.

Thank you for your email consultation received on 17th January 2020 regarding the above amended proposal. Based on the information provided we have the following advice³.

SUMMARY OF NATURAL ENGLAND'S ADVICE

- North Devon Council is required to conduct a Habitat Regulations Assessment for **Braunton Burrows Special Area of Conservation (SAC)**.
- Further consideration is required regarding impacts and mitigation for the **Taw Torridge Estuary SSSI**.

Details are provided below. Without this information, Natural England may need to object to the proposal. Please re-consult Natural England once this information has been obtained.

European designated sites Braunton Burrows Special Area of Conservation (SAC)

The application site is within the Zone of Influence (Zoi) for the Braunton Burrows SAC within which impacts of residential and tourist development on the SAC would arise in the absence of appropriate mitigation.

Further evidence submitted following your Joint Local Plan Habitats Regulations Assessment indicates that it would not be possible to reach a conclusion of 'no likely significant effect' for housing in this location, in combination with other residential/tourist development within the Zoi, in the absence of appropriate mitigation.

³ This reply comprises our statutory consultation response under the provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995, Section 28 of the Wildlife and Countryside Act 1981 (as amended), the Habitat Regulations 2017 (as amended).

North Devon Council and Torridge District Council have adopted an Interim Scheme 'Braunton Burrows Special Area of Conservation Visitor Impacts and Mitigation' (July 2019) whereby impacts can be avoided and mitigated through financial contributions in order to avoid significant effects of recreational impacts on the Braunton Burrows SAC from new housing/tourist developments within the Zol.

Natural England therefore advises that you:

- Undertake an Appropriate Assessment⁴ of the proposal and any mitigation proposed, prior to determining the application.
- Seek agreement from the applicant on funding of a package of measures which will permit you to reach a conclusion of no adverse effect on integrity before granting permission. Your Authority should not grant permission until such time as this mitigation has been secured.

The [Conservation Objectives](#) for the Braunton Burrows SAC explain how the sites should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

We note that a commitment has been made to making the appropriate financial contribution.

Nationally designated sites

Taw Torridge Estuary Site of Special Scientific Interest (SSSI)

Further to our advice of 18th February 2019 Natural England remains concerned that this application has the potential to adversely affect the overwintering water bird interest of the Taw Torridge Estuary SSSI.

Without mitigation, the increase in activity on and around the site during construction (up to 15 years) and operation (recreational activity impacts from residents and visitors to the site) is likely to lead to disturbance and displacement of the overwintering estuary birds on the adjacent high tide roosting sites identified within the SSSI.

The data gathered through the [Taw Torridge Estuary High Tide Roost and Recreational Impacts study](#)⁵, of which your Authority is a partner, suggests this sector is of particular importance for providing quiet refuge to wintering wetland birds in the context of the estuary. This is confirmed by the applicant's own over wintering bird surveys of 2016/17 and 2018/19.

A strategic approach to mitigation is the ideal outcome with all development adding to recreational impacts making a financial contribution to measures that avoid impacts.

However, based on the information provided for this application, whilst we welcome the mitigation proposed in the Environmental Statement which should be secured as legally binding conditions on any permission, Natural England has the following outstanding concerns:

- The proposed post and wire fencing along the estuary frontage needs to extend further to include that along RSPB land (to where the frontage joins the Tarka/cycle Trail) to prevent access from the ashbeds to Isley Marsh. This need to be made clear in text and maps provided.
- The application needs to ensure that sufficient design measures to avoid and mitigate potential light and noise disturbance are incorporated into the proposal to be certain there would not be significant adverse impacts during construction and operation. We have raised concerns and provided detailed advice previously.
- Noise and lighting mitigation must be included in the CEMP to cross reference with the

⁴ As the Competent Authority, North Devon Council is required to conduct a Habitat Regulations screening to determine the significance of impacts on Braunton Burrows Special Area of Conservation (SAC) and the scope for mitigation and to demonstrate that the requirements of Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by your authority.

