

DRAKE'S ISLAND, PLYMOUTH I4/00001/FUL AND I4/00002/LBC

UPDATE

On 15th January 2015, Planning Committee made the following decision in respect of the above planning applications:

Decision:

Application MINDED TO GRANT, defer until a March 2015 Planning Committee to allow negotiations to continue to resolve outstanding issues in respect of flood risk, impacts on the Special Protection Area (SPA) and impacts on the Special Area of Conservation (SAC) and for officers to prepare and consult upon a Habitat Regulations Assessment.

At Planning Committee on 12th March 2015, the Planning Committee Lead Officer provided an update. Members were reminded that the application had been deferred pending further negotiations with the applicant on various matters, one being submission of a mitigation plan in relation to the island's little egret colony. The Lead Officer reported that the applicant had employed ecological specialists to produce a mitigation plan which, following consultation, was anticipated would be brought to Committee on 23 April 2015. Unfortunately, this was not possible, but negotiations have continued, and the current situation with regards to the outstanding issues is as follows:

1.0 Flood Risk

- 1.1 In the previous version of the scheme, considered at Planning Committee on 15th January 2015, hotel bedroom accommodation was proposed at the lower level of the Casemates "Torpedo Room". This gave rise to an Environment Agency (EA) objection. The EA's principle concern was that sleeping accommodation was proposed in a potentially hazardous location where high energy waves carrying debris would be likely to impact upon the openings of the Torpedo Room, which is part of the island's foreshore. The EA feared that any windows, however engineered, could be broken and cause rapid flooding of the room (which has a floor level below the opening).
- 1.2 The EA had stated that its preferred approach for the Torpedo Room would be to leave it undeveloped. However, the EA indicated that it would accept a compromise if the use of the lower level Torpedo Room was limited to non-bedroom accommodation. This would remove the risk of people sleeping in this highly vulnerable area.
- 1.3 Since the January Planning Committee, the applicant has formally resubmitted revised Casemates plans, showing sleeping accommodation removed from the Torpedo Room. The EA has welcomed this amendment and officers have come to the view that, taking into account other material issues, the flood risk sequential approach set out in the National Planning Policy Framework has been satisfied because;

- i. the most vulnerable parts of the development (i.e. in this case the bedroom accommodation) has now been located away from the area of flood risk in the Torpedo Room hotel suite,
 - ii. the scheme and proposed conditions are sufficient to ensure the development will be appropriately flood resilient and resistant and access and escape arrangements, emergency planning and residual risk can be safely managed.
- 1.4 In light of this change the EA submitted a new formal consultation response on 27th March 2015. The EA now has no objection – subject to conditions covering;
 - i. the details of flood resilience and resistance measures including the marine glazing and other resistance measures for the Torpedo Room and the flood (wave action) measures for other parts of the island,
 - ii. a flood management plan including the details of the flood alarm system to be used and the evacuation/non-occupation of the Torpedo Room upon the issuing of a warning,
 - iii. the restriction of the future use of the Torpedo Room,
 - iv. the submission of an intrusive investigation report assessing the potential risks to controlled waters from former activities on site,
 - v. the appropriate management and remediation of any unexpected contamination found during construction,
 - vi. the agreement of a Construction Environment Management Plan and Operational Management System before development starts and,
 - vii. the details of an appropriate foul drainage system serving the development.
- 2.0 Impacts on the Special Protection Area (SPA) and Special Area of Conservation (SAC)
- 2.1 Natural England is currently maintaining its objection – as it considers that it is not possible to ascertain that the proposal will not result in adverse effects on the integrity of the Tamar Estuaries Complex Special Protection Area (SPA) and the Plymouth Sound and Estuaries Special Area of Conservation (SAC).
- 2.2 On 19th March 2015, Natural England was re-consulted on additional information including supplementary ecological mitigation, an addendum to the ecological chapter of the Environmental Statement, a SAC mitigation and monitoring document and a draft Habitats Regulations Assessment (HRA).
- 2.3 On 10th April 2015 Natural England supplied a formal consultation response which is as follows:

“We welcome the additional data and mitigation proposed by the developer and recognise the efforts made by all parties to find a sustainable solution to this complex project. However we advise there are remaining issues which we outline below.

