

Minutes of the meeting of the South East Devon Habitat Regulations Executive Committee held at Civic Centre, Exeter, on Monday 23 October 2017

Attendance list at end of document

The meeting started at 6.00pm and ended at 7.15pm.

***8 Public speaking**

The Chairman, Cllr Daniel Gottschalk, welcomed everyone present to the meeting.

The Executive Committee had received four questions on notice. The Chairman invited the first speaker to read out their submitted question.

Question one received on notice - Rex Frost

'Has the Executive consulted in detail with the Port of Exeter Harbour Authority regarding their attitude to this proposal?'

The Chairman invited the Habitat Regulations Delivery Manager to respond to the question. In response, the Delivery Manager advised that he worked closely with the Waterways Team Manager from Exeter City Council and that he sat on the Habitat Regulations Officer Working Group. As such, they have been involved in decisions about the Wildlife Refuge proposals since their inception and accompanied the Executive Committee on their boat visit to view the areas from the water.

Under the Executive Committee's terms of reference in respect of questions submitted in advance, the questioner had the right to ask a supplementary question relevant to the original question printed above. In response to the supplementary question asked, the Habitat Regulations Delivery Manager advised that he had met with the Service Lead to discuss this.

Question two received on notice - Peter Hardy, Exe Power Boat and Ski Club. Member of the Port User Group

'The zoning of the Exe Estuary is entirely based upon a study - called the Exe Disturbance Study - that has been completely dismissed as inaccurate and flawed. The report to this committee said, "The study is key because it establishes reasonable scientific argument that activities on and around the Exe are causing disturbance to protected species".'

This seems contrary to the long and detailed studies conducted by the leading figure in estuary bird disturbance research - Professor John Goss-Custard of Bournemouth University - whose work in this field has not been mentioned in this report.

In order to make the correct decision on this important subject, the committee should be made aware of all the facts both for and against the Voluntary Exclusion Zones. Why is this important evidence on disturbance not included with this report today?'

The Chairman invited the Habitat Regulations Delivery Manager to respond to the question. In response, the Delivery Manager advised that the critique of the Exe Disturbance Study by Professor Goss-Custard was referenced in Section 2 of the report. This section of the report went into considerable detail to explain why the current

approach had been chosen and pointed out that the critique had been considered and rejected by Natural England and the partner authorities.

The critique failed to address a number of important considerations, including the precautionary principle which ensured protection where there was doubt. The Exe Disturbance Study was carried out by leaders in the field of bird disturbance monitoring, was robust and based on direct observation of the distribution and behaviour of birds on the Exe.

This was why, nationally, there were other studies and strategies, from the Humber to the Solent, from North Kent to Poole Harbour, which shared this approach and not that put forward by Professor Goss-Custard.

Records of ongoing disturbance had been compiled by Officers of Teignbridge District Council and were shown in Appendix F. This provided compelling evidence showing ongoing disturbance from powered and non-powered watercraft from 2009 to the present.

In response to a supplementary question, the Delivery Manager reported that Professor Goss-Custard's critique of the study had been considered and rejected as it was considered it did not meet the requirement of the legislation. The Delivery Manager had met with Professor Goss-Custard in 2013 and December 2016 and he had talked to all of the planning teams and each of the local authorities concerned.

Third question submitted on notice – Jane Evans

'Please can the committee explain why the proposal for wildlife refuges restricts human activity so that small craft (canoes, kayaks, dinghies and stand up paddleboards) will no longer be able to travel safely in the estuary? Instead, small craft will be obliged to travel too close to the main channel. This has two major problems:

- a) they are at risk of being run down by large craft e.g. powered vessels and large yachts.
- b) they will be unable to travel against the tidal flow, whereas without any restrictions it is possible to make passage against the tide when not close to the main channel. There are strong tidal flows in the estuary and craft need to be able to travel along a safe route.

The Committee should not introduce a requirement that compromises the safety of water users.

The agenda report states that the objections notified in the consultation which included these points have been addressed because they were misunderstandings. I can assure you that this is not the case, and that the agenda report is extremely misleading in this respect. I urge you to postpone any decision on wildlife refuges to a future date, and for the SEDHR Executive Committee (and not a partnership comprising only conservation bodies) to engage properly with water users.'

The Chairman invited the Delivery Manager to respond to the points raised. In response, the Delivery Manager advised that the Wildlife Refuge proposals had been amended as a result of the 9 month consultation period and took full account of the safety of all users. Since the outset and again in the report, the clear position was that the voluntary refuges cease to apply in the event that they are needed for immediate safety.

