



SOUTH EAST DEVON
HABITAT REGULATIONS
PARTNERSHIP

South East Devon Habitat Regulations Executive Committee

*Rebasing the South East Devon European Site
Mitigation Strategy – the strategic response.*

Neil Harris
Habitat Regulations Delivery Manager
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Legal comment/advice:

The principle of rebasing the Strategy with consequent revisions to the per dwelling charges is sound, as these funds are necessary to ensure that the mitigation detailed in the Strategy (being the mitigation measures necessary to ensure housing does not have a likely significant effect on the European Sites) is delivered. It will be for each of the partner authorities to agree to deliver the shortfall (addressed through the revised per dwelling contributions) from their CIL income / funds or, where applicable, by adopting a unified approach to securing non-infrastructure payments through separate legal agreements, to ensure that the correct sums of money are obtained to deliver the Strategy. Each authority will need to consider whether any reserve matter applications coming forward should be subject to the higher contribution (being the revised per dwelling charges) having taken their own legal advice on the issue.

Finance comment/advice:

The report and associated appendix detail significant financial issues with the recommendation for increase rates being substantiated within the report in accordance with the joint strategy. Each partner authority will need to be aware and consider the impact within its own authority and the necessary resources required to meet this obligation.

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. Endorses the approach to mitigation for CIL exempt development.
3. Recommends that the revised per dwelling contributions (as per the report and detailed in Appendix 1) should be adopted by each of the partner authorities as soon as possible. The contribution rates to be index linked with an annual increase to be applied from April 2018; Infrastructure charges to be increased annually by BCIS (Building Cost Information Service) and non-Infrastructure charges to be increased annually by RPI (Retail Price Index).
4. Agrees the proposed arrangement to cover the shortfall in funding at Dawlish Warren (as detailed in paragraph 12) subject to the anticipated S106 receipts actually being received by Exeter City Council.

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 builds on work which revealed 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. In order to ensure that there is a credible and secure financial approach which enables ongoing delivery, the paper outlines a revised financial position. To meet our legal obligations it is imperative that new per dwelling contributions based on re-validation of income, cost and expenditure are implemented by each of the partner authorities.

1. Summary

1.1 As previously reported¹, the South East Devon European Site Mitigation Strategy (“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 These assumptions have been re-validated in order to provide a credible platform for future financial decision making. The initial findings in the previous report (referenced in 1.1 above) indicated that the overall quantum of new housing development within respective local plan periods has not significantly changed.

¹ *Rebasing the South East Devon European Site Mitigation Strategy, March 2017*

- 1.3 However, there are significant deviations in the numbers of homes that are actually contributing financially, either in whole or in part, to the delivery of the Strategy. This report sets out a strategic response to the challenges presented by the re-validation and aims to achieve a greater level of consistency amongst the partner authorities.

2. Exemptions from CIL

- 2.1 It is a legal obligation that each partner authority adheres to the requirements of the Conservation of Species and Habitats Regulations, 2010 (as amended). Amongst other requirements, these regulations stipulate that, where likely significant effects (LSE) from development cannot be avoided, they must be mitigated for and no net impacts be permitted to occur on protected sites.
- 2.2 Through the Habitat Regulations Assessment (HRA) process, it is possible for particular types of development to be screened out, if it can be evidenced that they do not result in LSE. In the absence of mitigation, it cannot be concluded that the planned levels of housing would not result in LSE. They therefore require mitigation in order that they are legally compliant in proceeding.
- 2.3 Types of residential development such as affordable housing, brownfield, permitted development (such as office to residential) and self-build are exempt from the requirement to pay the Community Infrastructure Levy (CIL). In such cases, the need to mitigate the assessed LSE of residential development still remains. It is the mechanism by which authorities are (or are not) able to request developer contributions which is altered.
- 2.4 It is therefore recommended that all such development as outlined in 2.3, (above) is mitigated for. This requires a financial contribution as part of the Strategy. As these types of development are exempt from CIL (and in the absence of any other mechanism), this will mean using funds from wider CIL revenue at each partner authority.

