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**31 March 2021**

Dear Member

**Cabinet – 8 April 2021**

With regard to Item 12 on the agenda for the above meeting (**The Design of Shopfronts and Associated Advertisements Supplementary Planning Document**), Natural England has provided advice to the Council yesterday about Habitat Regulations Assessment (HRA), in relation to the Somerset Levels and Moors Ramsar Site, which is relevant to some types of development in a handful of parishes in Mid Devon and therefore this has required Appendix 3 of this item to be updated (revised copy attached).

Members, I direct you to this copy to be read in conjunction to the report.

Yours sincerely

**Sally Gabriel**  
**Member Services Manager**

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## Appendix 3



### **Draft Mid Devon The Design of Shopfronts and Associated Advertisements Supplementary Planning Document (SPD)**

### **Habitat Regulations Assessment Screening Report**

Note: this report has been updated following advice received from Natural England on 30<sup>th</sup> March 2021. Updates are shown in bold and through ~~striketrough~~ for deletions from the text of the submitted plan and underlining for additions to the text

~~February~~ March 2021

## 1.0 Mid Devon The Design of Shopfronts and Associated Advertisements SPD

### *Purpose, scope and content*

- 1.1 The advice offered in this guidance is to help towards achieving successful designs where shop fronts are proposed either as new build or as replacements. It will set out the relationship between Mid Devon District Council (MDDC) planning policy and guidance whilst identifying its purpose as bridging the gap between high level policy aspirations and delivery on the ground. This is to ensure that future change integrates well into the existing context.
- 1.2 The document is set out in two parts. The first is a guide to a successful refurbishment or alteration to an existing shopfront, or complete replacement of a shopfront, or a brand new shopfront. The second sets out the permissions/consents that may be required and the context in which those decisions are made.

### *Relationship with the National Planning Policy*

- 1.6 The National Planning Policy Framework (2019), in Chapter 7 'Ensuring the vitality of town centres' sets out that "*Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation*" (paragraph 85, NPPF). Chapter 16 'Conserving and enhancing the historic environment', is the main part relative to heritage. This requires that great weight is given to a heritage assets conservation.

### *Relationship with the Mid Devon Local Plan*

- 1.8 The Mid Devon Local Plan 2013-2033 was adopted July 2020.
- 1.9 Applications for development must be determined in accordance with the Development Plan unless material consideration indicate otherwise as required by section 38(6) of the Town and Country Planning Act 1990 (as amended)
- 1.10 Policies with the Adopted Local plan that are relevant to this SPD are:
- DM1 – High Quality Design
  - DM16 - Fronts of shops and business premises
  - DM17 - Rural shopping
  - DM25 - Development affecting heritage assets
- 1.11 The Adopted Mid Devon Local Plan 2013 – 2033 has been subject to a Sustainability Appraisal (SA), which has incorporated a Strategic Environmental Assessment (SEA). The Local Plan Review has also been subject to a Habitat Regulations Assessment.

### *Status of Mid Devon The Design of Shopfronts and Associated Advertisements **Design Guide*** ***~~The Design of Shopfronts and~~***

- 1.12 The Design of Shopfronts and Associated Advertisements SPD will be adopted by the Council as a Supplementary Planning Document. The SPD will not be part of the development plan and does not introduce new planning policies into the development plan. It will, however, be capable of being a material consideration in determining planning applications.

## **2.0 Habitat Regulations Assessment**

### *Habitat Regulations Assessment*

- 2.1 A Habitat Regulations Assessment (HRA) refers to one of the several distinct stages of Assessment. These must be undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) to determine whether a plan or project may affect the protected features of a European site ('habitats site') identified under these regulations before deciding whether to undertake, permit or authorise it.

### *Screening*

- 2.2 All plans and projects which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site. This consideration is typically referred to as the 'Habitats Regulations Assessment screening' and should take into account the potential effects both of the plan/project itself and in combination with other plans or projects.
- 2.3 Where the potential for likely significant effects cannot be excluded, an appropriate assessment of the implications of the plan or project for that site, in view of the site's conservation objectives must be undertaken. A plan or project may be agreed but only after having ruled out adverse effects on the integrity of the habitats site. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.
- 2.4 In April 2018, the Court of Justice of the European Union delivered its judgement in Case C-323/17 People Over Wind & Peter Sweetman v Coillte Teoranta ('People over Wind'). The judgment clarified that making screening decisions as part of the HRA and for the purposes of deciding whether an appropriate assessment is required, mitigation measures cannot be taken into account. Mitigation measures intended to avoid or reduce the harmful effects of a plan or project, can only be taken into account at the appropriate assessment stage.
- 2.5 The Design of Shopfronts and Associated Advertisements SPD has been 'screened' for the purposes of the Habitat Regulations Assessment (HRA) to assess whether it may affect the protected features of a 'habitats site' identified under the Conservation of Habitats and Species Regulations 2017 as amended and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended).

## **3.0 Habitats site**

- 3.1 A Habitats site refers to any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

- 3.2 There are no Habitats sites within Mid Devon although there are 11 such sites within 10km (Table 1); the closest being the Culm Grasslands SAC which lies immediately adjacent to the north western boundary of Mid Devon District.

