



# Newsletter

## Words from The Chair

According to the Local Government Association 'devolution is the transfer of powers and funding from national to local government'.

If only that were really true! And we have been here before because, as our archivist Nicola Fox recounts on page 11, it is now *deja vu* all over again. Back in 1974, the Society's then president was complaining that:

Politicians and bureaucrats have clearly decided that bigger is better and have created a system which places the effective power in the hands of larger units..

And as we report on this page it is happening all over again. Published just before Christmas, the English Devolution White Paper makes it clear the government would like to see the end of district councils in Devon, with responsibility for functions such as planning being transferred still further away from those who will be most affected.

It is hard to see how that can be considered devolution. Nor is it the only example in this Newsletter of politicians claiming one thing that turns out to deliver a diametrically different outcome.

On page 7 our Planning Lead Les Pengelly tells of Areas of Great Landscape Value which, although sitting at the third level of landscape importance immediately below National Landscapes (AONBs), can still provide significant protection against inappropriate development. Policy CDE4 of the South Hams Local Plan 1989-2001 made it clear:

In Areas of Great Landscape Value development will only be permitted which has no significant adverse effect on the special landscape character of the area.

That was obviously constraining housebuilding and, by the time of South Hams Local Development Framework Core Strategy, adopted in December 2006:

Government advice is that planning authorities should move away from these designations and adopt a landscape character approach, setting a clear framework to help ensure that development takes place in the right locations and is sensitive to local landscape character in its design, form, materials and layout.

Developments that have since been permitted in locations that were once AGLVs often show only too well what planners consider to be sensitive to local landscape character in design, form, materials and layout can sadly end up having a significant adverse effect on the special landscape character of the area.

Nor is it only inconvenient laws that governments choose to change. As our Environment Lead Martin Fodder explains on page 8, even though the Office for Environmental Protection has concluded there have been failures to comply with environmental law by Defra, the Environment Agency and OfWat, the government appears happy to still allow the pollution of our waterways.

Of course preventing pollution would require significant investment. It could also make it more difficult for the government to build yet more houses. As we again report on page 11 in 1999 one of the first topics on the SHS committee agenda:

was the discussion on the current County Structure Plan and the housing figures it proposed for the South Hams area. Those figures were considered excessive at the time. Today a new government is again insisting on the South Hams somehow accommodating a dramatic increase in housebuilding. We examine government housing fantasies on page 5. And we are far from alone in believing their targets are simply undeliverable.

On page 9 we very much doubt the government has any real chance of delivering its promise of clean power by 2030, while on page 4 we address some of the issues Octopus still need to address before being able to erect a wind turbine 294 feet high from ground to tip in the National Landscape.

The height of Nelson's Column is but 169 feet, or some 42% lower. Elsewhere protecting Bechstein's Bat is explored in no little detail by Martin Fodder on page 16.

Happy New Year! •

## Devolution a dinner even a dog would decline



*The White Paper was published on 16 December*

On 16 December the government published its English Devolution White Paper. 'We will expect', the paper read, 'all two tier areas and smaller or failing unitaries to develop proposals for reorganisation.'

Devon is a two-tier area, with both District Councils and a County Council, that has just joined with Torbay in the Devon and Torbay Combined County Authority.

The White Paper went on to explain what that reorganisation would entail:

We will facilitate a programme of local government reorganisation for two-tier areas and for those unitary councils where there is evidence of failure or where their size or boundaries may be hindering their ability to deliver sustainable and high-quality services for their residents. Fewer politicians, with the right powers, will streamline local government to focus on delivering for residents. We will deliver this process as quickly as possible, including through legislation where it becomes necessary to ensure progress.

On the Devon and Torbay Devolution Deal website the next day Councillor James McInnes, the Leader of Devon County Council was quoted as saying:

I welcome the Government's intention to transfer even more powers for housing, transport, skills and other critical responsibilities from Whitehall to the Devon and Torbay area.

adding:

Devon's district councils, national park authorities, county council and Devon Association of Local Councils are working together as a Team Devon partnership. From next March our Team Devon Joint Committee will tackle the things that matter most such as housing and homelessness; water pollution; climate change; and the cost of living.

But given that the White Paper is unequivocal that one of the purposes of the proposed reorganisation is to:

save significant money which can be reinvested in public services, and improve accountability with fewer politicians who are more able to focus on delivering for residents.

and as well as establish Strategic Authorities that can change 'a Combined County Authority to a Combined Authority when a two-tier area becomes single-tier', not only is it inevitable that local authorities such as South Hams District Council will cease to exist and the 'Team Devon Partnership' will be no more, but that Devon County Council and Torbay Council are likely to find themselves 'merged' in to a Combined Authority.

To quote the White Paper:

in order to ensure that citizens across England benefit from devolution, and to ensure the effective running of public services, we will legislate for a ministerial directive.

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## ... Devolution

This will allow the creation of those Strategic Authorities where local leaders have, after due time has been allowed, not been able to make progress. This, combined with our plans to support local government reorganisation, will help align public service boundaries with Strategic Authorities and will ultimately lead to fewer politicians and a more efficient state.

In other words it's going to happen, regardless of whether local communities and politicians like it or not.

