

21 December 2018

To whom it may concern,

Please find below the response to the Joint Spatial Plan - Technical Evidence Work Consultation on behalf of Avon Wildlife Trust (AWT).

Following on from Avon Wildlife Trust's (AWT's) comments provided at previous stages of the Joint Spatial Plan consultation process, this response reiterates many of our previous points which have yet to be fully addressed. AWT welcomes the commitment by the West of England's four Unitary Authorities to a joint approach to housing, employment and relevant infrastructure provision via the Joint Spatial Plan (JSP). However we remain concerned that several of the Strategic Development Locations (SDLs), particularly those proposed at Churchill, Banwell, Nailsea and Backwell, will have significant negative effects on some of the most important ecological sites in the region. The updated Habitats Regulations Assessment does not provide sufficient certainty that these SDLs and their associated infrastructure can be brought forward without significant ecological impacts.

Specific Comments

WED 010 – Updated Habitats Regulations Assessment

The Updated Habitats Regulations Assessment (HRA) is welcome as providing additional explanation and reasoning for the four West of England Authorities proposals. Having scrutinised this document and its predecessors we remain unsatisfied with the legal robustness that this document provides. Paragraph 6.3 of the HRA states

The objective of this HRA was therefore to determine whether there can be a reasonable degree of certainty that the quantum and distribution of development proposed by the JSP can be delivered through the lower-tier plans without harm to European sites.

AWT agrees that this should be the objective of the HRA, however we disagree with the subsequent conclusion that this degree of certainty can be provided by a "commitment through policy to a strategic approach to mitigation solutions".

The Court of Justice of the European Union ("CJEU") has made clear in a number of very recent cases, including People Over Wind,¹ that 'mitigation' measures should be treated with a high degree of suspicion and must meet a high bar, particularly in terms of certainty.²

AWT argues that with particular regard to the North Somerset and Mendips bats SAC the degree of certainty associated with the level of impact predicted and the success or otherwise of the proposed mitigation is very low. The updated HRA does not seem to have taken account of our previous response to the previous HRA and instead has

¹ Case C-323/17.

² See C-142/16 Commission v Germany (Moorburg Plant) (April 2017), Case C-441/17 Commission v Poland (Białowieża Forest) (April 2018), Case C-164/17 Grace & Sweetman v An Bord Pleanála (July 2018), Joined Cases C-293/17 & C-294/17 'Dutch Nitrogen' (November 2018) and Holohan (November 2018). Unlike People Over Wind (April 2018), all these cases concern how mitigation should be treated for the purposes of **appropriate assessment**.



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repeated the assertion that the including of the following policy wording provides sufficient certainty that likely significant effects on this SAC can be avoided.

Policy 7.4 Backwell

Strategic approach to the assessment, safeguarding and enhancement of greater and lesser horseshoe bat habitat (particularly the Juvenile Sustenance Zone between the A370 and Chelvey Road), and Tickenham; Nailsea and Kenn Moor SSSI interests.

Policy 7.5 Banwell

Strategic approach to the assessment, safeguarding and enhancement of greater and lesser horseshoe bat habitat including investigation of the potential to create a 'dark corridor' link through the development from open countryside around Stonebridge towards the Grumplepill Rhyne corridor.

Policy 7.6 Churchill

Strategic approach to the assessment, safeguarding and enhancement of greater and lesser horseshoe bat habitat. Investigation and implementation of a green corridor through development linking from open countryside to the west to Windmill Hill to areas south of Langford and beyond to the Langford Brook.

Policy 7.7 Nailsea

Strategic approach to the assessment, safeguarding and enhancement of greater and lesser horseshoe bat habitat, and Tickenham; Nailsea and Kenn Moor SSSI interests. This includes investigating the potential for a dark corridor through the new development linking habitats at Backwell through to open countryside to the north and at Batch Farm Meadow wildlife site.

AWT disagrees with this conclusion, particularly with regard to the policy amendments for Policy 7.5 and 7.7 which include the phrase 'Investigate the potential to create a dark corridor'. The phrase 'investigate the potential' does not provide certainty that this will be delivered or that it will result in the required outcome of maintaining connectivity between roosts and critical foraging areas.

Understanding how greater and lesser horseshoe bats use the landscape beyond the designated site boundaries is critical. In other locations Natural England, often working in partnership with local authorities and others, have identified and mapped the critical movement corridors for bats together with the main sustenance (foraging) zones associated with the component parts of bat designated SACs. This work has not been undertaken for the North Somerset and Mendips Bat SAC, although the HRA states in paragraph 5.142 that this work is currently being undertaken (although no time frame for the presentation of this work are given). In the absence of this information it is impossible to state with any degree of certainty what the level of impact the quantum and distribution of development proposed by the JSP will be. AWT would also argue that if the initial level of impact cannot be identified then there can be no certainty that any proposed mitigation will be successful.

The updated HRA correctly identifies the North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: Supplementary Planning Document as providing a mechanism for assessing importance of habitat for SAC bats and for calculating habitat mitigation needs. In Annex 7: Application of the Habitats Regulations of the SPD, paragraph A7.8 it states:

*For the Somerset authorities to be able to conclude with enough certainty that a proposed project or development will not have a significant effect on the SAC, the proposal or project must therefore be supported by **adequate evidence***

AWT would argue that in this case the evidence available at this stage is not adequate. Earlier in the SPD it states:

For proposals within bands A and B of the Bat Consultation Zone, full season surveys will be needed (unless minor impacts can be demonstrated), and must include automated bat detector surveys.

Given the JSP proposes 7,850 new dwelling and a range of associated infrastructure within zones A and B it would seem at the very least a robust HRA would be accompanied by, at minimum, a full season of surveys.

The HRA also seems to pay very little attention to the infrastructure associated with the proposed development locations beyond their impacts on air pollution. The new road associated with Banwell and Churchill SDL is mentioned in passing but AWT would expect the potential impacts of this kind of linear barrier to bat movements to be addressed in greater detail at this stage in order to provide some degree of certainty that its construction will not sever the connection between the summer maternity roost on the levels and the hibernation roost in the Mendips. This road alone has the potential to have a significant effect on the integrity of the North Somerset and Mendips Bat SAC and yet no evidence is provided as to the predicted level of this impact or the mitigation that it will require.

Yours sincerely



Eric Heath

Head of Land Management