CONSERVATION OF HABITATS AND SPECIES REGULATIONS, 2010 AND THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, & c.) REGULATIONS 2007 (AS AMENDED)

Internationally and nationally designated sites

The application site is within and in close proximity to European designated sites (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect their interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is in close proximity to the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and within 2km of the Tamar Estuaries Complex Special Protection Area (SPA) which are European sites. Please see the subsequent sections of this letter for our advice relating to SAC and SPA features. The Tamar Estuaries Complex SPA is also notified at a national level as the Tamar-Tavy Estuary, the Lynher Estuary and St John's Lake Sites of Special Scientific Interest (SSSI).

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

Special Protection Areas (SPAs) are classified for rare and vulnerable birds, and for regularly occurring migratory species. The birds for which SPAs are designated may also rely on areas outside of the SPA boundary. These supporting habitats may be used by SPA populations or some individuals of the population for some of the time. These supporting habitats can play an essential role in maintaining SPA bird populations, and proposals affecting them may therefore have the potential to affect the SPA.

It should be noted that some of the potential impacts that may arise from the proposal relate to the presence of SPA interest features that are located outside the site boundary. It is advised that the potential for offsite impacts needs to be considered in assessing what, if any, potential impacts the proposal may have on European sites.

Habitats Regulations Assessment

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 61 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard for Natural England's advice.

Your draft Appropriate Assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question, provided the mitigation proposed by both the developer and Plymouth City

Council is put in place. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, it is the advice of Natural England that it is not possible to be certain that the proposal will not result in adverse effects on site integrity. Natural England advises that the assessment does not provide sufficient certainty to justify the assessment conclusion and that your authority should not grant planning permission. The potential for further mitigation options, such as disturbance free off-site mitigation, has been discussed with both you and the developers and we are disappointed that this has not been given further consideration at this stage.

Natural England's views on the HRA can be found below, with more detailed comments regarding individual aspects of the Appropriate Assessment found in Annex 1. It should be noted that the HRA provided to us was in draft form. Natural England advises that one combined Habitats Regulations Assessment should be provided relating to this development from the three competent authorities involved; Plymouth City Council (PCC), the Marine Management Organisation (MMO) and the Environment Agency (EA).

Tamar Estuaries Complex Special Protection Area (SPA)

*The SPA qualifies under Article 4.1 of the Directive (79/409/EEC) (as amended) by supporting populations of European importance of Little Egret *Egretta garzetta* and Avocet *Recurvirostra avosetta*.*

We have previously expressed our concerns in relation to Little Egrets on Drakes Island in respect of proposals to redevelop buildings on the island and the operation of a hotel. We made clear that we believed these proposals would be difficult to put in place without risking the loss of the Little Egret breeding colony and communal roost, and the consequent adverse impacts on the Tamar Estuaries Complex SPA.

Following amendments to the proposed mitigation measures in the CEMP we believe that the redevelopment work could be completed whilst maintaining the Little Egrets on the island. This would require stringent adherence to all of the detailed measures set out in the CEMP.

The measures proposed in the most recent OEMP and summarised in the draft HRA have considerably reduced the potential for disturbance to Little Egrets. The mitigation now proposed should ensure that casual disturbance does not occur as a result of the presence of people immediately adjacent to the roost site. This includes access restrictions to the casemates closest to the roost and the fact that access to these casemates is via an enclosed tunnel with a sealed glass roof.

The mitigation measures proposed to ensure that visitors do not cause disturbance through loud noise elsewhere on the island include visitor education and training, signage, access restrictions and the use of a covered buggy for visitors moving from the main hotel complex to the jetty. These measures will reduce the number of incidents resulting in disturbance to the Little Egrets. However, they are at high risk of being compromised by a small number of visitors not prepared to behave in accordance with

these instructions and protocols at all times. The small size of the island means that loud noise made by people on the island will be heard by the Little Egrets and reveal the presence of people close to their roost site. The main hotel building and the jetty are both within 150 m of the Little Egret roost. There are other open areas on the island accessible by visitors that are within 120 m of the roost. The Little Egret's requirement for a secure, disturbance-free roost site means that such disturbance, this close to the birds, is likely to be perceived as a threat and may result in them abandoning the roost site. This is a likely outcome even if disturbance incidents of this nature occur only infrequently. We suggest this is a likely reason for Little Egrets not regularly using other apparently suitable sites around the Tamar even though these sites appear to be subject to very low levels of human disturbance.