Some might therefore wonder whether Councillor McInnes had actually read the White Paper before choosing to comment. At least his colleague Councillor David Thomas, the Leader of Torbay Council, quoted on the same website, admitted:

We will now take the time to read the White Paper and to see what needs to be in place for the Devon and Torbay Combined County Authority to be established. What we do know is that the Combined Authority will be a "strategic authority" and will have access to the new devolution framework.

And no doubt once the White Paper had been read a few days before Christmas a "special meeting" of all Devon County Council members was called for 9 January, to discuss "the opportunities" arising from the government's devolution launch and "collectively take a view about the way forward".

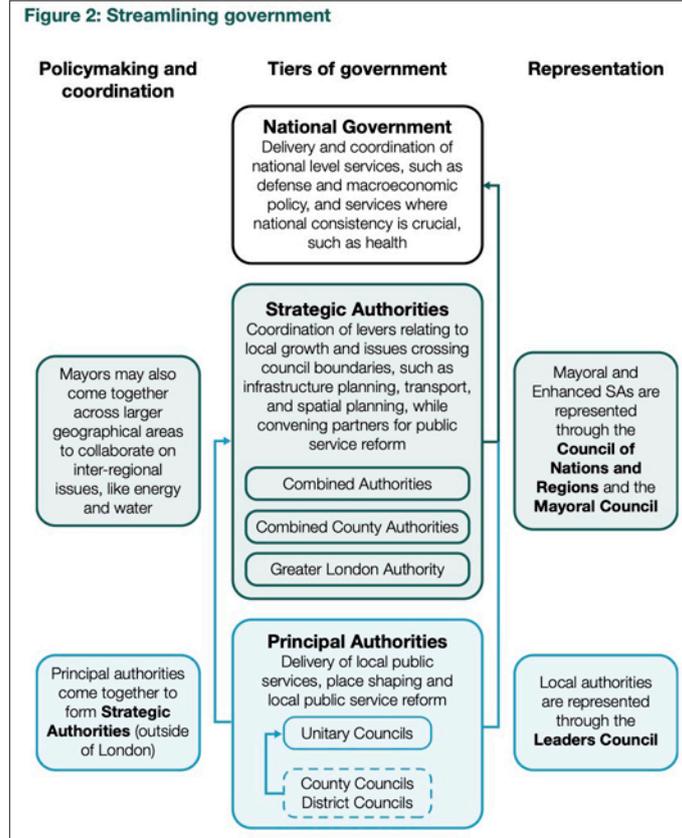
That followed on from a report that Phil Bialyk, the leader of Exeter City Council, would be making an independent bid to become a stand-alone unitary authority, divorced from the County Council and Torbay, claiming the city had "a huge opportunity to make the most of devolution".

At the same time Tudor Evans the Labour leader of Plymouth City Council, who had previously chosen not to participate in the Devon and Torbay CCA, said devolution offered a "once-in-a-lifetime opportunity", and called:

on all local leaders to recognise the potential that devolution can bring – unlocking funding, resources and giving our region a bigger voice on the national stage.

Significantly Councillor Evans has previously suggested there should be a single strategic authority across all of Devon and Cornwall. There is every possibility that will be the eventual outcome. Exeter will not obtain independence. And when the County Council meets to take a collective view about the way forward, it is likely to have to ac-

Figure 2: Streamlining government



### How the government hopes to streamline government

cept that the new entity of which we will all be a part will be led by a Mayor, as the government has made it clear that:

We want to see all of England benefit from devolution, with full devolution coverage across the country, at least to the level of Foundation Strategic Authorities, with an ambition to move to a mayoral model. By completing the map and working towards all areas having a Mayor, the government will rebalance power.

and that only Mayors will be:

free to set the priorities for funding that suit their areas the best through Integrated Settlements for Established Settlements for Strategic Authorities, meaning that for the first time Mayors are not bound by strict Westminster rules over how to spend money locally.

Authorities without a Mayor will not have that same level of control. But before any of this may happen the government wants to move quickly on strategic planning:

This means that where no Strategic Authority is in place or is planned to be in place, the government will take a power through the forthcoming Planning and Infrastructure Bill to direct defined groupings of upper-tier county councils, unitary councils, and in some cases Foundation Strategic Authorities to deliver a Spatial Development Strategy.

and:

This will include an obligation to

apportion an assessment of the housing need of the Strategic Authority across its constituent members.

So, in addition to the number of homes that we will now be required to build as a consequence of the government's new mandatory housing targets (see page xx) there is every chance that, at the whim of individuals who none of us have voted for, we may also have to accommodate those houses that cannot, for whatever reason, be built elsewhere.

To quote Green party co-leader Adrian Ramsay:

Local democracy is in urgent need of reform but this White Paper does not deliver the real change our local councils need.

It steals power away from local people and risks making the real changes required harder to achieve, including building the homes we need, cleaning our rivers, reforming social care and greening our local economies.

We should trust local communities to make the right decisions on homes, food, energy, nature and adapting to the climate crisis.

Instead, these plans risk moving power away from local councils to huge remote super councils and regional mayors.

