

Our Ref: 1974-01/MP

E-mail Only

20th December 2018

Jo McCabe
 Site Allocations DPD - Programme Officer
 3rd Floor,
 Pydar House,
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 Truro,
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Dear Ms McCabe

**CORNWALL SITE ALLOCATIONS DEVELOPMENT PLAN DOCUMENT –
 INSP.S17 NOTE FROM THE INSPECTORS ON HABITATS REGULATIONS
 ASSESSMENT AND IMPLICATIONS OF RECENT CASE LAW**

I write on behalf of Oceans Reach regarding the advice provided in INSP.S17 on 31st July 2018 and Cornwall Council's response.

Within INSP.S17 the Inspector's advised Cornwall Council that the Habitats Regulations Assessment (HRA) supporting the CSADPD pre-dated the judgement in the Court of Justice of the European Union ("CJEU") on *People Over Wind v Coillte Teoranta* (C-323/17) ("POW"). This ruling requires measures incorporated into a plan or project, to avoid, mitigate or compensate impact on a European Site, to be made clear and, subsequently, eliminated from consideration during the screening process (stage 1 of the HRA). Where a plan or project may have a significant effect on a European site(s), Articles 6(3) and 6(4) of the Habitats Directive require Appropriate Assessment (stage 2 of the HRA) but considering the *POW* ruling, it is no longer acceptable to rule out likely significant effects based on incorporated avoidance, mitigation and compensation measures.

The Inspectors asked Cornwall Council to consider whether the HRA carried out in support of the CSADPD remained legally compliant and whether any further actions were required. Following publication of INSP.S17, Cornwall Council prepared an updated Habitat Regulations Assessment (HRA) Report (August 2018).

We are writing to advise the Inspectors and Cornwall Council that POW is not the only ruling on this matter and would like to draw attention to more recent decisions made by the CJEU, on the issue of HRA, including:

- *Grace v An Bord Pleanala* (C-164/17) – 25th July 2018;
- *Holohan v An Bord Pleanala* (C-461/17) - 7th August 2018; and
- *Cooperatie Mobilisation for the Environment UA* (C-293/17) – 7th November 2018.

Each of these judgments is relevant to the matter of HRA, and are not covered by the POW judgement and will, therefore, not have been considered by Cornwall Council in their updated HRA Report. Consequently, my client does not consider that Cornwall Council's current HRA report has been carried out in conformity with the recent CJEU judgments and they challenge whether the HRA Report is legally compliant with these new judgments.

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Given that the Inspectors now intend to proceed with the drafting of their report on the soundness of the Plan, for delivery in the New Year, we would be obliged if this matter could be raised with the Inspectors, as a matter of urgency.

I trust that the content of this letter is self-explanatory. However, please do not hesitate to contact me at the South Manchester Office should you require any further information.

Yours sincerely,

Martin Pollard

Martin Pollard
Associate Director