The noise that would cause most concern is the use of raised voices or shouting as this will clearly reveal the presence of people on the island. The levels of noise would not need to be excessive in order to be perceived as a threat by the birds. Provided that the noise is audible at the roost it will give away the presence of people nearby. Other loud noise made by people would further increase the potential for disturbance including the playing of loud music or the use of fireworks, for example, although these types of noise would be easier to prevent by measures set out in the proposed mitigation.

Limited monitoring information means that we do not have a complete picture of the roosting sites used by Little Egrets in and around the Tamar Estuaries Complex. It is clear, however, that Drakes Island is a favoured site and that birds are willing to travel a considerable distance in order to reach it. It regularly supports a significant proportion of the Tamar Estuaries Complex population and, at times, the majority of birds from the estuary use this site.

If disturbance on Drakes Island resulted in birds losing this roost site they would be forced to relocate. It is possible they may be able to use alternative sites within the Tamar Estuary Complex or they may join other established roosts away from the Tamar. With either scenario they will have lost a secure site that current behaviour confirms is highly valued. The use of alternative, less highly favoured sites may have a significant adverse impact on the birds through subjecting them to more frequent human disturbance. Or it may directly reduce the population of birds using the Tamar Estuary Complex if they move to an alternative site away from this estuary.

Natural England has issued Supplementary Advice on conserving and restoring the site features of the Tamar Estuaries SPA. Guidance: Marine conservation advice for Special Protection Area: Tamar Estuaries Complex (UK9010141). This advice was published on 30th March 2015 and is relevant to the proposed re-development of Drakes Island. We advise that this package should be taken into account in your HRA.

Conclusion:

Adopting a precautionary approach, as required by the Habitats Regulations, we are unable to agree with the conclusions of the HRA prepared by Plymouth County Council

that it can be certain that the proposed development will not have an adverse effect on the integrity of the Tamar Estuaries Complex SPA.

Plymouth Sound and Estuaries Special Area of Conservation (SAC)

Natural England can confirm that the proposed works are located within Plymouth Sound and Estuaries SAC (SAC). This SAC is designated for a suite of flora and fauna:

- Sandbanks which are slightly covered by seawater all the time
- Estuaries
- Large shallow inlets and bays
- Reefs
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- Mudflats and sandflats not covered by seawater at low tide
- Shore Dock (*Rumex rupestris*)
- Allis shad (*Alosa alosa*)

Natural England has reviewed the HRA provided by Plymouth City Council on the 23rd March 2015. Our views on the HRA can be found below with more detailed comments regarding individual aspects of the Appropriate Assessment found in Annex 1.

After reviewing the draft HRA, including the HRA recommendations and the CEMP/OEMP proposed mitigation, Natural England does not have sufficient information to fully agree with Plymouth City Council's conclusion that if the described mitigation measures and HRA recommendation are implemented then the proposal will not cause an adverse effect on the integrity of the Plymouth Sound and Estuaries SAC. Natural England is satisfied with the majority of the mitigation provided the following recommended planning conditions are included:

- A monitoring methodology and threshold of damage for seagrass are agreed with Natural England prior to commencement of works
- Foul water drainage plan is submitted and agreed with Environment Agency and Natural England prior to commencement of works, this is to include turbidity data and plume modelling for all proposed outflows.

However, we continue to have insufficient evidence regarding the following aspect of the development:

- Changes in water quality due to emissions from energy to waste plant, in order to assess the likelihood of significant effect we require information of the size of plant and expected emission levels.

Protected Species

We have not assessed the application and associated documents for impacts on protected species.

Natural England has published Standing Advice on protected species. The Standing Advice includes a habitat decision tree which provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides detailed advice on the protected species most often affected by development, including a flow chart for each species to enable an assessment to be made of a protected species survey and mitigation strategy. You should apply our Standing Advice to this application.