Table 1: Habitats Sites within 10km of Mid Devon District		
Special Areas of Conservation (SACs)	Special Protection Areas (SPAs)	Ramsar Sites
<ul style="list-style-type: none"> <li>• East Devon Pebblebed Heaths</li> <li>• Culm Grasslands</li> <li>• South Dartmoor Woods</li> <li>• Holme Moor and Clean Moore</li> <li>• Dartmoor</li> <li>• Exmoor Heaths</li> <li>• Quants</li> <li>• Exmoor and Quantock Oakwoods</li> </ul>	<ul style="list-style-type: none"> <li>• Exe Estuary</li> <li>• East Devon Heaths</li> </ul>	<ul style="list-style-type: none"> <li>• Exe Estuary</li> </ul>

**In addition to these 11 sites, Natural England has written to the Council on 30<sup>th</sup> March 2021 to advise on matters regarding development in relation to the Somerset Levels and Moors Ramsar Site, which it has pointed out will affect a very small part of Mid Devon district that falls within a catchment area. An indicative map for the catchment includes parts of the parishes of Clayhanger, Hockworthy, Holcombe Rogus and Culmstock and it is understood that Natural England is refining this map. The Somerset Levels and Moors are designated as a Special Protection Area (SPA) under the Habitat Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention. While the SPA is designated for its international waterbird communities, the Ramsar site is designated for its internationally important features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest (SSSIs). Natural England has advised that in light of the unfavourable condition of the Somerset Levels and Moors Ramsar site, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment proceeding to an appropriate assessment where a likely significant effect cannot be ruled out, even where the development contains pollution mitigation provisions. The development types affected include: additional residential units and commercial development; infrastructure that supports agricultural intensification; anaerobic digesters; and other developments that result in additional phosphates in the Somerset Levels and Moors catchment.**

#### *Potential Impacts on Habitats Site*

- 3.3 There are a number of categories that can affect Habitats Sites which include:

- Physical Loss
- Physical Damage
- Non-physical disturbance
- Water table/availability
- Toxic contamination
- Non-toxic contamination
- Biological disturbance

#### **4.0 Mid Devon Local Plan Review 2013 – 2033 HRA**

- 4.1 As the competent authority under The Conservation of Habitats and Species Regulations (2010) (now 2017 as amended) Mid Devon District Council has been required to assess its Local Plan Review 2013-2033 as part of the HRA process.
- 4.2 A full HRA Report for the Mid Devon Local Plan Review 2013-2033 was undertaken March 2015 and related to the Publication Draft version of the Local Plan Review. This concluded that adverse effects on the integrity of European sites (referred to in this report as Habitats 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.
- 4.3 Two HRA Addenda were prepared in 2016. The first (dated August 2016) was prepared in order to update the findings of the March 2015 HRA Report in light of changes to the supply of housing and employment land that were made in the Submission version of the Local Plan Review. The HRA Addendum screened the changes to policies in the Local Plan Review and concluded that, for each change, the screening conclusions of the March 2015 HRA Report would have been the same and the same Appropriate Assessment work would therefore have been undertaken. The second HRA Addendum (December 2016) presented Appropriate Assessment work that was undertaken in relation to potential air pollution impacts on the Culm Grasslands SAC that could result from development at Junction 27 and the associated additional housing required.
- 4.4 A third HRA Addendum was prepared in October 2019 which presented an assessment of the proposed Main Modifications raised by the Planning Inspector appointed by the Secretary of State to undertake the independent examination of the Mid Devon Local Plan Review (2013-2033). This concluded that the HRA for the Mid Devon Local Plan Review remain that the Local Plan Review (taking into account the Proposed Main Modifications) is not likely to have adverse effects on the integrity of European sites (referred to in this report as Habitats sites), either alone or in-combination with other plans or projects. These proposed Main Modifications include the proposed Main Modifications to Mid Devon Local Plan Review Policy DM25: Development Affecting Heritage Assets. The third HRA addendum found that the proposed Main Modifications to Policy DM25 did not change the HRA findings previously reported.

#### **5.0 The Design of Shopfronts and Associated Advertisements SPD HRA Screening**

- 5.1 The Design of Shopfronts and Associated Advertisement SPD expands upon policies within the Adopted Mid Devon Local Plan 2013-2033. The SPD does not introduce new policies or proposals outside the scope of the Adopted Local Plan. The SPD does not result in development itself but seeks to guide very specific and limited development, and limited building and advertisement consent in the form of shopfronts and associated advertisements in existing

building and as part of new build. The Mid Devon Local Plan Review 2013-2033 HRA Screening, for the policies relevant to this SPD, DM1 – High Quality Design; DM16 - Fronts of shops and business premises; DM17 - Rural shopping; and, DM25 - Development affecting heritage assets, concluded that these policies are unlikely to have significant effects on European sites (referred to in this report as Habitats sites), either alone or in-combination with other plans or projects.

**Additionally the type of development falling with the scope of SPD in those parts of Mid Devon within the catchment identified by Natural England is unlikely to have significant effects on the Somerset Levels and Moors Ramsar Site based on the development types Natural England has identified in its advice received on 30<sup>th</sup> March 2021.**

As such it can be concluded that the Design of Shopfronts and Associated Advertisements SPD is unlikely to have significant adverse effects on the integrity of Habitats sites, either alone or in-combination with other plans or projects and further 'Appropriate Assessment' is not required.

## **6.0 Conclusion**

6.1 This screening report has identified that the Design of Shopfronts and Associated Advertisements SPD is unlikely to have significant effects on the integrity of Habitats Sites, either alone or in-combination with other plans or projects and further Appropriate Assessment is not required.

## **7.0 Next steps**

7.1 This screening opinion will be subject to consultation with the three designated consultation bodies – Historic England, Natural England, and the Environment Agency. The screening opinion will be publishing alongside the draft Design of Shopfronts and Associated Advertisements SPD as endorsed by the MDDC Statement of Community Involvement.