⁵ <https://www.northdevon.gov.uk/media/379527/final-report-identification-of-wintering-wildfowl-high-tide-roosts-and-recreational-disturbance-impacts-on-the-taw-torridge-estuary.pdf>

CEcoMP etc.

- The most sensitive period for the overwintering birds is September to March inclusive. The Construction period for the ground raising, rock armour and lagoon and relevant building phases are likely to require additional mitigation to that proposed if carried out during this period. This would include use of the jetty to bring in materials during construction.
- Employment of the proposed warden should be implemented as soon as people are living in the dwellings not merely post construction.

In addition, we are concerned about the level at which enhancement features are being delivered:

- The number of nest boxes proposed is significantly below the level recommended by the RSPB.
- Biodiversity net gains offsite have been identified as necessary but with no detail or certainty of delivery.

We welcome the proposal that the creation of a new pedestrian route from the development to link with the south west coast path to the west of the site would be re-routed to the landward side and below the embankment adjoining the estuary. Although we would prefer this access to be removed from the plans, the amended route will help to minimise potential disturbance in the area immediately to the west of the roost.

We recognise the work that has been done (light contour maps) to show that a 0.5lux dark corridor can be achieved on the Tarka Trail at the new access road crossing point.

We welcome the use of SuDS to maintain water quality/manage surface water runoff from the site and the consideration given to minimising impacts on the SSSI mudflats at the existing outfall in to the estuary by restricted discharge via on site attenuation. The Surface water management plan which will be provided at RM should include detail of the maintenance and management of the SuDS and how it will be funded. We would advise that a condition should be included on any permission or secured through S106 obligations as appropriate.

We would recommend that the developer works with the LPA regarding the number, location and wording of signage to ensure a consistent message as they are already looking at a wider estuary approach.

We would recommend that consideration is given to amending the proposed landscaping in the fields south of the Tarka Trail so that the trees are planted along the new access road rather than the eastern and southern field boundaries. This would help to maintain the open aspect/sight lines required by the water birds identified as using the fields opportunistically for foraging.

In conclusion, your Authority should ensure a comprehensive package of effective robust mitigation measures are secured before determination.

Should the application change, or if the applicant submits further information relating to the impact of this proposal on the Taw Torridge Estuary SSSI, Natural England will be happy to consider it, and amend our position as appropriate. Following submission of this advice to the LPA we are able to consider offering advice to the developer through our [Discretionary Advice Service](#)

Other advice

Please note that our advice in our consultation response of 18th February 2019 (ref 269685) for **Biodiversity Net Gain; the North Devon Area of Outstanding Natural Beauty; Caen Valley Bats SSSI; South West Coast Path National Trail (SWCP NT)/Tarka Trail; Local Sites; Priority habitats and species; Protected species; Soils and the England Coastal Path** remains current and relevant to the amended application. I have attached a copy for ease of reference.

Please do not hesitate to contact me on the details below if you wish to discuss anything further.

Yours sincerely
Clare Guthrie

18 February 2019

Our ref: 269685

Your ref: 60823



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Dear Keith,

Planning consultation: 60823 (Additional information) Hybrid planning application (A) Full application for the raising of the ground levels, site access works & highway infrastructure to site, (B) Outline application for 280 dwellings (use class C3); 50 bed hotel (class use C1) space of up to 3000sqm. employment (use class B1) space of up to 1000sqm gross floor space; up to 2000sqm (C) all the associated infrastructure including removal of any contamination, roads, footpaths, cycleway, drainage (including attenuation works), flood defence works, landscaping, public open space, utilities and vehicle parking and including demolition of buildings former Yelland power station Lower Yelland Yelland Barnstaple Devon EX31 3EZ.

Thank you for your email consultation received on 7th January 2019 regarding the above proposal. Based on the information provided we have the following comments⁶.