Or, as the vice-chair of the District Councils' Network Hannah Dalton said:

We're concerned that any creation of mega-councils will prove the

opposite of devolution, taking powers away from local communities, depriving tens of millions of people of genuinely localised decision-making and representation. Little evidence exists that past local government reorganisation has saved money. We are concerned that, far from making local government more efficient and more effective, reorganisation would have the opposite effect.

Of course, regular readers of this Newsletter will remember that before our County Councillors voted to be part of a Combined County Authority with Torbay earlier this year the Society, along with many others, strongly argued that any decision should wait until after the then forthcoming general election, once the new government's intentions might be known.

Yet despite this course of action also being endorsed by our District Councillors at a meeting of the full council on 21 March that 'called for the process to be postponed pending the outcome of the forthcoming General Election and 2025 County Council elections', of our District Councillors who are also County Councillors, only Cllr Jaqui Hodgson chose to vote against the creation of the Authority. And they did so despite their colleague Cllr John Birch having previously warned them the CCA was 'just a preamble to the abolition of true local government in Devon'.

With South Hams District Council also due to meet on 6 January explanations may be called for, and mea culpas could well be in order.

Needless to say there will be those who will welcome the loss of genuinely local representative democracy. For example, as South Devon MP Caroline Voaden explained to Martyn Oates when interviewed on Politics South West:

I personally think there's probably money to be saved if there was one council rather than ten or twelve districts plus a county. There would be fewer elections to fight and fewer leaflets to deliver, which would be very welcome.

Perhaps surprisingly she expressed no concern for those who will lose their jobs in any reorganisation. Nor for the fact that decisions directly affecting her constituents, currently being taken by locally elected representatives, accountable to their communities, would instead end up becoming the responsibility of others many miles away.

Separately when the then Devon ...Continued page 3

## Use an Exemption Certificate to turn the Green Belt grey

Early in December one of our members contacted the Society. Both he, and many of his neighbours, were concerned about a 'Caravan Club Notification of proposed exempted campsite to accommodate 5 caravans / campervan pitches & 5 tent pitches on site for the use of club members' that the LPA had received six days earlier.

The site itself was a field by Deere Bridge in Slapton.

And the Notification had been submitted by an organisation called The Hideaway Caravan and Camping Club who, according to their registered address, are based in Redruth, Cornwall.

Were the exemption certificate to be issued by the Club, under section 2 of the First Schedule to the Caravan Sites and Control of Development Act 1960, planning permission would not be required for club members to be able to make use of the site. And according to the Notification:

Our club officer has inspected the site and it meets all our club's criteria and is deemed suitable for certification by our club.

However a Google search failed to reveal any mention of the Club. Nor of Mark Scotford, the chairman of the Club and the man responsible for submitting



*The field entrance is on a narrow lane with a long history of flooding*

the Notification. There was also no record of the Club at Companies House, at that or any other address.

So the Society investigated further and found there was a business operating from the registered office address, namely Tiller & Co, a creator of keepsakes and memories from loved one's clothing. Clause 20 on the Terms & Conditions page of their website revealed 'Questions about the Terms of Service should be sent to us at mark.scotford@outlook.com'.

At the same time our Planning Lead also went to visit the site and, as we subsequently informed the Local Planning Authority:

- the site directly abuts the highly protected landscape of the South Devon National Landscape.
- the access to the site is via narrow lanes without adequate passing places for caravans, campervans and trailer tents. These lanes necessitate considerable reversing and it is a known issue in the neighbourhood of Slapton.
- the field entrance is on a road with a long history of flooding.
- the site is steep and will require engineering works.
- the site abuts the Slapton Ley SSSI and is in the risk assessments zones
- Part of the site is recorded on the Devon County Environmental viewer as either a designated site or a DBRC Priority Habitat.

The field, we said, was an inappropriate location for caravans and campervans. Included with our submission were a number of photographs clearly illustrating the access problems. However, and as the case officer pointed out:

We are not the determining body for this proposal as the Local Planning Authority are a consultee on applications for exemption certificates. The exempted organisation will submit a notification to the LPA seeking their views before issuing a certificate permitting sites to be used for camping/caravanning.

Therefore all I will be doing is issuing comments to the determining body based upon the site designations and potential constraints for them to take into account as part of their decision to grant or not grant any certification.

Not long afterwards the case officer reviewing the Notification issued his comments to the Club, although these have yet to be posted to the Council's website, but it is clear no exemption certificate has been issued.

Even so this whole episode raises a number of concerns. Firstly, it seems, anyone can apply to Natural England for a touring caravan and/or a camping exemption certificate. If granted, they are then able to operate, or grant a licence to operate, a small privately run campsite accommodating up to five caravans or motorhomes and 10 tents on a greenfield site, without having to apply for planning permission.

And, at a minimum, they would need to provide a fresh drinking water tap, a sealed chemical disposal tank, a rinsing water tap with a non-return valve, and dry waste disposal.