As Standing Advice it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation. If you have any specific questions not covered by our Standing Advice or have difficulty in applying it to this application please contact us at consultations@naturalengland.org.uk.

Consent

If your Authority is minded to grant consent for this application contrary to the advice relating to the Tamar-Tavy Estuary, Lynher Estuary and St John's Lake SSSI's, the Tamar Estuaries Complex SPA and the Plymouth Sound and Estuaries SAC contained in this letter, we refer you to Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended), specifically the duty placed upon your authority, requiring that your Authority;

- Provide notice to Natural England of the permission, and of its terms, the notice to include a statement of how (if at all) your authority has taken account of Natural England's advice, and representations made under regulation 61 (3) of the Habitats Regulations, and*
- Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.*

Annex 1

Comments on the draft HRA – Plymouth Sound and Estuaries SAC

Toxic contamination of water as a result of construction activity or operational accident – If the HRA recommendations are followed as detailed in the Appropriate Assessment along with the proposed mitigation from the revised CEMP/OEMP, it is Natural England's view that this aspect of the work is not likely to have a significant effect on the SAC.

Physical damage (increased threats to intertidal and subtidal habitats by refurbishment of the Jetty, seawall, apron and new foul drainage outfall - If the HRA recommendations are followed as described in the Appropriate Assessment along with the proposed mitigation from the revised CEMP/OEMP, it is Natural England's view that this aspect of the work is not likely to have a significant effect on the SAC. This is however dependent on a detailed methodology provided in regards to the jetty repair, to which Natural England would be consulted through the subsequent MMO marine licence application process.

Physical Damage (increased threats to intertidal and subtidal habitats by increased water transport to the hotel) If the HRA recommendations are followed as set out in the Appropriate Assessment along with the proposed mitigation from the revised CEMP/OEMP, it is Natural England's view that this aspect of the work is not likely to have a significant effect on the SAC. This proposed mitigation may need to be amended if the seagrass is shown to have a greater maximum height in the proposed Phase 2 Sea Grass Survey or in other subsequent surveys.

Physical damage (increased threats to intertidal and subtidal habitats by increased recreational pressure from visitors arriving in their own vessels including anchoring, mooring and physical disturbance) – The HRA proposes a voluntary no anchor zone, annual surveys of the seagrass and a threshold of damage that would trigger the implementation of a Plymouth City Council byelaw to prohibit anchoring. Natural England agrees that these HRA recommendations may be sufficient to ensure there will not be a likely significant effect on the SAC. It is Natural England's view that this aspect is not likely to have a significant effect on the SAC provided any planning permission includes a condition to cover the agreement of a monitoring method and damage threshold with Natural England prior to commencement of works.

The following information may be of relevance for the applicant in the further development of the monitoring plan.

Natural England believes that annual monitoring of the seagrass beds by repeat of the 2012 phase 1 survey is likely to be insufficient to identify damage from infringement of the voluntary no anchoring zone. The phase one survey was intended to map the distribution of the seagrass bed however in order to identify anchoring damage a more fine scale approach would be advised. We suggest the following may be suitable; during the phase two seagrass survey, a more thorough baseline of seagrass density is established. We would suggest the same method as the phase one survey is suitable however survey points could occur every 10 meters, conducted in an alternating grid pattern. We would advise that the video is monitored at all times during the survey to identify any bare patches in the bed that occur in areas not covered by a survey point. If a bare patch is identified towing should stop and an additional survey point should be taken. The annual monitoring could follow the same method as the phase one survey with the addition of monitoring the video for bare patches and taking additional survey points if any are found. The bare patch data can then be compared to identify if they are new and potentially a result of anchoring damage. Natural England believes the threshold of 5% damage needs to be explained in more detail – what classes as damage? A reduction in percentage cover or total loss of seagrass in 5% of the area?

Physical Damage (increased threats to intertidal and subtidal habitats by construction and operation caused by smothering with litter) - If the HRA recommendations are followed as set out in the Appropriate Assessment along with the proposed mitigation from the revised CEMP/OEMP, it is Natural England's view that this aspect of the work is not likely to have a significant effect on the SAC.