3. Student accommodation

- 3.1 Purpose Built Student Accommodation (PBSA) in Exeter is not expected to make a contribution towards habitats mitigation.
- 3.2 Further to recent discussion with officers at the City Council, a draft Habitats Regulations Assessment covering the impact of student PBSA on protected sites has been undertaken. This concludes that PBSA has no discernible impact on the protected habitats and therefore none of the CIL contributions made in respect of PBSA are to be reserved for habitats mitigation.

4. Reserve matters

- 4.1 Work continues following receipt of a legal opinion which maintains that it is possible to secure enhanced habitat mitigation payments from Reserved Matters applications (i.e. over and above the level set out in the original outline permission).
- 4.2 Such options are considered appropriate only where there has been a material change in circumstances, such as the evidence base.
- 4.3 It is thought unlikely that this will apply to the majority of applications, as outline planning applications approved 2 years ago will already have had reserved matter applications in within this timescale.
- 4.4 Large, legacy planning applications may be affected and therefore it is possible that these applications could be reviewed. Counsel opinion to clarify this approach is under consideration.

5. Estimated cost of the mitigation measures

- 5.1 As part of the rebasing process, the estimated costs of delivering the mitigation measures has been re-examined, including opportunities for value engineering. It is important to ensure that such engineering does not undermine the purpose of the Strategy to enable the authorities to be certain of no net impacts to the protected sites.
- 5.2 As shown in Table 1, overleaf, a number of cost savings have been identified with the help of the Officer Working Group. These play a hugely significant role in ensuring the ongoing delivery of the Strategy and relieve an otherwise problematic financial burden on the partner authorities.
- 5.3 Work to review a number of other mitigation measures in the Strategy is ongoing and will be reported as and when completed.
- 5.4 The revised cost of delivery of SANGS is based on detailed research by Teignbridge District Council and remains the best available information at the time of writing. Cost efficiencies have been realised due to a variety of reasons including realisation of actual costs and changes in how the original figure was calculated.
- 5.5 Cost savings related to a vehicle for the Habitat Mitigation Officers (HMOs) have been achieved through a change in arrangements. The Strategy originally recommended leasing 2 separate vehicles and embedding each HMO more deeply with existing warden teams at Dawlish Warren and the Pebblebed Heaths. The HMOs now work as a team of 2 and therefore only require 1 vehicle. By outright purchase of a vehicle every 10 years as opposed to lease of 2 vehicles every year, this results in cost savings of an estimated £380,000 over an 80 year period.

Table 1. *Cost savings (only) from the Strategy and Pebblebed Heaths Visitor Management Plan (VMP)*

Project/measure	Strategy cost	Revised cost	Saving
Warden vehicle	£ 720,000.00	£ 340,000.00	£ 380,000.00
SEDESMS: Visitor numbers at set locations on all three sites	£ 80,000.00	£ 50,000.00	£ 30,000.00
SEDESMS: Visitor activities, motivation, profile and behaviour at all three sites	£ 80,000.00	£ 50,000.00	£ 30,000.00
Dawlish Warren: Carry out audit of information boards over whole of the area. As necessary re-design and add new boards	£ 67,500.00	£ 19,500.00	£ 48,000.00
Modifications of slipway at Mamhead to encourage users not to enter the estuary	£ 7,500.00	£ -	£ 7,500.00
PBH: Education work with schools	£ 93,160.00	£ 46,600.00	£ 46,560.00
PBH : Gorse management	£ 80,000.00	£ -	£ 80,000.00
PBH : Changes to car parks	£ 1,080,000.00	£ 500,000.00	£ 580,000.00
PBH: Combined bird monitoring & southern damselfly monitoring	£ 160,000.00	£ 80,000.00	£ 80,000.00
PBH : Visitor numbers	£ 160,000.00	£ 100,000.00	£ 60,000.00
PBH : Visitor interviews	£ 128,000.00	£ 80,000.00	£ 48,000.00
Total	£ 2,656,160.00	£ 1,266,100.00	£ 1,390,060.00