SUMMARY OF NATURAL ENGLAND'S ADVICE

Further information advised to determine impacts on designated sites:

- As the Competent Authority, North Devon Council is required to conduct a Habitat Regulations screening to determine the significance of impacts on **Braunton Burrows Special Area of Conservation (SAC)** and the scope for mitigation and to demonstrate that the requirements of Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017 have been considered by your authority.
- Further consideration is required regarding impacts on, and mitigation for, the **Taw Torridge Estuary SSSI**.
- Amendments to the Construction Environment Management Plan (CEMP) are required to include necessary **SSSI mitigation**.

Details are provided below. Without this information, Natural England may need to object to the proposal. Please re-consult Natural England once this information has been obtained.

Natural England's advice on other matters is provided at **Annex 1** of this letter.

⁶ This reply comprises our statutory consultation response under the provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995, Section 28 of the Wildlife and Countryside Act 1981 (as amended), the Habitat Regulations 2017 and the EIA Regulations 2017.

European designated sites

Braunton Burrows Special Area of Conservation (SAC)

Braunton Burrows SAC is one of the most important sand-dune systems in the country. The application is for residential development likely to have an indirect impact on the Braunton Burrows SAC because of its proximity to the European site and the likelihood of recreational impacts associated with development.

North Devon Council's Habitat Regulations Assessment (HRA) at the Joint Plan level (JLP) considered whether there would be an increase in recreational pressures on the Braunton Burrows SAC associated with housing development allocated in North Devon and Torrridge Districts over the life of the JLP. It identified the main recreational pressure as coming from the Braunton, Wrafton and Chivenor area and concluded that there is unlikely to be an adverse effect on the integrity of the interest features for which the Braunton Burrows SAC has been notified.

However, since adoption of the JLP, new evidence has come to light through an assessment, commissioned by the Council, of the potential recreational impacts linked to non and plan-led development for the Braunton Burrows SAC (Footprint Ecology September 2018).

The report states that '*recreational impacts are currently evident at Braunton Burrows*' and that '*recreational impacts would be likely to intensify and spread as a result of an increase in visitor numbers*'. It also states that '*where likely significant effects are identified it is anticipated that it will be difficult to rule out adverse effects on integrity without appropriate mitigation*'.

This would suggest that there is a probability or risk that recreational activities arising from occupants of all new residential development within a certain distance of the Burrows would, in combination, have a significant effect on the SAC. In light of the new evidence, it is no longer appropriate to conclude no adverse effect on integrity (AEOI) from plan led housing.

North Devon Council is currently working on identifying a Zone of Influence (Zoi) where effects from development could have a likely significant effect (LSE) on the special interest of the Braunton Burrows SAC. It is possible that Yelland Quay will fall within the Zoi.

All new applications likely to have a significant effect will require Appropriate Assessment and need to address measures for mitigation prior to determination. All future assessments should be made in light of the best and most recent evidence available.

As a competent authority under the provisions of the Habitats Regulations, North Devon Council should have regard for any potential impacts that a plan or project may have⁷ and are required (by Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017) to conduct a Habitat Regulations Assessment to determine the significance of these impacts on the SAC and the scope for mitigation.

The [Conservation Objectives](#) for the Braunton Burrows SAC explain how the sites should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

People Over Wind

North Devon Council as the competent authority will need to seek and rely upon their own legal advice on the interpretation of People Over Wind⁸. This case relates to how mitigation measures are treated at the screening stage of a Habitats Regulations Assessments (HRA) when deciding whether an

⁷ Requirements are set out within Regulations 63 and 64 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 63 and 64 are commonly referred to as the 'Habitats Regulations Assessment' process. The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/>

⁸ Ruling made on 12 April 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of [People Over Wind and Sweetman vs Coillte Teoranta](#) (ref: C-323/17).

appropriate assessment of a plan/project is required. This judgment is now the leading case on mitigation and screening assessments and all competent authorities should be mindful of it in the context of their own screening decisions taken under the Habitats Regulations. They should come to their own view as to whether to undertake appropriate assessments of plans and projects that they are responsible for.

