

**EXAMINATION OF THE CORNWALL SITE ALLOCATIONS
DEVELOPMENT PLAN DOCUMENT**

**NOTE FROM THE INSPECTORS ON
HABITATS REGULATIONS ASSESSMENT and
IMPLICATIONS OF RECENT CASE LAW
31 JULY 2018**

1. This note is for consideration in conjunction with recommendations for Main Modifications consultation Ref INSP.S16 also of 31 July 2018.
2. The Habitats Regulations Assessment ('HRA') supporting the CSADPD (Ref D2) pre-dates the judgement handed down on 12 April 2018 in the case of *People Over Wind and Sweetman v Coillte Teoranta*.¹ The Council and its appointed consultants may be aware that the essence of that judgment is that measures to avoid or reduce effects of plans or programmes on protected habitats should be considered via appropriate assessment, as opposed to being integrated with an earlier screening assessment.
3. Paragraph 6.1.1 of the HRA concludes that '*...the findings have included consideration of the potential for in-combination effects from other plans and projects and have proposed avoidance and mitigation measures to address identified effect*'. Paragraph 6.1.2 then sets out that likely significant adverse effects may be screened out on the basis of the measures set out in HRA table 5.2.
4. In this context the Council should consider whether the HRA remains legally compliant. Whilst we have provided separately recommendations for consultation on the MMs proposed to date, if the Council considers that additional work is necessary in this respect it would be beneficial to align that process and to seek any comments in conjunction with consultation on MMs.
5. ***The Council is asked to take account of the above in (i) providing their view as to whether the HRA report is legally compliant, and (ii) setting out any subsequent actions that they intend to take in this regards.***
6. As with all changes to circumstances since submission of the CSADPD, the Inspectors will consider how best to address such issues in the interests of fairness at examination (including whether further written evidence or an oral hearing is necessary).

Brian Sims
Lead Inspector

Thomas Bristo
Inspector

¹ Environment – Conservation of natural habitats, [2018] EUECJ C-323/17.