



SOUTH EAST DEVON
HABITAT REGULATIONS
PARTNERSHIP

South East Devon Habitat Regulations Executive Committee

Rebasing the South East Devon European Site Mitigation Strategy

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Legal comment/advice:

The report identifies that there is likely to be a funding shortfall due to a number of factors which are explained. It is going to be necessary for the Committee to resolve the potential difficulty this presents in terms of seeking to deliver the mitigation measures in the Strategy for the number of homes to be built. A further report will be brought with recommendations as to how this will be achieved. It is expected that Legal input will be required and given in the preparation of that report and specific legal implications (including those raised by Natural England in their comments) will be addressed in the report and legal observations.

Finance comment/advice:

The report highlights a fundamental financial problem with the assumed income to be generated from new homes as set out in the original 2014 Strategy when compared with what's been charged to date. The report identifies significantly lower charges have made on certain housing and in some cases no charges at all. To recoup this lost income over future developments would see a significant rise in requested sums (report indicates a 69% rise – ranging from £626 to £2,397 per property). Expenditure assumptions also need updating and it is recommended that a further report is presented to the Committee with a suggested way forward.

This does however put members in a difficult position with the need to consider approving mitigation expenditure without the clear certainty that funding through the Joint Approach will be available. This will be considered in each report on the agenda presented to the Executive Committee where approvals are sought.

Public Document:	Yes
Exemption:	None
Review date for release	None

Recommendations

It is proposed that the Executive Committee:

1. Notes the work that has been undertaken to rebase the South-East Devon European Site Mitigation Strategy and acknowledges the significant deviations from the original assumptions that have been revealed.
2. Receives a further paper setting out the final assessment and proposed strategic way forward.

Equalities impact: Low

Risk: High. The paper sets out the work that has been undertaken to re-validate the core assumptions underpinning the Mitigation Strategy. It reveals some discrepancies between the quantum of new homes that will be making a full financial contribution to the delivery of the Strategy and that which was assumed when the Strategy was finalised in 2014. This goes to the heart of the delivery of the Strategy and meeting our legal obligations. Further assessment and legal advice will be required in order to mitigate these risks and formulate a strategic response.

1. Summary

1.1 Implementing the South-East Devon European Site Mitigation Strategy (“the Strategy”) is the core purpose of the Executive Committee. The Strategy is predicated on assumptions of the likely number of new homes that would come forward within the zones of influence of the three European sites and the potential cost of the mitigation measures (both on-site and off-site) needed to protect their integrity.

1.2 We have now reached a stage where it is important to re-validate these assumptions in order to provide a credible platform for future financial decision making. The reports detail the initial findings from this work and highlights the significant variants that have been revealed. A further report will be needed to the next Executive Committee meeting to provide further detail on specific dimensions of this and also, more fundamentally, to set a strategic way forward.

2. Background

2.1 The Strategy was published in June 2014. It provides a strategy to mitigate the impact of the potential in-combination impacts of new housing on the three European wildlife sites (Exe Estuary Special Protection Area (SPA) and Ramsar site, Dawlish Warren Special Area of Conservation (SAC) and the East Devon Pebblebed Heaths SAC/SPA).

2.2 The strategy was evidence led. Based on data provided by the three local authorities, it was assumed that around 30,000 new homes were likely to come forward within the zones of influence. A package of mitigation measures, both on-site and off-site, were identified that would be necessary to protect the integrity of the sites in respect of this level of future growth and the commensurate increase in recreational pressures. This was costed at approximately £23.5m.

2.3 In essence this gives rise to the fundamental premise upon which delivery of the Strategy is predicated. A numerator (the estimated costs of the mitigation measures) divided by a denominator (the expected number of new homes) gives a unit price i.e. the amount that each new home needs to contribute to the deliver the mitigation measures. This is set out in Table 1 below;

Table 1: Calculation of contribution per dwelling for on-site mitigation measures¹

Site	Exe Estuary	Dawlish Warren	Pebblebeds	Total
Cross-site measures	£1,995,167	£1,995,167	£1,995,167	£5,985,500
On-site mitigation	£1,401,100	£461,500	£756,000	£2,618,600
Monitoring	£155,667	£242,333	£151,667	£549,667
Total Cost	£3,551,933	£2,699,000	£2,902,833	£9,153,767
Number of dwellings within zone	28,875	3,291	19,529	
Per dwelling cost	£123	£820	£149	

2.4 Total SANGS costs were estimated at £14.4m. This estimate was divided by the total number of houses (30,170) to provide a per dwelling SANGS contribution of £477.