The proposed refuge at Dawlish Warren has been moved back by 100 meters from the navigation channel and existing National Nature Reserve boundary. The proposed refuge at Exmouth had been significantly reduced and the western boundary was approximately 750m from the navigation channel. This provided ample room for users to continue their activities.

Additionally, the proposed timing of the refuge at Exmouth had been significantly shortened so that it would not apply at the time of year when it was most popular for water sports. The Watersports Participation Survey 2016, funded by organisations such as the RYA and British Canoeing, shows that 77% of all water based activities take place between March and August.

At the same time, the very reason that the refuges had been proposed was because it was not permissible to allow disturbance from recreation to affect the survival of protected species. If approved, it was reasonable to expect users to factor the refuges into their plans and take personal responsibility for their safety and to avoid them.

In response to the supplementary question, the Delivery Manager advised that he wanted to work with user groups to establish proposals that would maintain the safety of users including less experienced users.

Question four submitted on notice – David Rochester

‘In section 5.1 of your report you comment on consultation as follows:

Through the questionnaire, approximately 70% of respondents raised issues with the initial proposed VEZs. However, although concerns were also raised during consultation meetings, the EEMP was able to clarify any misunderstandings about the proposals and discuss with users what they would like to see amended. The meetings generally resulted in users largely accepting the approach, as long as their concerns and suggestions were taken on board

If as you suggest the user concerns and suggestions were taken on board can you explain why the most recent online questionnaire results (shown in appendix d) still show approximately 70% of respondents (69% for Exmouth and 64% for Dawlish) are raising issues with your proposals.’

The Chairman invited the Delivery Manager to respond to the question. In response, the Delivery Manager advised that the majority of those issues raised had been taken on board – they were the same as those addressed in the Exe Estuary Management Partnership’s report and addressed in detail again in the committee report.

The results of the most recent online questionnaire also broke down the issues raised by the respondents, as shown in Appendix D. Many of these responses (96 out of 143 responses for Exmouth and 83 out of 127 for Dawlish) suggested:

- that the proposals should be abandoned.
- there wasn’t sufficient evidence to back up the proposals.
- that the areas were needed for safety.
- or that non-engine water users didn’t have any impact.

Sections 2 and 3 of the report explain in detail the reasons it was considered that the proposals could not be abandoned, that there was sufficient evidence, how safety

concerns had been addressed and Appendix F provided evidence of the disturbance that non-engine water activities could have.

In the absence of other compelling information, the proposals cannot simply be abandoned because people were not in favour of it or choose to support a challenge to the approach which had been addressed and rejected. The refuge proposals remain a request to all user groups to help to protect vulnerable species over areas accounting for less than 10% of the Special Protection Area.

In response to the supplementary question, the Delivery Manager reported that the safety of human users of the estuary was paramount and it was important that education was used to assist with safety and also protect vulnerable areas of the estuary and wildlife. The Delivery Manager confirmed that the operation of the patrol boat would be in line with health and safety protocols.

There were four speakers who had registered to speak at the meeting. The Chairman invited each in turn to address the Committee.

Gavin Bloomfield, representing the RSPB and the Devon Wildlife Trust. He reported that the RSPB fully supports the proposals and wanted to emphasise the importance of the area for migrating birds, which was without dispute. With the demands on the estuary, the number of migrating birds on the estuary had declined. Five species had shown particular high levels of reduction in numbers. The Exe Estuary was very busy compared with other estuaries.

The proposals would help reduce the effect on the most vulnerable parts of the estuary and the wildlife protection aspect of the proposals were important. To act now was a moral imperative to provide protection for both the Exe Estuary and the wildlife on it.

Myles Blood Smyth, representing Exmouth mussels, reported that he was a mussel fisherman on the Exe for 360 days per year. He had the aim of having a vital and healthy river, which supported everybody. He had helped overcome the total mortality of the shellfish beds in the estuary, which had occurred in Spring 2015.

He considered that the disturbance on the Dawlish side on the estuary was minimal. One way to act to help preserve the estuary and wildlife was for Exeter City Council to appoint a harbourmaster as Mr Blood Smyth considered that much of the disturbance of the estuary occurred at the weekend. He opposed the proposals in respect of protective zones within the Exe Estuary and considered that the views of those who knew what would work had not been properly taken in to account.