Nationally designated sites

Taw Torridge Estuary Site of Special Scientific Interest (SSSI)

The proposal is adjacent to the Taw Torridge Estuary Site of Special Scientific Interest (SSSI) which is notified for its intertidal mud and saltmarsh habitat and overwintering bird interest (high numbers of overwintering Golden Plover, Lapwing and Curlew, more than 20,000 Non-Breeding Water birds).

Further information on the SSSI special interest features can be found at www.magic.gov.uk The composition of the SSSI assemblage alters through time as species populations fluctuate, therefore any native wetland bird species (in practice waders and wildfowl) will be a legitimate part of the bird assemblage.

Although the principle of mixed use development at Yelland Quay has been established in the adopted Local Plan (Policy FRE02), based on the survey data available the location and scale of development and duration of build have the potential to adversely affect the overwintering birds associated with the Taw Torridge Estuary SSSI.

Without mitigation, the increase in activity on and around the site during construction (5-15 years) and operation (recreational activity impacts) is likely to lead to disturbance and displacement of the overwintering estuary birds on the adjacent high tide roosting sites identified within the SSSI. The estuary birds are particularly sensitive during the winter and during stopovers on annual migrations, throughout which time they must build up energy reserves. Any disturbance that causes them to take flight, especially repeatedly, reduces foraging time and causes additional energy expenditure. This can result in a reduction in fitness making it a challenge to survive the winter.

The British Trust for Ornithology (BTO) Wetland bird Survey (WeBS) data indicates that the Isley to Instow count sector is of particular importance to wintering wetland birds in the context of the estuary with the High Tide Roost at Yelland being particularly important. The 2017/18 overwintering bird surveys provided in the Environmental Statement (ES) support this.

The data being gathered through the Taw Torridge Estuary High Tide Roost and Recreational Impacts study (due to report at the end of March 2019), of which your Authority is a partner, suggests the Yelland roost is one of the few places within the estuary to provide quiet refuge for birds. Other roost sites are available in the estuary but are already subject to greater levels of disturbance. Ultimately, this can reduce the capacity of an area to support large numbers of birds.

The footpath/recreation surveys done as part of the ES show that the South West Coast Path National Trail which runs along the northern boundary of the site adjacent to the estuary is used all year round but is currently used by low numbers of visitors, predominantly dog walkers, during the winter (average 11/day).

The Cotswold Transport Planning Footpath and Household visitor surveys identified that provision of parking, toilets, circular routes, cafés etc. would encourage people to other sites. These elements will all be provided by the development and it is therefore likely to attract more people from further afield as well as those resident.

The [Taw Torridge Estuary Management Plan 2010-2015](#) has as its first Aim '*To reverse the decline in biodiversity*' and states that '*The main concern around the Taw Torridge Estuary relates to the disturbance to wildlife*'. It identifies the potential for creating alternative sites in the estuary via various policies and objectives e.g. Policy C1 no net loss of intertidal area through coastal squeeze; Objective CC1 by 2015 there will be 15ha of new estuary side habitat; Objective BIO2 there will be an increase in suitable roosting habitat for birds within the estuary.

The development site is in an area of anticipated coastal change. North Devon Council will need to consider this proposal in view of SMP2 policy and the anticipated Taw Torridge Estuary coastal change management area (CCMA). In light of climate change/sea level rise and the requirement to retain and improve existing coastal defences the saltmarsh at this location is likely to be subject to coastal squeeze and is likely to disappear with a loss of the high tide roost.

Based on the information provided, whilst we welcome the mitigation proposed, Natural England has the following concerns:

Noise – further consideration

The noise assessment (chapter 13) appear to underplay the potential impact on the ecological receptors (EC 1-3). Predicted construction noise levels appear to be based on a 10 hour average (LAeq 10hr) and a change of 3dB LAeq is considered to be slight. Table 13.18 indicates increases in background ambient noise as a result of construction of between 2.1 and 14dB.

Natural England's advice is that predicted construction and operational noise levels should be within background levels and that an increase of 3dB to the LAeq measure can be considered significant.