With their application they would also have to include:

- your club's constitution; minutes of the inaugural committee meeting;
- a copy of the club's code of conduct on headed paper - include a statement that all members

follow it; details of any club branches, and confirm they share the same constitution and rules; evidence of your camping and caravanning history; evidence of relevant experience of organising camping and caravanning events; names and contact details for at least 2 independent UK sites you have used within the last 2 years; event or meeting programme for the last 2 years and also the next 12 months; details of your complaints procedure and policy - we require this as evidence about how your organisation deals with complaints against it; details of the membership enrolment process

No doubt Natural England thoroughly check and confirm the veracity of the information applicants provide, and no doubt that was indeed the case where The Hideaway Caravan and Camping Club is concerned, but it is not beyond the realms of possibility that a miscreant may occasionally slip through the net. There are always those looking for ways to turn green fields in to grey, particularly in protected landscapes, hoping to subsequently exploit further development opportunities.

As for The Hideaway Caravan and Camping Club, as its chairman informed one of those living close to the site:

You won't find details about our club online as we are not a commercial club that needs an online platform, we are not a Ltd company hence we are not registered at company's house.

But you do wonder how, given the obvious difficulties any caravan would have in trying to access the site, exactly what the club's criteria might be that made it think it suitable for certification? •

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### ... Devolution

County Council Leader Cllr John Hart originally met with Cllr David Thomas and Levelling Up Minister MP Jacob Young in January 2024 to sign what was being described as 'a ground-breaking deal that could transfer significant decision-making powers and funding from Whitehall to local government in Devon and Torbay', he suggested it was:

an opportunity for us to change what we're doing, the way that we're doing it, and get better value for our money than we sometimes get when we bid to government and then get strings attached.

noticeably adding:

We will have the right to do it our way.

He also promised 'our way' would not require an elected Mayor or changes to the current structure of local councils.

So much for that. And with our councils only having until Friday 10 January to decide with whom they wish to merge, then hope that will prove acceptable to Ms Rayner, it's all turning out to be yet another unbelievably fine mess. •

## Issues Octopus still need to address



*Octopus's own photomontage illustrating the impact of the turbine on the skyline when seen from Ringmore Footpath 1*

To quote *The Guardian*:

Ed Miliband has vowed to take on the nimbys opposed to the government's rollout of wind turbines, solar farms and pylons across the UK as a matter of "national security" and "economic justice".

And, if the Government succeeds in making its proposed changes to the National Planning Policy Framework, Paragraph 164 demands:

Local planning authorities should support planning applications for all forms of renewable and low carbon development.

At the same time the Government intends to delete Footnote 59 from the Framework, which states:

a planning application for wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan or a supplementary planning document; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support.

So, given that the Government goes ahead with its proposed changes effectively ensuring local communities no longer have any say in such matters, you would assume that once Octopus Energy submits its planning application for its proposed wind turbine at Rolliers, on a green field site less than a kilometre north-north-east of St Ann's Chapel in the parish of Bigbury, it is certain to be approved.

This despite Policy BP29 of the Bigbury Neighbourhood Plan

declaring:

Proposals for solar arrays or wind turbines on open farmland will not be supported

and Policy DEV33 7. of the Joint Local Plan requiring:

For wind turbine proposals, the site has been allocated for that use within a neighbourhood plan.

Fortunately the site falls within the South Devon National Landscape or what was previously the AONB, and there remains the small matter of the significantly strengthened Countryside and Rights of Way Act 2000 'Section 85 duty', which became law on 26th December 2023. It requires all public bodies:

In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority, must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

And as the South Devon National Landscape Unit has itself pointed out:

The 'South Devon AONB Planning Guidance' is the principal document for how planning functions should "seek to further the conservation and enhancement of natural beauty" of the South Devon National Landscape. Forming part of the statutory Management Plan, it is a statutory material consideration in planning.

That Guidance makes clear that 'renewable energy development that conserves and enhances South Devon AONB will:

- Be small scale, aimed at providing energy for use on site, and operating at an individual farm, household or community scale,

with minimal transport or transmission impacts and is unobtrusive in the landscape;

- Be located close to existing buildings, farmsteads or settlements;
- Be ancillary to agricultural enterprises with the energy generation used to off-set farm energy cost, rather than being a primary enterprise in its own right;
- Be small renewable energy installations (solar hot water, photovoltaics, woodfuel, etc) fitted to existing and new buildings, where this can be done without harm to the character of historic structures or the wider landscape.

The Rolliers turbine satisfies none of those criteria, while the Guidance goes on to say 'proposals for renewable energy development that have potential to harm the AONB include:

- Industrial and commercial scale renewable energy installations aimed primarily at exporting energy off-site and which should therefore be located outside the AONB;
- Visually intrusive developments in open countryside, particularly where the topography makes any installation more visually conspicuous by virtue of its size, transmission infrastructure, traffic generation, noise or other characteristics including motion in the landscape;
- Detractions from open skylines and views within, into or out of the AONB;

With the turbine being located within the high, open, gently undulating or coastal plateau of the South Hams that is dissected in places by deep coombes and where:

Land use is mixed farmland, with arable dominant, and some localised recreational use. Sparsely settled with limited narrow roads,

although many rights of way including the South West Coast Path. Extensive views of the sea.

And LanMan/F2 of the South Devon National Landscape Management Plan makes it clear 'wind turbines... have the potential to damage the traditional agricultural environment.'

Or as South Hams District Council themselves emphasise:

Communications masts and other skyline infrastructure at Start Point and elsewhere are particularly intrusive to the open skylines of the AONB.

