



MID DEVON LOCAL PLAN REVIEW 2013 – 2033

Proposed Submission (incorporating proposed modifications) Examination

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Main Hearings - Hearing 4: Tuesday 19th February 2019

Matters and Issues

Development Management Policies

Statement of Mid Devon District Council

ISSUE 26	Does Draft Policy DM28 (Other Protected Sites) work in the light of recent development in the courts?
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26.1 Yes, Draft Policy DM28 (Other Protected Sites) does work in light of recent development in the courts.

Recent development in the courts

26.2 Reference to ‘recent development in the courts’ is understood to mean 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). This is summarised in a letter from the Chief Planning Officer to the Council, dated 15th January 2019, as “In April 2018, in the case *People Over Wind & Sweetman v Coillte Teoranta* (“People over Wind”), the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means if a likely significant effect is identified at the screening stage of a habitats assessment, an ‘Appropriate Assessment’ of those effects must be undertaken.”

Policy DM28 and development affecting Natura 2000 sites

26.3 A Statement of Common Ground (**SCG6**) has been agreed between the Council and Natural England which has followed the recent judgement of the Court of Justice of the European Union. In this, paragraph 2.3 states “The Council and Natural England are of the opinion that protection of European sites and consideration of potential impacts at the project / application stage is addressed through policy DM28...”.

- 26.4 While Policy DM28 does not make specific reference to the 'screening' of development proposals, or to 'Appropriate Assessment' it is workable in light of the recent development in the courts.
- 26.5 The final paragraph in Policy DM28 makes clear that planning permission will be refused where development proposals would lead to an individual or cumulative adverse impact on Natura 2000 sites [which includes European protected habitats under the Habitats Directive as referred to in the court case]. The assessment of adverse impact would be determined through a screening of the development proposal and where an adverse impact is found then an Appropriate Assessment must be undertaken. It is at this stage that mitigation measures may be identified and put in place (criterion c) in Policy DM28) to satisfy the final part of this paragraph, that 'the integrity of the features of the Natura 2000 site would not be affected'.

Policy DM28 and 'sound' Local Plan Part 3 Policy DM30

- 26.6 Policy DM28 has been carried forward, substantially unaltered, from Policy DM30 in the adopted Local Plan Part 3 Development management policies DPD (**LDO03**). This DPD was subject to an examination in public in March 2013 and has been found sound by a Planning Inspector for the Secretary of State. Local Plan Part 3 Policy DM30 has therefore been examined in the context of the 2012 NPPF and a substantially unaltered version is now included in the Local Plan Review.