

Mid Devon Local Plan Review 2013 – 2033

Proposed Submission (incorporating proposed modifications) Examination in Public

**Hearing 1:
Policy J27
(20/09/2018)**

Issue 9

**Parties: Mid Devon District Council
Natural England**

Date: 24.08.2018

Signatures

Signature

A handwritten signature in black ink, appearing to read 'Jenny Clifford'.

**Jenny Clifford (Mrs) - Head of Planning, Economy and Regeneration
On behalf of Mid Devon District Council**

Signature

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**Denise Ramsay
Team Leader – Devon, Cornwall and Isles of Scilly Area Team
On behalf of Natural England**

ISSUE 9	Is the approach to the SAC sufficient and linked to that, what account is taken of the Priority Habitats that form part of the proposed allocation?
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1. Introduction

1.1 This joint statement of common ground (SoCG) has been prepared by Mid Devon District Council (MDDC) and Natural England (NE) in relation to the Mid Devon Local Plan Review. It is prepared in the context of the preliminary hearings relating to Hearing 1: Policy J27: Land at Junction 27 of the M5 Motorway. This SoCG relates specifically to Issue 9 of the Inspector's Matters and Issues [ref. ID02a] and, unless explicitly stated otherwise, outlines matters of agreement between MDDC and NE in respect of Issue 9. The SoCG is intended to assist the Inspector during the Examination.

2. Culm Grassland Special Area of Conservation (SAC)

2.1 The approach to the SAC is sufficient and legally compliant. Habitat Regulations Assessment (HRA) screening of the Local Plan Review identified that none of the policies or site allocations were considered to result in a 'likely significant effect' on the European sites within 10km of Mid Devon. However 'uncertain effects' were identified for some of the strategic policies and all of the site allocations, as such, the policies and proposals may result in effects on European sites (either alone or in combination). An Appropriate Assessment was then undertaken (ENV02) which concluded that adverse effects on the integrity of European sites around Mid Devon from policy and site options in the new Local Plan, either alone or in combination with other plans will not occur, provided that the identified mitigation as proposed in the Appropriate Assessment is implemented. The identified mitigation proposed in the Appropriate Assessment has been incorporated as part of the Local Plan Review policies (S1 Sustainable development priorities, S9 Environment and DM28 Other protected sites). Further updates to the HRA have since been undertaken reflecting the amendments to the plan following the Proposed Submission Stage consultation including an Appropriate Assessment of the inclusion of Policy J27 (ENV03 and ENV04).

2.2 ENV03 formed an addendum to the 2015 HRA Report. It reviewed the changes incorporated in the Local Plan Submission Draft and considered whether the nature and scale of the proposed changes were sufficient to change the findings of the HRA. The addendum concluded that *"no changes are expected to the findings and conclusions of the 2015 HRA Report"*. Further to this, LUC prepared ENV04, a supplement to previous HRA work which assessed development at J27 of the M5 and associated housing and considered how these proposals could affect the findings of the original HRA if an allocation for the development was incorporated into the Local Plan. ENV04 was prepared as ENV03 had not previously considered the J27 proposals. The screening process of the J27 option concluded that there would be an uncertain effect in relation to air pollution of the Culm Grasslands SAC. As such an Appropriate Assessment was undertaken to determine whether the impacts arising from the proposed development in combination with the

other policies in the new Local Plan (as addressed in ENV03) and other plans and projects would have an adverse effects on the Culm Grasslands SAC. The conclusions of the updated Appropriate Assessment (ENV04) show that the J27 site allocation, alone or in combination with the new Local Plan proposals or other plans and projects at the time of undertaking the HRA, will not have an adverse effect on the integrity of the Culm Grasslands SAC.