Noting that amongst the forces for change posing a threat to the area is the:

Pressure for the development of renewable energy infrastructure such as wind turbines and solar farms, and communications masts which are intrusive on prominent skylines.

It is self-evident the turbine is unlikely to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Photomontages provided by Octopus themselves illustrate the impact the turbine will have on both local and wider views in an area that within the neighbouring parish of Aveton Gifford alone boasts 28 public rights of way which, according to the Neighbourhood Plan, 'residents and tourists regularly make use'. The area, as Paragraph 18 of that Plan goes on to explain 'attracts walkers, horse riders, bird watchers, photographers and artists' and the 21 footpaths, four bridleways and three byways, collectively more than 20km in length, 'are a major asset of the parish'.

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## ...Issues Octopus still need to address



*Octopus's own photomontage clearly demonstrates the intrusive presence of the turbine when seen from a nearby unmade road*

The turbine will also be clearly visible from many public viewpoints in the parish of Bigbury, and given the previous refusals of similar applications North of Goveton, at Higher Torr Farm, Winslade Farm and Luscombe Cross, is difficult to see how Planning Officers will be able to both perform their Section 85 duty and approve the application.

As Paragraph 4.79 of the Bigbury Neighbourhood Plan emphasises: 'Tourism is a very important

part of the local economy' and consequently it is important to preserve 'the beauty and unspoilt nature of the countryside, the coastline and the beaches', which is arguably the primary reason why visitors wish to come to the area, and something which the imposition of the turbine will threaten.

Finally the National Landscapes Association Briefing of November 2024 reminds us:

it is important to remember that

'natural beauty' is holistic. 'Natural beauty' is not just the look of the landscape, but includes landform and geology, plants and animals, landscape features, and the rich history of human settlement over the centuries.' It includes landscape and scenic quality, natural heritage (species, habitats, geology and physical geography), wildness, tranquillity and dark skies, and cultural heritage (including cultural traditions and the historic and other built environment that makes the area unique).

Historic England make clear that the historic environment is fundamental to the distinctive character, sense of place and natural beauty of each AONB.

There is nothing 'natural' about an industrial and commercial scale renewable energy installation. Instead it will be an alien and unwelcome intrusion in to the historic environment.

It is hard to envisage how Octopus will be able to argue otherwise. •

## Government housing fantasies

Consultation outcome

# Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation

Updated 12 December 2024

Back in July, when the government brought forward its consultation on changes to the National Planning Policy Framework, they simultaneously introduced a new 'standard method' by which local housing need was to be calculated.

Here in the South Hams it meant we were going to have to find sufficient land to accommodate at least 875 new houses each year, an increase of no less than 70% on the total of 513 previously required in our current Joint Local Plan.

Where, we wondered, was the

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land for those additional homes to be found?

Nor, we noted, was that the only challenge the government would face. As we wrote in the Society's response to the consultation:

a combination of the constraints imposed by other Policies, the fact that protected landscapes occupy as much as 57.5% of the total land area of the South Hams – with much of the remaining local terrain unsuitable for development on any scale, when coupled with both the question of whether the increased supply will continue to ensure existing levels of developer profitability combined with the

need for developers to be able to recruit the additional skilled workers they need to deliver against the new targets all make it doubtful that, even if the sites can be identified, the additional housing called for can realistically be delivered within five years.

Unsurprisingly, we were not alone. On 12 December the government formally responded to the 10,981 responses they had received from private individuals, local authorities, interest groups, developers and others, noting:

it is recognised that there may be local constraints on land and delivery that could justify a lower

housing requirement figure. and:

we note the comments that there should be further guidance on the circumstances in which local planning authorities can deviate from local housing need as assessed by the standard method.

Unfortunately that further guidance has yet to appear.

But at least for the moment, although our current five year housing land supply falls far short of that which will now be required, the previous presumption in favour of sustainable develop-

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ment, enabling developers to obtain planning consent on sites where existing Joint Local Plan policies would otherwise require refusal, will not be automatically applied.

Instead we will have until December 2026 to submit a new Joint Local Plan in which the necessary deliverable housing sites will need to be identified. Only if we fail to do so will the presumption come in to force.

In the process we will also have to add a 5% buffer to our housing land supply and, because our adopted plan annual housing requirement figure is less than 80% of what we are now told is our annual local housing need figure, we will additionally be required to add a further 20% buffer to our 5-year housing land supply from 1 July 2026.

