

REPORT TO: STRATEGY AND RESOURCES COMMITTEE

Date: 1 July 2019

**TOPIC: BRAUNTON BURROWS SPECIAL AREA OF
CONSERVATION VISITOR IMPACTS AND MITIGATION**

REPORT BY: HEAD OF PLACE

1 INTRODUCTION

- 1.1 The purpose of this report is to seek approval to commence securing developer contributions towards a strategic environmental mitigation strategy for Branton Burrows Special Area of Conservation (SAC).
- 1.2 Evidence produced since the adoption of the North Devon and Torridge Local Plan (the "Local Plan") concludes that as a result of increasing visitor pressure adverse effects on the integrity of the SAC cannot be ruled out and development which contributes to harm of the SAC should not be granted without appropriate mitigation measures being in place.
- 1.3 Natural England has advised that a formal mitigation management plan must be produced to provide certainty on what mitigation measures are required.
- 1.4 The mitigation management plan is due to be completed by September 2019 and therefore interim measures are required.

2 RECOMMENDATIONS

- 2.1 That the Local Authority commence collection of developer contributions at a rate of £100 per unit (including administration fees) on any development resulting in a net gain in temporary or permanent residential or holiday accommodation within the identified Zone of Influence (Zol).
- 2.2 That the rate of contributions is reviewed as soon as reasonably practical following the completion of the formal mitigation management plan.
- 2.3 That Full Council be recommended to amend the Scheme of delegations to provide delegated power to the Head of Corporate and Community to enter into undertaking and obligations under s106 T&CPA and/or s111 LGA1972 to secure contributions.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To fulfil the Council's statutory duty to ensure that any plan or project will not adversely affect the integrity of a European Community Habitats Directive designated site and to secure any necessary compensatory measures to ensure the overall coherence of the site is protected.
- 3.2 To enable the ongoing functionality of the Local Planning Authority to determine planning applications and continue issuing permission for otherwise policy compliant development within the Zol.

4 REPORT

- 4.1 The Conservation of Habitats and Species Regulations 2017 sets out a duty to maintain and restore European Designated Sites. Local authorities are required to have regard to the implications of plans or projects on the integrity of protected sites conservation objectives.
- 4.2 The SAC is also designated as a Site of Special Scientific Interest (SSSI) and is protected by the provisions of Part II of the Wildlife & Countryside Act 1981 (as substituted by Schedule 9 to the Countryside & Rights of Way Act 2000 and inserted by section 55 of the Natural Environment and Rural Communities Act 2006).
- 4.3 The North Devon and Torridge Local Plan Habitat Regulations Assessment (HRA) has iteratively assessed the Local Plan at each stage of its development. The HRA includes detailed Appropriate Assessment (AA) of potential impacts on Branton Burrows SAC and the Culm Grassland SAC resulting from the cumulative effect of all development within the Local Plan.
- 4.4 All further impacts on any protected sites resulting from individual Local Plan allocations alone or in combination with other plans or projects was screened out from further assessment.
- 4.5 At the Local Plan Examination the Inspector agreed with the conclusions of the Local Plan HRA/AA in that the potential impacts on Branton Burrows SAC and the Culm Grassland SAC were minimal and within acceptable limits. The Local Plan was adopted on this basis.
- 4.6 The Council commissioned Footprint Ecology to assess potential impacts on Branton Burrows SAC as a result of further non plan-led development in combination with that allocated for within the Local Plan. The Branton Burrows SAC – An Assessment of the Potential Recreational Impacts Linked to Non Plan-Led Development report was finalised in March 2019.
- 4.7 The report concluded that 'the Council as competent authority and Natural England as statutory nature conservation body can now respond positively, recognising a threat to the site that is only going to be exacerbated with further development in the absence of mitigation. It is therefore right to strive to achieve the conservation objectives by putting mitigation measures in place now, and not waiting for further deterioration before acting. The latter would be

contrary to their public body duties' and that '*when considering measures to alleviate recreation pressure, any mitigation measures necessary to provide the necessary certainty of effectiveness are best established at a more strategic level, i.e. where individual developments contribute towards a centrally managed mitigation approach*'.