5.6 Following discussion with the Officer Working Group, there are two ways in which Strategy monitoring costs could be rationalised:

1. By following the frequencies suggested in the Strategy & VMP (monitoring every 5 years) for the first 20 years, it is felt that this would provide sufficient data to indicate how effective the approach has been – and allow enough time for refinement. By reducing subsequent monitoring to every 10 years thereafter, (instead of every 5), this ensures a more suitable frequency but still provides opportunities for ongoing review. This results in savings of an estimated £168,000.
2. As the Strategy and VMP both allocate funding for visitor monitoring to the Pebblebed Heaths, there is undoubtedly an element of unintentional double-counting. As a rough estimate, it would seem appropriate (after allowing for (1) above) to reduce the Strategy visitor monitoring allocation by a third, to account for this. This results in further savings of an estimated £33,000.

5.7 After consultation with the Senior Ranger at Dawlish Warren, it is proposed that funds be made available for the design & print of 3 new panels and funding to cover installation of 8 new boards with two replacements each (24 boards in total). Ongoing maintenance/replacement thereafter will be covered under site maintenance costs by TDC. This would save an estimated £48,000.

5.8 The Mamhead Slipway renovations in Exmouth are now complete. As part of the planning consents and as owners of the project, EDDC are required to fund and implement a specific mitigation strategy to satisfy the Habitat Regulations. As such, it is not appropriate for funding from the wider Strategy to be allocated towards this project. This saves £7,500.

5.9 Through discussion with Clinton Devon Estates (with, and as part of, the Officer Working Group), further value engineering in respect of the VMP has been achieved in respect of:

- Gorse management to control access to sensitive areas for wildlife. It has been agreed that this can be incorporated into existing management practises, saving an estimated £80,000
- Education work with schools to raise awareness of the importance of the heaths to children & their families. Agreement has been reached to scale back the scope of the project and contribute to the work of the existing Countryside Learning Officer. £46,560.
- Changes to car parks to prevent an increase in diffuse access across the heaths and concentrate access (and visitor management) at fewer access points. After considerable debate, it is currently proposed that instead of ongoing maintenance/improvement to a select number of car parks over 80 years, funds be made available for capital works to a number of car parks and that maintenance thereafter would fall to Clinton Devon Estates and/or the Pebblebed Heaths Conservation Trust. This would save an estimated £580,000.
- Combining the allocations for collating species monitoring data on birds and southern damselfly. Surveys are already undertaken for these species and there are plans for a more integrated management partnership on the Pebblebed Heaths. It is thought that such a partnership will be able to collate this data more readily. Combining the two funding streams will enable that work to continue, whilst saving an estimated £80,000.

6. Revenues

6.1 In addition to considering which costs can be rationalised, rebasing the Strategy allows the opportunity to account for any additional costs to be identified. Not part of the original Strategy, three new projects are recommended in recognition of their emerging importance.

6.2 An additional £41,000 towards the (3 year, fixed term) staff costs for the Project Officer (Devon Loves Dogs) has been accounted for. This is a “cross site” project, so costs have been allocated equally between the three protected sites.

6.3 Subject to the outcome of the proposals to create Wildlife Refuges in the Exe Estuary, it is considered appropriate that funding to mark the areas with buoys should be made available. This is considered critical to the success of these areas, should they be implemented. £30,000 over 20 years has been allocated (50:50 from Exe and Warren zones of influence).