To make matters worse, since their consultation began, the government has also decided to change the way in which their standard method calculates local housing need, allowing them to claim:

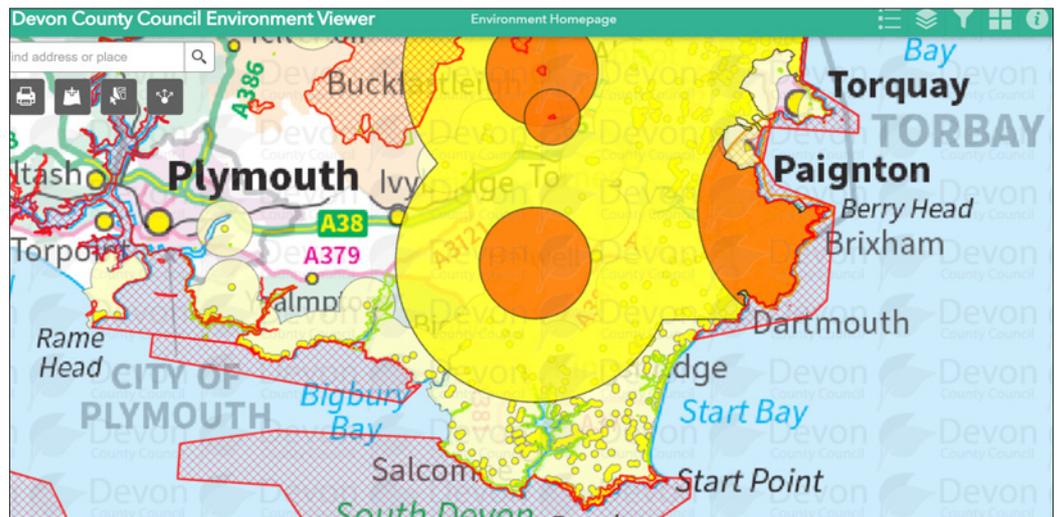
it results in increases in assessed housing need in London, South East and East of England. For all other regions, housing need falls when compared to the method consulted on.

Sadly this turns out to be untrue. For we now no longer have a target of 875 new houses each year but rather 910 – to which for five years from July 2026 a 20% buffer will need to be added, taking our annual requirement to 1,092 and, if a further 5% buffer is then required, to 1,147.

To try to put these numbers in to context, in October 2021 Council Tax records showed Kingsbridge, for example, could boast 3,061 properties, Totnes 4,388 and Ivybridge 5,144. Although each of those totals will now be higher, to achieve the government's new housing targets, in the five years from 2026 we are going to have to build the equivalent of another Ivybridge.

More pertinently we, or at least our locally elected district councillors, are unlikely to be given the option of deciding exactly where those houses are to be built. Because at the same time as publishing its consultation response the government has also published its English Devolution White Paper, in which it announces its intention to do away with District and County Councils, and instead replace them with Unitary Authorities, under the

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*Add in the Special Areas of Conservation for bats and Cirl Bunting and little land is left for houses*

leadership of an elected mayor. Almost certainly the new authority will assume responsibility for planning, not only throughout Devon but also both Torbay and Plymouth, and possibly throughout Cornwall as well. Inevitably its officers will be based many miles away and lack direct local knowledge. Yet somehow they will have to decide where all these new houses both can and are able to go.

And inevitably they will face many challenges, not the least of which is the fact that almost 58% of all land in the South Hams is to be found either in a National Park or a National Landscape, and Paragraph 189 of the NPPF continues to insist:

Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues.

while the significantly strengthened Countryside and Rights of Way Act 2000 'Section 85 duty', which became law on 26th December 2023, requires all public bodies:

In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority, must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Even so, that does not necessarily make all development impossible. And given the requirement to meet our housing targets, it is noticeable Paragraph 190 of the NPPF might allow the government to argue that, should sufficient land prove unavailable elsewhere, it must be found from

within our protected landscapes. It reads:

When considering applications for development within National Parks, the Broads and National Landscapes, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

After all, the government seems convinced that concreting over the countryside is in the public interest to both stimulate economic growth and ensure housing targets are met. But significantly they managed to make it harder for that to happen, at least here in the South Hams, when on 16 December they published 'guidance for relevant authorities on seeking to further the purposes of protected landscapes', reminding them that:

as far as is reasonably practical, relevant authorities should seek to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities, and key characteristics of Protected Landscapes

emphasising that key amongst: the statutory purposes of National Landscapes (areas of outstanding natural beauty) are... conserving and enhancing the natural beauty of the area of outstanding natural

beauty. As few would claim the imposition of a housing estate on an otherwise unspoilt landscape can conserve and enhance its natural beauty, the land needed for housing will have to be found elsewhere in the South Hams, on the other unprotected four-tenths of the area. Consequently it is also pertinent that this same government guidance continues:

Natural beauty, special qualities, and key characteristics can be highly dependent on the contribution provided by the setting of a Protected Landscape. Aspects such as tranquillity, dark skies, a sense of remoteness, wildness, cultural heritage or long views from and into the Protected Landscape may draw upon the landscape character and quality of the setting. Development and the management of land, water and estates located in the setting have the potential to adversely affect the natural beauty, special qualities, and key characteristics of a Protected Landscape.

And here it is relevant to refer to the article on our former Areas of Great Landscape Value on page 7, many of which were to be found within the settings of our protected landscapes. It may therefore also be difficult to bring forward many other potential sites, located outside our protected landscapes, where development would have an adverse impact on their setting.

In practice this makes it probable that the vast bulk of the land needed to meet our housing targets will have to be found along the A38 corridor between Plympton and Bittaford. But here there is another problem as, according to the NPPF, all proposed sites must be 'deliverable', meaning:

sites for housing should be avail-

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## 6 ... housing fantasies

able now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
- b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

And it is distinctly questionable whether, following on from the precedent set by Sherford, there will be much by way of developer demand for more sites along the A38 corridor.