- 4.8 In its e-mail of 13th November 2018 Natural England responded to a draft version of the report stating that "*This would suggest that there is a probability or risk that recreational activities arising from occupants of all new residential development within the Zone of Influence (ZOI) would, in combination, have a significant effect on the SAC and that the appropriate Assessment to accompany all new applications will need to address measures for mitigation.*"
- 4.9 In response to the final version of the report Natural England stated that '*If in the light of the recent Footprint evidence (and any further evidence that emerges subsequently) adverse effects on the integrity of the SAC cannot be ruled out consent should not be granted*' and that '*there are requirements for certainty both that mitigation measures will be in place before impacts occur and that the measures will work*'.
- 4.10 On behalf of the Local Authority, Footprint Ecology have carried out further visitor surveys and identified a robust Zol. The Zol encompasses Croyde Bay in the north and runs from Putsborough across to Barnstaple, with the southern edge following the A361/A39 as far as the Torridge (see Appendix A). A fully costed mitigation management plan is currently being produced and will reflect the Local Authority position in partnership with Natural England, National Trust and the landowner Christies Estate. Delivery of the mitigation plan will be through contributions secured from development within the Zol over the lifetime of the Local Plan.
- 4.11 The Local Authority seeks to adopt an interim position to cover the period prior to the mitigation plan being finalised. In order to address the duty referred to above, it is considered it will be necessary to adopt an interim position. The interim position will enable the Local Planning Authority to determine applications and continue issuing permission for otherwise policy compliant development within the Zol.
- 4.12 The Local Authority will seek contributions at a rate of £100 per unit (including administration fees) on any development resulting in a net gain in temporary or permanent residential or holiday accommodation within the Zol. The interim mitigation costs are based on the annual average rate of approved applications within the Zol since 2011. The per-unit contribution will be reviewed once the mitigation plan is published and detailed mitigation proposals are available.
- 4.13 The Local Planning Authority cannot legally grant planning permission for developments where the impacts on the protected habitats are not mitigated, and hence the habitats mitigation contribution must either be paid before permission is granted, or a Unilateral Undertaking must be in place before permission is granted. Advice has been sought from local authorities managing the Exe Estuary/Dawlish Warren habitat mitigation plans which have informed the selection of the most appropriate means of collecting contributions.

4.14 Unilateral Undertakings can involve significant legal expense for applicants, and delays to the issue of consent, and the Council's preference is therefore for applicants to provide an s111 Undertaking (Local Government Act 1972) and the necessary payment at the time at which planning applications are submitted.

4.15 The s111 Undertakings provide for the return of any monies paid in the event that planning permission is refused, or the timeframe for implementing the permission has expired, or an appeal lodged in respect of a refused planning permission is dismissed, subject to a reduction of any administration costs.

4.16 Proposals for onsite mitigation measures will not be implemented until sufficient funds accrue.

5 RESOURCE IMPLICATIONS

5.1 There are no additional costs to North Devon Council other than the already identified costs of Local Plan evidence base and currently emerging mitigation plan.

5.2 There are administrative fees associated with collection of developer contributions but these are to be covered within the per unit rate fee.

5.3 If the Council determines not to formally seek developer contributions towards strategic mitigation measures, the Authority may be subject to challenge.

6 EQUALITIES ASSESSMENT

6.1 Not applicable.

7 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?
Part 3 Annexe 1	Referred and delegated

8 STATEMENT OF CONFIDENTIALITY

8.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

9 BACKGROUND PAPERS

9.1 The following background papers were used in the preparation of this report:

- North Devon and Torridge Local Plan – Adopted (October 2018)
- North Devon and Torridge Local Plan Habitats Regulations Assessment (November 2017)

- Branton Burrows SAC – An Assessment of the Potential Recreational Impacts Linked to Non Plan-Led Development. Footprint Ecology. (March 2019).
- Branton Burrows Visitor Survey Results 2019. Interim Report with Postcode Data. Footprint Ecology. (March 2019)

The background papers are available for inspection and kept by the author of the report.

10 STATEMENT OF INTERNAL ADVICE

10.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers.

Author: Mark Saunders Date: 19th June 2019
Reference: Braunton Burrows SAC Mitigation