6.4 Again, should the Wildlife Refuge proposals be approved, it is essential that it is clearly understood whether the new areas function as intended. As such, it is considered appropriate to allow for a specific monitoring programme to be established. Following introductory talks with an ecological consultant, this has been estimated at £30,000 for a 3 year period (50:50 Exe and Warren zones). However, funding should be reviewed annually in light of the results, as it may indicate that further monitoring is not necessary.

6.5 The projects outlined above total an estimated £101,000, which means that final revised Strategy cost savings will be £1,289,060, down from £1,390,060.

7. Consistent charging rates

7.1 In October 2014, Exeter City Council took the decision to reserve a smaller contribution (£220 as opposed to £477) towards SANGS costs from dwellings coming forward in “South (A)” and “West (B)” zones. This was based on officer cost estimates for SANGS improvements at Riverside and Ludwell Valley Parks.

7.2 A standardised per dwelling contribution lies at the heart of the concept of strategic SANGS delivery across the three partner authorities. Now that the cost (and location) of SANGS and the rebasing of the Strategy are more accurately understood, it is recommended that standardised SANGS contributions are re-adopted.

7.3 Work by the City Council has identified that 68 dwellings have been subject to the lower SANGS contribution in these zones. Further work will be required by each partner Council to authorise the revision of SANGS and on-site contributions.

8. The challenge

8.1 As identified in the March 2017 report, significant discrepancies have been revealed in how many dwellings do or do not contribute towards the Strategy.

8.2 In terms of addressing the challenge this poses, work to re-evaluate the costs of mitigation as well as recalculating developer contribution requirements has been undertaken.

8.3 The shortfalls identified have been greatly reduced via the reappraisal of mitigating CIL exempt development, standardising SANGS contributions and identifying cost savings where possible. Table 2, below, illustrates the scale and scope of the remaining challenge.

Table 2. *Projected income vs estimated costs; shortfall*

Mitigation type/area	Revised cost	Reported income	Shortfall
SANGS	£6,381,254	£5,471,753	£909,501
Dawlish Warren	£2,541,754	£1,796,980	£744,774
Exe Estuary	£3,406,189	£2,483,668	£922,521
Pebblebed Heaths	£3,127,067	£2,271,686	£855,381
Total	£15,456,264	£12,024,087	£3,432,177

9. Future dwellings

9.1 Discussion between senior officers at the partner authorities has centred on inconsistencies in how the impacts of development are mitigated and the most appropriate ways to address the anticipated shortfalls.

9.2 It would seem appropriate to focus on “future” dwellings at each authority to address these shortfalls. This is development identified within respective Local Plan allocations which do not have planning permission and therefore could have revised per dwelling contributions applied. This mirrors the approach taken when revised charges were introduced after the completion of the Strategy (after the Joint Interim Approach).

9.3 Each of the partner authorities have supplied estimates of “windfall” housing whereby sporadic development occurs outside of Local Plan allocations. These estimates are based on historic rates.

10.0 Revised per dwelling contributions & In perpetuity considerations.

10.1 After taking into account reported income, revised costs and future dwellings, it is possible to calculate revised per dwelling costs. The shortfalls are divided by the number of future dwellings to provide a new per dwelling contribution, which must be added to the original strategy contribution.

10.2 The tables in Appendix 1 show the calculations for revised per dwelling contributions from future dwellings to meet revised cost estimates for both on and off site mitigation.

10.3 The Strategy took a simple approach to calculate in perpetuity costs, multiplying estimated annual costs (where appropriate) by 80 to give a total cost. It states:

“The costings table does not take account of inflation or discounting and is approximate, the intention to provide an overall indicative cost for the different elements proposed.”²

10.4 The work to rebase the Strategy now offers an important opportunity to introduce revised costs which are index-linked into the future. The contribution rates are to be index linked with an annual increase to be applied from April 2018; Infrastructure charges to be increased annually by BCIS (Building Cost Information Service) and non-Infrastructure charges to be increased annual by the RPI (Retail Price Index). Costs and income will be monitored against the rebased position and any significant variations reported to the Committee. It is envisaged that a full review of future costs, housing numbers and charges will be revisited every 3 years to ensure mitigation is provided and allowed for in perpetuity.