In November 2013 outline planning permission was given for the development of 5,500 new homes at Sherford, and building work began on site in 2015. But, by the end of 2023, only 562 of those homes had actually been built, and the LPA only expects an average of 276 further completions in each of the next five years.

Quite simply, the demand for homes on that site is not there, or at least not at the prices the developers wish to charge. Nor is there any evidence to suggest that, even were sufficient suitable sustainable sites to exist elsewhere on which developers

would be willing to rapidly deliver houses in the numbers required, it will be possible to find purchasers for them in the number needed.

After all, as the Competition and Markets Authority in Paragraph 43 of their February 2024 Housebuilding market study final report summary have pointed out:

In terms of how quickly housing is built and the price at which it is sold, instead of building houses as quickly as possible, a range of evidence shows housebuilders tend to build them at a rate that is consistent with the local absorption rates, ie, the rate at which houses can be sold without needing to reduce their prices.

The government have noticeably offered no realistic suggestion as to how this problem will be resolved. Yet even in the highly unlikely event that this and all the other challenges can be overcome, there still remains the fact that as the Housebuilders Federation recently noted:

tens of thousands of new people will need to be recruited if we are to reach the targets set out.

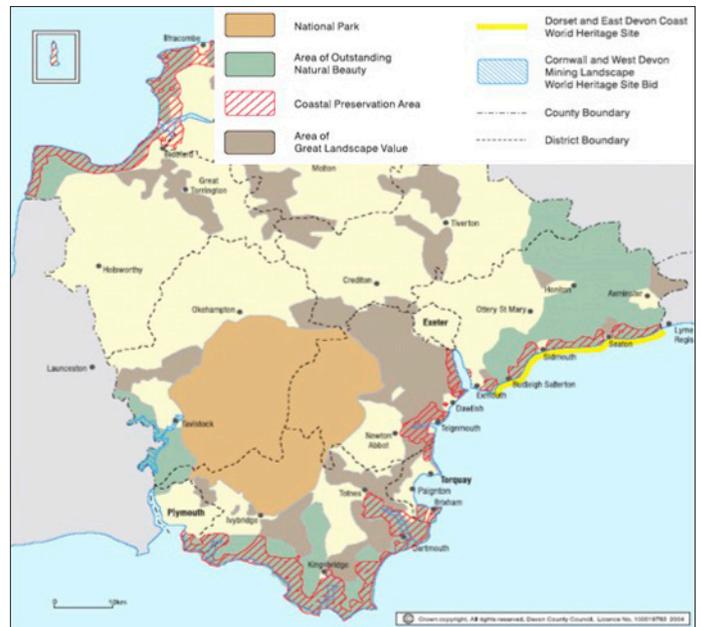
According to the HBF, for every 10,000 new homes to be built, the sector needs about 30,000 new recruits across 12 trades, including bricklayers, plumbers, carpenters, plasterers and electricians.

For targets to be met, no less than a quarter of a million additional qualified skilled workers are needed, numbers that are not going to be found overnight, or even within the remaining life of this Parliament.

In responding to the consultation the Society, along with many others, pointed out all of these issues. But for reasons best known to themselves the government still continues to insist their objectives will be achieved and housing targets met.

As it stands, it is impossible to see how. •

## Once we too had Areas of Great Landscape Value



Many of our Areas of Great Landscape Value are now built over

Many local authorities in England continue to use Local Landscape Designations (LLD) to protect locally important landscapes, of which an Area of Great Landscape Value or AGLV is one. Others include Special Landscape Areas (SLA) and Areas of Special Landscape Importance (ASLI).

An Area of Great Landscape Value (AGLV) is an area of land in England considered to be of high landscape quality with strong distinctive characteristics, in combination making them particularly sensitive to development.

The designation was established under the Town and Country Planning Act 1947. Within ALGVs the primary objective is conservation and enhancement of their landscape quality and individual character. These will sit outside of any AONBs.

Consequently ALGVs sit at the third level of landscape protection, but this does not limit their importance.

The Area of Great Landscape Value (AGLV) designation was first used in Devon County Council's County Development Plan in the early 1950s, and received ministerial approval in 1959 (prior to the local government changes that led to the establishment of South Hams District Council).

The South Hams Local Plan 1989-2001 stated:

'Areas of Great Landscape Value (AGLV) protect landscapes of local importance. This designation is made by the Local Authorities and

is defined in detail in this Plan' 'The Plan includes several new Areas of Great Landscape Value. In the first place, the Protected Landscapes identified in the South Hams Local Plans adopted during 1988 are now designated as Areas of Great Landscape Value. These are in the following localities:

- Sherford (near Kingsbridge)
- Buckland-Tout-Saints
- The Avon Valley
- The Erme and Lud Brook Valleys
- Sparkwell and
- The Upper Yealm Valley

The landscape setting of Totnes, which is under considerable development pressure, is also protected in a greater way, by the extension of the Coastal Preservation Area along the Dart, the extension and linking of the Areas of Great Landscape Value to be north and east of the town, and the designation of a new Area of Great Landscape Value on the slopes to the south of the town. The Plan also includes a new Area of Great Landscape Value in the valley of the Harbourne.