We welcome the commitment to mitigating noise from construction activities but do not feel the information submitted provides the LPA with enough certainty that impacts will be avoided. The noise assessment has confirmed that the site can be considered quiet at the ecological receptors. The prolonged nature of the construction phase (5-15 years) is an important consideration when thinking about introducing increased noise levels to a site.

Timing of works has the potential to reduce potential disturbance effects substantially in some circumstances. For example, on estuaries the most sensitive period, when the greatest numbers of birds are present will be between September and March. Requiring a blanket restriction on all construction works for several months can be very restrictive to developers and does not take account of site-specific information such as the existing background noise at the site, the timing of significant aggregations of birds in the affected area and the possibility of less noisy works being carried out during sensitive periods.

At coastal locations the tidal cycle might provide opportunities to synchronise the noisiest and most disturbing activities with states of the tide when birds are least vulnerable to disturbance. For example, disturbance could be restricted to the state of the tide when birds are foraging farthest from the working area, generally at low tide, or at the higher tides when no intertidal habitat is exposed (and if no high tide roosts are nearby).

Effective acoustic screening requires intercepting the 'line-of-sight' between source and receptor birds. Screening is often very effective when works are taking place at ground level. Ordinary acoustic screens are often ineffective for piling as pile lengths can be 20m above ground when piling commences. For work at higher elevations an acoustic curtain is available (e.g. Soundex) which is hung from scaffolding.

- Natural England's advice is that noise contour maps of background noise levels and predicted construction noise levels are provided to indicate more clearly where the significant impacts are likely to be and when. As the development is large scale lasting many years we would also advise a noise scatter graph.
- A noise management plan can then be produced to ensure that construction and operational noise levels are within background levels and where any significant increases are predicted at ecological receptors, with the 2.5m high acoustic screen in place, then additional measures will be required e.g. categorising activities that would create significant noise impact and carrying them out at times of low tide. Noise modelling will avoid the need for mitigation measures to apply to the whole site and at all phases.

Lighting – further consideration

- Detailed lighting design for the development is proposed at the detail design stage in accordance with the lighting strategy. This currently covers public lighting only. Our advice is that consideration must also be given to the potential impacts of private lighting. All designs should be subject to review by lighting specialists and ecologists to ensure a dark corridor (<0.5lux) at the estuary front. Consideration could be given to the use of specialist glazing in the dwellings/buildings closest to the foreshore.

Proposed Mitigation – amendments/further consideration

- Fencing is proposed along the whole of the estuary front to prevent access to the foreshore. Our advice is that this must extend further east to prevent access from the ashbeds to Isley Marsh RSPB reserve.
- Amendments to the Construction Environment Management Plan (CEMP) are required to include reference to mitigation required to protect the SSSI i.e. noise mitigation/acoustic screening and construction lighting on the foreshore.
- An alternative to the footpath link from the development to the coast path shown on the proposed site plan ref: Y029 18 at the western end needs to be considered as it will put people on to the coast path adjacent to the high tide roost. The proposed screen may need to extend further to the west to avoid the same issue.
- Construction of the flood defence/ground raising is proposed for the period March to October. Our advice is that the most sensitive period, when the greatest numbers of birds are present, will be between September and March inclusive and so the construction period may need to be shortened or additional mitigation put in place.

Additional mitigation

- We would like to see consideration given to securing additional habitat in perpetuity for the birds to use at high tide. This would include compensating for the loss of the fields to the south of the development that have been identified as opportunistic but regular foraging areas for Lapwing and Little egret. The detail of the offsite biodiversity netgain has not been determined but offsite projects that also contribute towards the ecological function of the estuary e.g. habitat/habitat features that support overwintering waders and wildfowl associated with the SSSI should be considered such as Bowling Green Marsh in Topsham (associated with the Exe Estuary SPA).
- Although not a SSSI feature, the level of bird use during the summer is of County Wildlife Site level importance. No reference has been made to the breeding Oystercatcher roost on the jetty identified in the 2015 ACD assessment.