Rex Frost, Chairman of the Exeter Port User Group, reported on the huge outcry on how the protective zones on the Exe were to be implemented. He considered that the views of the water users, including those of the Royal Yacht Association, had been ignored. All the objections had not been dealt with properly. He did not feel that this matter had been dealt with in a democratic way and that the process should be started again and dealt with in a more conciliatory manner.

Vyv Game, reported that if inflammatory language was used it was because what users had been saying has not been taken into account in the proposals made. He considered that no Exe Estuary User had been part of the process. There had been a lack of proper statistical evidence, which undermined the legitimacy of the whole process.

He had two points to make regarding the proposals:

1. that the use of scientific evidence was not compelling.
2. The process was flawed from the outset.

He considered that no users of the Exe Estuary had been involved in the process. He urged the Committee to refuse the proposals that had been put in front of them and start again. He felt that the use of the Exe Estuary had reduced over the last 20 years.

Councillor Phil Twiss, had a question regarding the effect of future development of the Exe Estuary and also on the level of S106 funding. The Delivery Manager reported there was a 10km zone of influence for development around the designated wildlife site. These were the people in new housing likely to have a future influence on the Exe. Local Plans for the three Districts anticipated the development of 30,000 homes in these zones. Councillor Twiss did consider that the opinions of members of the public had been taken into account during the process.

***9 Declarations of interest**

There were none.

***10 Matter of urgency - Car parking at Dawlish Warren**

With the agreement of the Chairman, there was one matter of urgency presented to the Executive Committee for consideration. The matter related to the management of car parking at Dawlish Warren to ensure improved visitor management and reduced visitor pressure on the Special Area of Conservation.

The Executive Committee considered the Delivery Manager's report outlining the current parking arrangements at Dawlish Warren and recommending that new arrangements be implemented by Teignbridge District Council (who owned the car park), to encourage visitors to the area to use alternative green space, such as the newly opened Dawlish Countryside Park, and relieve pressure on Dawlish Warren, which was an important wildlife site.

RESOLVED:

1. that the Executive Committee recommends that Teignbridge District Council consider cessation of "high" and "low" season charges and implement a single charging schedule for car parking at the both the "inner" (seaward) and outer (landward) car parks (edged yellow and blue respectively on the plan at Appendix A), Dawlish Warren. These charges would apply throughout the year, including on Sundays, and would be most appropriately based on existing "summer" prices (and any appropriate increases to account for inflation).
2. that the Executive Committee recommends that Teignbridge District Council considers closure of the easternmost half of the "inner" car park (edged blue and cross hatched red on the Plan at Appendix A) from 15th October – 1st March. (Discussion and agreement from Dawlish Warren Golf Course on access arrangements would be necessary.)

***11 Financial report**

The Executive Committee considered the Habitat Regulations Delivery Manager's report updating Members on the overall financial position of developer contributions received by all three local authorities as mitigation payments toward measures identified in the South East Devon European Site Mitigation Strategy. The report set out details of the contributions received from inception until the end of the first quarter of 2017 financial year and also included anticipated income from contributions where planning permission had been granted, however the mitigation payment had not yet been paid. Members noted that updated housing forecasts were not currently available from all partner authorities and to avoid inaccuracies a 5 year income forecast of developer contributions had not been included - they would be presented to the Executive Committee at their next meeting (January 2018).

Councillor Phil Twiss asked how much S106 money from developers was still outstanding. The Delivery Manager reported that that it was always challenging to get developer contributions on time. There were items that dated from 2011 and 2012, but EDDC's S106 Officer was actively chasing these.

RESOLVED:

- 1. that the quarterly update on the overall financial position, including contributions received, contributions not received because arrangements might be in place for contributions to be with-held, expenditure and anticipated contributions (from signed S106), be noted.**
- 2. that the Executive Committee receives an update on 5 year income forecasts of developer contribution receipts at the HREC meeting in January 2018.**

***12 Review of zones in the Exe Estuary**

The Executive Committee considered the Habitat Regulations Delivery Manager's report setting out the legal background and detailed process, including comprehensive consultation and engagement, to arrive at a set of proposals for two protective Wildlife Refuges on the Exe Estuary at Dawlish Warren and Exmouth.

Members noted that the Wildlife Refuges presented one of the most significant, albeit voluntary, changes to access in the Estuary for a number of years and were required as result of a significant increase in human population, associated recreational activities and evidence, which indicated the significant impacts this had on protected species and habitats. The protected species depended on the Estuary for survival and the evidence coupled with a precautionary approach required by legislation made it clear that doing nothing was not an option. To work effectively, the Refuges would depend on the goodwill and education of people using the Estuary for their recreational pursuits. It was recommended that the Executive Committee received annual monitoring reports in order to maintain an overview of how effective the Refuges were and that after three years there would be an overarching review of monitoring results.