2.5 This is the basis upon which financial decisions, both to invest in the Dawlish SANG and the on-site measure including employing Habitat Mitigation Officers, have been made by the Committee to date. An exercise has been undertaken to re-validate these assumptions to ensure that there is a credible and robust platform from which to take decisions. The headline findings from this work are set out below.

¹ *South-East Devon European Site Mitigation Strategy, Table 27, pg. 224*

3. Expected level of new housing development

Table 2², below sets out the original expected housing development by District³;

Zone	New Dwellings	TDC	ECC	EDDC
Exe only	7,350	756	6,568	26
Pebblebeds only	1,385			1,385
Pebblebeds and Exe overlap	18,144		8,344	9,800
Dawlish and Exe overlap	3,291	3,291		
TOTAL DWELLINGS	30,170	4,047	14,912	11,211
Exe Total	28,785	4,047	23,256	9,826
Dawlish Total	3,291	3,291		
Pebblebeds Total	19,529		8,344	11,185

3.1 Over the course of the last 12 months further work has been undertaken to verify the level of new homes and how they are contributing to the delivery of the Strategy. This is set out below in Table 3.

² South-East Devon European Site Mitigation Strategy, Table 22, pg. 211

³ Note an error in the “Exe total” dwellings for ECC. This should read 14,912 not 23,256.

Table 3. Verified levels of new housing in zones of influence (and how they currently contribute/do not contribute to the Strategy)

	Pre - consented ⁴	Pre JIA ⁵	JIA (deviation) ⁶	JIA complete ⁷	JIA not complete	JA ⁸ complete	JA not complete	pEXEMPT ⁹	Unaccounted (windfall?) ¹⁰	Total
ECC	4737	634	59	2658 ¹¹		104	1305	3881	1,534	14912
TDC	0	0	0	578	1260	6	2246	0	0	4090
EDDC	0	0	0	907	756	47	7884	0	1030	10624
Cranbrook 587										587
Total	4737	634	59	4143	2016	157	11435	3881	2,564	30213

⁴ Planning permission granted prior to any established approach to mitigation

⁵ £35 per dwelling (a developer contribution prior to the Joint Interim Approach, for which no rationale is currently available)

⁶ £302 per dwelling (a variation to developer contributions during the Joint Interim Approach for which no rationale is currently available)

⁷ Joint Interim Approach (£350 per dwelling) – developer contributions sought 2011-14 (prior to the development of the Strategy).

⁸ Joint Approach – developer contributions based on the Strategy estimates (although some zones in Exeter contribute £220 per dwelling for SANGS rather than £477).

⁹ Development exempt from CIL and proposed exempt from mitigation requirements.

¹⁰ There will be some windfalls from all partner authorities but they have not been reported here. These figures represent any discrepancy between recently reported housing numbers and those reported in the Strategy.

¹¹ Combined Joint Interim Approach figures were reported by Exeter (not separated into complete/not complete).

3.2 Fundamentally the overall quantum of housing development has not changed and this is in line with levels anticipated by the constituent Local Plans. However there are very significant deviations in terms of the level of new homes that are actually contributing financially, either in whole or in part, to the delivery of the Strategy. There are three main constituent factors in this respect;

- i) Development that is exempt from paying the Community Infrastructure Levy – notably affordable housing, self builds and housing on brownfield sites.
- ii) Development that is not considered to have a potential impact on the integrity of the European sites – notably student accommodation in Exeter
- iii) The level of pre-consented homes – the Joint Interim Approach operated between 2011 and 2014 and secured lesser financial contributions relative to the levels set out in the Strategy. Also, schemes which have the benefit of outline planning permission fall within this category.