Water quality

- Maintenance of a SuDS scheme is essential to ensure it functions as designed whilst also optimising benefits for biodiversity. How this will be achieved in the short, medium and long term needs to be identified and legally enforceable.
- How the maintenance and management of the SuDS will be funded is also an important element of any strategy. If the Planning Authority is minded to grant the application we would advise that a condition should be included on any permission or secured through S106 obligations as appropriate.

Should the application change, or if the applicant submits further information relating to the impact of this proposal on the Tav Torridge Estuary SSSI, Natural England will be happy to consider it, and amend our position as appropriate. Following submission of this advice to the LPA we are able to consider offering advice to the developer through our [Discretionary Advice Service](#).

Local sites

RSPB Isley Marsh nature reserve and Home Farm Marsh nature reserve/County Wildlife Site (Gaia Trust)

Your authority should ensure it has sufficient information to fully understand the impact of the proposal on any Local Sites such as County Wildlife Sites (CWS).

The RSPB Isley Marsh nature reserve and Home Farm Marsh nature reserve/County Wildlife Site

(Gaia Trust) are in close proximity to the development site. Your Authority should ensure it has sufficient information to fully understand the impact of the proposal on these local sites before it determines the application.

The estuary also provides important summer foraging habitat for waders/wildfowl associated with the SSSI interest. Although not a SSSI feature, the level of bird use during the summer is of County Wildlife Site level importance.

The impacts will be similar to those identified for the Taw Torridge Estuary SSSI and Yelland roost so we would refer you to the comments already made in this letter.

Natural England's advice on additional matters is provided at Annex 1 of this letter.

Please do not hesitate to contact me on the details below if you wish to discuss anything further.

Yours sincerely

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Annex A

Nationally designated sites

Caen Valley Bats SSSI

Although the proposal is some distance from the Caen Valley Bats SSSI, Greater Horseshoe bats associated with the SSSI are known to cross the estuary at the Caen River to the south side of the river Taw and then fly along the Tarka Trail. Further information on the SSSI special interest features can be found at www.magic.gov.uk

Based on the information provided and the mitigation proposed, our advice is that the proposal is unlikely to have a significant impact on the Greater Horseshoe bats associated with the SSSI. For other species of bat please refer to Natural England's [standing advice](#).

Information in the Environmental Statement indicates that lighting levels along the Tarka Trail will be <0.5lux to maintain a dark flight corridor for foraging and commuting bats and that large parts of the site will remain unlit. Low level downward bollard lighting will be used in the main development.

We would draw your attention to The Institute of Lighting Professionals' practical guidance on considering the impact on bats when designing lighting schemes - [Guidance Note 8 Bats and Artificial Lighting](#). They have partnered with the Bat Conservation Trust and ecological consultants to write this document on avoiding or reducing the harmful effects which artificial lighting may have on bats and their habitats.

Low numbers of Greater Horseshoe and Daubenton's bats were recorded in the underground chamber to the west of the development site indicating a day roost and a night/feeding roost. It has also been shown to host a small number of hibernating Lesser Horseshoe bats.

The loss of these roosts will be compensated for, under licence, with a bespoke bat house sited in the dark corridor alongside the Tarka Trail to the south east of the development site.

Appropriately worded conditions should be part of any permission to secure all necessary mitigation measures.

Biodiversity Net gain

Development provides opportunities to secure a net gain for nature in line with paragraphs 170 and 174 of the [revised NPPF](#) (2018) and the Defra 25 year Environment Plan.

Policy ST14 *Enhancing Environmental Assets* of the North Devon and Torridge Joint Local Plan expects all development to provide a net gain in biodiversity (note 6.4 of Policy ST14).

Biodiversity metrics⁹ are available to provide certainty and assist developers and local authorities in quantifying and securing net gain. Local Authorities can set their own net gain thresholds but Natural England would currently expect a minimum of 5% net gain and LPAs should aim to negotiate upwards.