- 2.3 In response to the findings of the HRA Appropriate Assessment for J27, Natural England (6242) as part of their representation to the Local Plan Review 2013-2033 Proposed Submission (incorporating proposed modifications) consultation January 2017 (SD08 – ID 6242) noted that criterion e) of policy J27 states that *'prior approval of planning permission mitigation measures for the Culm Grasslands Special Area of Conservation (SAC) shall be identified and agreed'* but that the Habitats Regulations Assessment, Appropriate Assessment Report (dated 22nd December 2016), published alongside the Local Plan has addressed potential impact on the SAC. This Appropriate Assessment report concludes (at para 5.1) that *"The J27 site allocation, alone or in combination with the Local Plan proposals, will not have an adverse effect on the integrity of the Culm Grasslands SAC"*. Natural England therefore recommended that Criterion e) of Policy J27 should be revised in light of the findings set out in the Appropriate Assessment. The Council and Natural England are of the opinion that protection for European sites and consideration of potential impacts at the project/application stage is addressed through policy DM28 and more generally in policy J27(c). Therefore in accordance with this recommendation and the updated findings of the J27 Proposals: Habitats Regulations Assessment – Appropriate Assessment Report (2016), SD14 modification 20 proposes to delete criterion e) of Policy J27 and amend paragraph 3.184d to remove reference to *"the need to ensure appropriate mechanisms are in place to ensure that the integrity of the Culm Grasslands SAC will not be adversely affected"*.
- 2.4 Natural England also identified in hearing statement J27-04 that North Devon Council and Torridge District Council were preparing a joint plan which was under examination. A number of main modifications to the North Devon and Torridge Local Plan were published for consultation on 20th July 2017 which post-dated the submission on the Mid Devon Local Plan. The modifications included a number of new allocations for housing to address a need for uplift in housing supply (around 17%). Traffic associated with additional allocations within North Devon and Torridge could, in combination with proposals in Mid Devon, have an impact on the Culm Grasslands SAC which lies adjacent to the main route linking Mid Devon to North Devon/Torridge (A361). Natural England identified that the potential impact of the additional proposals within the North Devon and Torridge area, in combination with those proposed within adjoining areas such as Mid Devon will therefore need to be subject to a Habitats Regulations Assessment. North Devon and Torridge Councils undertook an update of the Habitat Regulations Assessment (November 2017) to take into account the modifications proposed in the North Devon and Torridge Local Plan (NDTLP), and the in-combination effects with other plans and projects, including the submitted Mid Devon Local Plan Review (proposed modifications) 2017. This confirmed that the NDTLP in combination

with the Mid Devon Local Plan Review (incorporating proposed modifications) would not have an adverse effect on the integrity of the Culm Grasslands SAC¹.

2.5 In light of the recent judgement of the Court of Justice of the European Union in *People over Wind, Peter Sweetman v Coillte Teoranta* (Case C-323/17) the Planning Inspector submitted letter (ID06) requesting Mid Devon District Council (MDDC) to review the submitted HRA and confirm the extent to which it is legally compliant. LUC reviewed the HRA on behalf of MDDC (ID07), in summary LUC concluded that in their professional opinion the overall conclusions of the HRA remain robust in light of the above case law. Although mitigation was taken into account at the screening stage (as detailed in ID07), “the potential likely significant effects that were associated with the three policies that were screened out on the basis of mitigation were included in the Appropriate Assessment anyway, as a result of other policies that were not screened out” (Para 1.12 & Table 1 ID07). The Local Plan Review was also subject to Appropriate Assessment. Had mitigation not been taken into account at screening stage, the Appropriate Assessment would still have been undertaken in the same way, i.e. including an assessment of the same type of impacts on the same European sites.

3. Priority Habitats

3.1 Mid Devon District Council set out in ‘J27 – MDDC – 6 – Mid Devon District Council Issue 9’ that Priority Habitats exist within the J27 site allocation which are identified on the Policies Map and are unrelated to the Culm Grasslands SAC. Natural England’s hearing statement J27-04 similarly recognises that the priority habitats with the J27 site allocation are not linked to the Culm Grasslands SAC as such they have been considered separately. Proposed Policy J27 identifies the need for environmental protection and enhancement at criterion c). However in line with national guidance specific reference to the priority habitats within the site allocation were not provided for, whereby in drafting policies undue repetition has been avoided (National Planning Policy Guidance Paragraph: 010 reference ID: 12-010-20140306). Principles that are common for other allocations in relation to Priority Habitats are considered in policy DM28. Discussions have been held with Natural England (6242) following their representation to the Local Plan Review 2013-2033 Proposed Submission (incorporating proposed modifications) consultation January 2017. Given the views of Natural England for additional reference to Priority Habitats with regard to Policy J27 and given the scale of the site and the importance of the Priority Habitats within the site area, the following supporting text has been agreed and is proposed to be included at paragraph 3.184d as follows:

“Priority habitats exist within the site and in line with criterion c) of Policy J27 should be protected and enhanced.”

¹ <http://consult.torridge.gov.uk/portal/planning/localplan/examination/> (Main Modification Document MMD11, MMD11a)