11. Infrastructure and non-infrastructure.

11.1 Both Teignbridge and East Devon District Councils have split Habitat Regulations developer contributions into infrastructure (CIL) and non-infrastructure (S106 obligations) components. Furthermore, agreement has been reached in the definition of infrastructure as it relates to the Strategy. For simplifying delivery of the Strategy and where there is concern regarding implications for CIL revenue, it is recommended that a consistent approach is adopted by all partner authorities.

12.1 The revised per dwelling costs will be split into infrastructure and non-infrastructure costs by each partner authority. This will enable the prioritisation of CIL revenues and set the amount required through S106 obligations (where appropriate).

² South East Devon Mitigation Strategy, June 2014, 14.36 pg. 215

12. Dawlish Warren – proposed arrangement

12.1 According to current arrangements, previously agreed by the Executive Committee, TDC are forward funding both the SANGS at Dawlish and at South West Exeter. Combined costs are:

- For Dawlish SANGS, TDC have/will pay up to £2,923,000 from existing funds and through forward funding.
- £643,000 repayment has been agreed by the other partners, which leaves the remainder funded by TDC : £2,280,000
- At South West Exeter, TDC have agreed forward funding on behalf of the other partners of £1,660,000.
- Total funded element from TDC is £2,280,000 + £1,660,000 = £3,940,000

12.2 At the same time, up to £775K needs to be found to address the on-site funding shortfall at Dawlish Warren. Rather than increase per dwelling S106 contributions for that zone of influence, it is proposed that the shortfall is met with a proportion of the surplus repayments required to meet the agreed SANGS contributions.

12.3 In principle, it seems appropriate that funds secured during the Joint Interim Approach (JIA) could be used to fill this gap. As shown in Table 3, below, records show that ECC has secured £834,862 in JIA funds (although a large proportion of this remains to be banked), which could serve the purpose. ECC JIA monies are the most likely candidate because associated S106 terms are not site specific and Exeter's habitat mitigation continues to be funded only through CIL.

Table 3. Proposed arrangements for covering the shortfall in on site mitigation funding at Dawlish Warren:

	Dawlish	SWE	Total
TDC Forward funding	£2,962,000	£1,660,000	£4,622,000
TDC SANGS requirement (rebased)			£1,633,478
TDC SANGS "overpayment"			£2,988,522
DW Shortfall			£744,774
ECC JIA funds			£834,862

12.4 This arrangement would not see any increase in the funding required by ECC. The implications are that the majority of JIA funds expected at ECC would be used to cover the shortfall in on site mitigation funding at Dawlish Warren.

12.5 These funds would account for a part of the contribution to repaying TDC's SANGS forward funding – but would be used to cover the on site mitigation shortfall at Dawlish Warren.

12.6 This would require that the equivalent amount of CIL revenue at ECC was reserved for the on site mitigation for which the JIA funds would otherwise be used.

Neil Harris
Habitat Regulations Delivery Manager

South East Devon
Habitat Regulations
Executive Committee
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Natural England comment:

We are pleased to see that this issue is now being addressed and strongly advise that the committee endorse the proposed recommendations in order that the funding shortfall can be rectified as quickly as possible.

You should also note the considerable reduction which has been achieved in the estimated overall cost of delivery of the mitigation measures, without which the additional cost to each authority of meeting that shortfall would be far greater.

We welcome the proposals to ensure future consistency of contribution rates across the 3 authorities. However, it is not clear from the paper whether this will be “backdated” to cover previous permissions which were granted with zero or a reduced contribution rate and whether this might further reduce the remaining shortfall.

We also strongly urge the 3 authorities to implement revised index-linked charging rates and revised contribution rates at Reserve Matters stage as a matter of urgency.