The metric submitted indicates that biodiversity net gain cannot be achieved within the site and the applicant recognises this will need to be secured off-site. The detail of this has not been determined but offsite projects that also contribute towards the ecological function of the estuary e.g. habitat/habitat features that support overwintering waders and wildfowl associated with the SSSI should be considered.

We note the development includes green space provision in the form of playing fields, public open space, plus a SuDS area to the west. The proposal could also consider incorporating orchards and allotments. The development could consider supporting rarer species within the orchard or as specimen fruit trees, contributing towards keeping them from extinction. As an example, the parish of Landkey, to the south east of Barnstaple, has been instrumental in reviving the mazzard, a type of

⁹ e.g. Defra metric; North Devon Biosphere reserve metric based on the Defra metric

cherry peculiar to the West Country. More detail can be found at <http://www.englishinparticular.info/orchards/o-devon.html>

As proposed, to ensure delivery of appropriate mitigation and enhancement measures, Landscape and Environmental Management Plans should be secured via conditions or obligations as appropriate.

Landscape impacts

North Devon Area of Outstanding Natural Beauty (AONB)

The proposed development is for a site within the setting of North Devon AONB, a nationally designated landscape.

Although the proposal site represents development of a brownfield site, the introduction of housing here will change the landscape character of the area, bringing the town to the river edge and urbanising what is a relatively undeveloped estuary.

Natural England advises that the planning authority gives the advice of the North Devon AONB partnership careful consideration, alongside national and local policies to determine the proposal.

The policy and statutory framework to guide your decision and the role of local advice are explained here.

Your decision should be guided by paragraph 172 of the National Planning Policy Framework which gives the highest status of protection for the 'landscape and scenic beauty' of AONBs and National Parks. For major development proposals paragraph 172 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan particularly ST09, ST14 and DM08A.

The AONB Partnership will have knowledge of the site and its wider landscape setting, together with the aims and objectives of the AONB's statutory management plan, which will be a valuable contribution to the planning decision.

Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape's sensitivity to this type of development and its capacity to accommodate the proposed development. All proposals should complement and enhance local distinctiveness.

The statutory purpose of the AONB is to conserve and enhance the area's natural beauty. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm that statutory purpose. Relevant to this is the duty on public bodies to 'have regard' for that statutory purpose in carrying out their functions (S85 of the Countryside and Rights of Way Act, 2000).

The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

South West Coast Path National Trail (SWCP NT)/Tarka Trail

The proposal is adjacent to the South West Coast Path National Trail and the Tarka Trail.

Based on the information provided, there are likely to be direct landscape and visual impacts on the SWCP NT and Tarka Trail as well as physical disruption during construction of the development site.

Although the proposal site represents development of a brownfield site, the introduction of housing here will change the landscape character of the area, bringing the town to the river edge and urbanising what is a relatively undeveloped area of the estuary.

We recognise that the close board fencing, necessary to buffer the SSSI high tide roost, will have an

impact on the coast path experience at that point. Viewing points within the fence will enable walkers to see the views without disturbing the birds, similar to a bird hide.

The ES states that the greatest significant effect would be felt by recreational users of the SWCP NT closest to the site.

Your Authority should be satisfied that the development will not detract from the overarching perceptions of remoteness and relative tranquillity when travelling along this route and that appropriate mitigation measures have been incorporated for any adverse impacts.

We advise you to also seek the advice of the National Trail Officer and/or the Coast Path Officer for North Devon to ensure there are no adverse effects on the Trail. Their knowledge of the location and wider landscape setting of the development should help to confirm whether or not it would impact significantly on the SWCP NT/Tarka Trail. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officers.

Priority habitats and species

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006 found [here](#)¹⁰. Consideration should be given to how any loss will be avoided, mitigated or compensated.

The ES chapter 6 has identified several priority habitats and species within the development site.

Measures to avoid or reduce impacts or compensate for habitat loss should be secured via the LEMP.

Protected Species

Natural England has produced [standing advice](#)¹¹ to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice.

Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Soil and land use

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions.

¹⁰<http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

¹¹ <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>