Toxic or non-toxic contamination (changes in water quality due to emissions from energy to waste plant) – Information has yet to be provided regarding the energy from waste plant. Therefore, following the ‘precautionary principle’, it is Natural England’s view this aspect of the development has the potential to cause a likely significant effect to the Plymouth Sound and Estuaries SAC.

Toxic or non-toxic contamination (changes in water quality due to new waste water discharge as a result of water treatment facility required to serve the development) – This is concluded in the HRA as ‘no likely significant effect’ as the new discharge will have to comply with Environment Agency discharge standards. It is Natural England’s view that this aspect is not likely to have a significant effect on the SAC provided any planning permission includes a condition that the applicant submits and agrees a foul water drainage plan upon which Natural England is consulted prior to commencement of works.

The following information may be of relevance for the applicant in the development of the foul water drainage plan.

The movement of this outfall to the south west of the island is likely to be sufficient mitigation for impacts on the seagrass bed. However, information is required on water circulation and turbidity from the discharge location. Recent discussions have indicated a possibility of up to three additional discharges. Further information regarding the location and nature of these is also required. We would advise this information should include the expected circulation away from the discharge site and the potential turbidity impacts in the seagrass area.

Comments on the draft HRA – Tamar Estuaries Complex SPA (please also note the ‘Advice’ section, above)

Disturbance caused by increased noise, light and visual presence associated with construction of the hotel development - If the HRA recommendations are followed as set out in the Appropriate Assessment along with the proposed mitigation from the revised CEMP and the additional measures proposed by Plymouth CC, it is Natural England’s view that this aspect of the work is not likely to have a significant effect on the SPA.

Disturbance caused by increased noise, light and visual presence associated with hotel operation - If the HRA recommendations are followed as set out in the Appropriate Assessment along with the proposed mitigation from the revised OEMP and the additional measures proposed by Plymouth CC, it is Natural England’s view that this aspect of the work is likely to have a significant adverse effect on the integrity of the SPA.

Disturbance caused by increased noise and visual presence as a result of increased recreational pressure including anchoring, mooring and physical disturbance in close proximity to nesting and roosting sites - If the HRA recommendations are followed as

set out in the appropriate assessment along with the proposed mitigation from the revised OEMP and the additional measures proposed by Plymouth CC, it is Natural England's view that this aspect of the work is not likely to have a significant adverse effect on the integrity of the SPA."

- 2.4 Since the 15th January 2015 Planning Committee, the applicant has agreed to enter into a S106 commitment to fund the creation of a bylaw to prohibit boat anchoring to prevent any damage to the seagrass beds if the applicant's own monitoring and protection scheme is not effective.
- 2.5 The key outstanding issue is the potential negative impact on the island's little egret colony. Natural England's key outstanding concern in this respect is that a small number of visitors to the new hotel may not be prepared to behave in accordance with the instructions, management controls and protocols put in place and that the resulting disturbance is likely to lead to the little egret colony abandoning the site, even if the disturbance occurs infrequently. The issue is principally one of noise, with most concern being raised voices or shouting which reveals the presence of people on the island.
- 2.6 The applicant's team are in agreement with Natural England regarding the need for further noise impact analysis. However, there is a debate about the best method of undertaking this work. Natural England favour an approach which includes on-site fieldwork. The applicant's team favours an approach based on computer modelling.
- 3.0 Next Steps
Officers have continued working hard to find a positive way forward for this planning application. Significant progress has been made with regards to the flood risk issue and the impact on the SAC eelgrass beds.
- 3.1 The key outstanding issue is the impact on the island's little egret colony and officers are endeavouring to reach an agreement with Natural England and the applicant's consultants, with regards to the method by which the noise impact surveys should be conducted.
- 3.2 Officers are keen that the applicant completes the analysis using on-site fieldwork as requested by Natural England and legal advice suggests that this work is essential to enable a favourable Habitat Regulations Assessment to be written up lawfully.
- 3.3 Time is of the essence – as the on-site noise survey work would need to be completed during the summer period. At the time of writing, officers are in discussions with Natural England and the applicant's team with the aim of brokering an agreement and agreeing a brief for the survey.