The Delivery Manager thanked all those that had shared their views and had engaged in the process. It was recognised that not everyone would be happy with the proposals, however the recommendations were considered to be the best possible compromise.

Councillor Humphrey Clemens reported that he felt that a considerable amount had changed over the last year to the proposals and the areas in question had reduced considerably. He had attended a trip by boat to see the areas and this had proved very useful. There were still large areas available for recreational use. He had witnessed a

single kayak disturb a flock of widgeon, who had not returned. This had evidenced that even relatively small craft caused disturbance. It was the Committee's duty to protect bird life and it was the intention to make the proposals voluntary and estuary users who were in trouble could use the protected zones. He found that there was no evidence to suggest that he should not support the proposed protected zones.

Councillor Phil Twiss asked what the arrangements were for the patrol boat. The Delivery Manager reported that there was a budget of £22K available to purchase a patrol boat and that the purchase of this had been on hold pending the outcome of the wildlife refuge proposals. Councillor Twiss reported that the composition of the Committee had changed recently and that he was relatively new to it. The Exe Estuary was a finite resource and considered that the restricted zones were a small part of it. The pressures on natural resources would increase as the number of houses built increased. This would inevitably mean a growth in the users of the Exe Estuary.

CIL and S106 monies would help the Exe Estuary. Councillor Twiss reported that he did not like the idea of compulsory zones. A voluntary exclusion zone gives an opportunity to trial it. Doing nothing was not an option and he wanted the new zones to be properly maintained.

Neil Harris then read out the statement from Peter Lacey, during which he stated he was not fully qualified to make a judgement on the proposed restricted zones for the Exe Estuary, but still considered that they were a proportionate response to the problem. Andrew Stanger the Natural England representative reiterated his organisation's previous comments. Councillor Clemens asked if the zones were reduced would this meet Natural England's requirements to protect species on the Exe. The Natural England representative reported that he would not want to see them reduced further.

Neil Harris reported that previous patrolling of the area had been undertaken by volunteers. He confirmed that there was no current active enforcement of the bylaws.

Councillor Daniel Gottschalk, Chairman, wished to thank all those who had taken part in the process. Safety was paramount, these were only voluntary refuges, and residents were able to use all of the Exe Estuary for safety purposes. He confirmed that he would make sure that all users would be engaged and feedback would be received from all users.

RESOLVED:

- 1. that the outcome of the comprehensive consultation exercise on the introduction of Wildlife Refuges be noted. The Executive Committee wished to record its thanks to the Exe Estuary Management Partnership for undertaking the initial stages of the exercise;**
- 2. that establishing two Wildlife Refuges at Exmouth and Dawlish Warren as recommended in Section 6 of the Exe Estuary Management Partnership's report 'Exe Estuary Zonation Review – Consultation Report', subject to a change to preclude the use of powerboats in the Exmouth Refuge between 15 September to 31 December, be approved;**

3. that Exeter City Council be recommended to undertake a review of Byelaw 4a (relating to use of powerboats in the designated 'Powerboat' zone) with a view to precluding use of powerboats in the designated area between 15 September to 31 December;
4. that the Executive Committee receives an annual Wildlife Refuge Monitoring Report;
5. that the Executive Committee receives an overarching review of monitoring results after completion of the third year of monitoring (2021).

Attendance list

Committee Members:

Cllr Daniel Gottschalk, Exeter City Council (Chairman)
Cllr Humphrey Clemens, Teignbridge District Council
Cllr Phil Twiss, East Devon District Council

Officers

Henry Gordon Lennox, Strategic Lead – Governance and Licensing (EDDC)
Neil Harris, Habitat Regulations Delivery Manager – Growth Point Team
Andy Wood, East of Exeter Projects Director
Chris Lane, Democratic Services (EDDC)
Anne Mountjoy, Growth Point Communications Officer – Growth Point Team
Fergus Pate, Principal Growth Point Officer (TDC)
Andy Robbins, City Development Manager (ECC)
Andrew Stanger, Natural England

Apologies:

Peter Hearn, Strategic Infrastructure Planning (ECC)
Peter Lacey, Green Infrastructure Board
Amanda Newsome, Natural England
Simon Davey, Strategic Lead – Finance (EDDC)

Chairman Date.....