3.3 In relation to i) the impact of the housing that is exempt from CIL still needs to be mitigated and thus will draw more heavily on the residual payments made by open market housing and the funds available within the CIL pot. Item ii) is the subject of ongoing discussion between the partner authorities and Natural England, which requires resolution. Item iii) also has a substantial impact. Natural England has recently provided a legal opinion that it is possible secure enhanced habitat mitigation payments from Reserved Matters application i.e. over and above the level set out in the original outline permission. This will need careful consideration.

3.4 In combination, these factors highlight some deviations from the assumptions underpinning the original strategy. In order to secure the level of funding needed to deliver the strategy from the residual unconsented dwellings that are expected to pay CIL and/or S106, implies per dwelling contributions of between £626 and £2397 (calculations include contributions from windfall development, based on historic rates). The lower amount refers to a verified per dwelling contribution for SANGS and on site measures in the Pebblebed Heaths Only zone (based on costs of Dawlish, SW Exeter, Cranbrook & Exmouth SANGS). The higher amount relates to a revised per dwelling contribution for SANGS and on site measures in the Dawlish & Exe Estuary zone (based on costs of Dawlish, SW Exeter, Cranbrook & Exmouth SANGS). The latter is above the level assumed in the Strategy by a factor of 1.69

3.5 This is potentially challenging territory that goes to the heart of the delivery of the Strategy. It also raises corporate challenges for each of the Local Authorities as to the proportion of CIL revenues that are utilised to deliver habitat mitigation measures relative to other priorities and may even prompt a review of overall charging rates.

3.6 Additional work is required to fully understand these issues, including taking further legal advice. It is proposed that a follow up paper is brought to the next meeting of the Executive Committee in this respect.

4. Estimated cost of the mitigation measures

4.1 As well as understanding the denominator it is also essential that the cost of delivering the mitigation measures is also verified. In recommending investments to the Committee to date significant attention has been given to cost effectiveness and value for money. This has included the price of acquiring land in relation to delivering SANGs for example.

4.2 Further work is being undertaken as part of the rebasing exercise to re-examine the estimated costs of delivering the mitigation measures. This will include exploring opportunities for value engineering. This work will again be reported back to the next Executive Committee meeting.

5. Conclusion

5.1 This paper details the work that has been undertaken to rebase the Strategy. It reveals some discrepancies between the assumed and revealed level of new housing that will contribute financially. This goes to the heart of the approach to delivering the Strategy and ensuring that we fulfil our legal obligations.

5.2 Further work will be undertaken to refine this analysis. This will include both taking further legal advice and additional work with partners such as Natural England. This will be reported to the next meeting of the Executive Committee along with recommendations as to how to respond strategically.

5.3 The temptation at this juncture would be not to make further investment decisions until the outcome of this work is known. However, agenda item 2 puts forward a proposal to invest a significant sum of money in to the delivery of a SANGS in Zone B as recommended in the Strategy. This is a time limited opportunity which is considered to provide the best solution to bringing forward effective SANGS mitigation in Zone B. Hence it is still considered that this is a decision that needs to be taken at this point in time.

Natural England comment:

Natural England notes the recommendations made.

We feel that the extent of the funding shortfall is not clearly set out in the report. E.g. no overall figure is provided.

In order to redress the identified funding shortfall we advise that the “proposed strategic way forward” which will be presented to the committee in June 2017 should:

- i) Address the charging anomalies presented in Table 3 (i.e. exemptions, lower SANGS charging zones in Exeter, student accommodation) for all JA contributions

Natural England comment (continued):

- ii) Agree to recoup full contributions from development which currently has outline permission, in line with the legal opinion provided.
- iii) Revise the cost estimates of the proposed mitigation measures based on current 'best available' information.
- iv) Present a reasoned proposal for how "adequate" mitigation can be delivered with the funding available.

The SANGS being provided are "strategic" in nature, i.e. provided to mitigate for all development across all "zones" and therefore the SANGS contribution for all dwellings should remain the same regardless of which zone they are in. It is not clear from the explanation given in 3.4 whether this approach has been followed in calculating the required revised charging rates.

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