To the north of Roborough on the edge of Plymouth, a small extension to the Bickleigh Vale Area of Great Landscape Value is included, giving protection to the valley south of Bickleigh village.

Following a consultant's report on the South Devon AONB, new and extended Areas of Great Landscape Value are also shown flanking the AONB to the north and east of Modbury, north and

...Continued page 8

## Join us on a visit to Salcombe!

You are invited to join us on Tuesday 25 March when historian and chair of the Salcombe Maritime Museum Roger Barratt has kindly offered to lead Society members on an hour-long private tour of the Museum. Then, provided the weather is suitable, a guided tour of the town as well, lasting just over another hour.

As many as 25 members are very welcome to attend, and no payment is necessary!

If you would like to join us please email [southhamsociety@gmail.com](mailto:southhamsociety@gmail.com) – first come, first served!

## Sewage regulations failing

The super regulator set up in the wake of Brexit to fulfil the watchdog role of the European Commission in relation to the environment – The Office for Environmental Protection ('OEP'), has concluded that there have been failures to comply with environmental law by Defra, the Environment Agency and OfWat. This follows an investigation into the regulation of the network of combined sewer overflows (CSOs) and has issued notices to those entities to that effect.

The OEP's view is that the authorities have been either misapplying or misunderstanding the law as to when CSOs can be used. Even so the OEP has not and will not publish its notices for the time being. As a result it is not exactly clear what the OEP is saying has been wrongly applied/ misunderstood.

However the OEP does say that the public authorities are "now taking steps to ensure their approaches are aligned and reflective of the law", but that "this has not always been the case".

Last year the Government responded by stating that it did not agree with the OEP's (then preliminary) view as to the law. And the response to the announcement of a finding that there have been breaches of duty is to be found here In essence it claims the OEP's allegations are being considered carefully and will be responded to formally in



*Sewage in the streets of Kingsbridge*

due course whilst stressing that much is being done to improve the overall regulatory position.

Last year I wrote (at some length) on the general subject of sewerage regulation so I will just briefly summarise the key points behind this latest development.

The 1994 Urban Waste Water Treatment Regulations transposed in to UK law the EU's Council Directive 91/271/EEC, the Urban Waste Water Treatment Directive. Notwithstanding their EU origin those Regulations remain very much alive. The Regulations, which OfWat is required to enforce, impose a duty to build infrastructure that is:

- designed (account being taken of seasonal variations of the load),
- constructed, operated and maintained to ensure sufficient performance under all normal

local climatic conditions.

The design, construction and maintenance of collecting systems is to be:

undertaken in accordance with the best technical knowledge not entailing excessive costs, notably regarding–

- volume and characteristics of urban waste water;
- prevention of leaks;
- limitation of pollution of receiving waters due to storm water overflows.

The cost benefit expression "best technical knowledge not entailing excessive costs" is referred to as "BTKNEEC."

The EU Directive contains a Footnote which says that:

Given that it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water

can be treated during situations such as unusually heavy rainfall, Member States shall decide on measures to limit pollution from storm water overflows. Such measures could be based on dilution rates or capacity in relation to dry weather flow, or could specify a certain acceptable number of overflows per year.

The OEP's reference to those authorities now taking steps to ensure that their approaches are aligned with the law appears to relate (in particular) to the approach deployed by OfWat proposing to issue an enforcement order and impose a financial penalty on Northumbrian Water in its notice of 6 August 2024.

In that notice OfWat set out the relevant legal provisions and referred to the EU case of Commission v United Kingdom of 2012 which led to a decision that the UK was not in compliance with the Directive with regard to, amongst other circumstances, the amount of untreated sewage being discharged into the Thames. The critical sentence in the ECJ's judgment is this one:

For the purpose of examining the present action, the Court must, first of all, examine whether the discharges from the collecting systems or the treatment plants of the various agglomerations in the United Kingdom are due to circumstances of an exceptional nature, and then, if that is not the case, establish whether the United Kingdom has been able to dem-

...Continued page 9

## ←7 ... Landscape Value

east of Kingsbridge and west of Dartmouth. These are extensive areas, linking with other existing and proposed Areas of Great Landscape Value and affording widespread protection to much of the South Hams landscape'.

### Areas of Great Landscape Value Policy CDE4

In Areas of Great Landscape Value development will only be permitted which has no significant adverse effect on the special landscape character of the area.

In the next plan – the Draft Local Plan Review (2001-2011), the District Council began the process of reviewing the Local Plan (adopted in April 1996) and published a First Deposit Draft Local Plan Review (2001-2011) for consultation in January 2002. This plan was not progressed, being superseded by the Local Development Framework process which commenced under the new Planning and Compulsory Purchase Act 2004.

In the South Hams Local Development Framework Core Strategy, adopted in December 2006, the document stated:

In previous versions of the South Hams Local Plan, policies have identified Areas of Great Landscape Value (AGLVs) and Coastal Preservation Areas (CPAs). Government advice is that plan-

ning authorities should move away from these designations and adopt a landscape character approach, setting a clear framework to help ensure that development takes place in the right locations and is sensitive to local landscape character in its design, form, materials and layout. In pursuing this approach the Council will

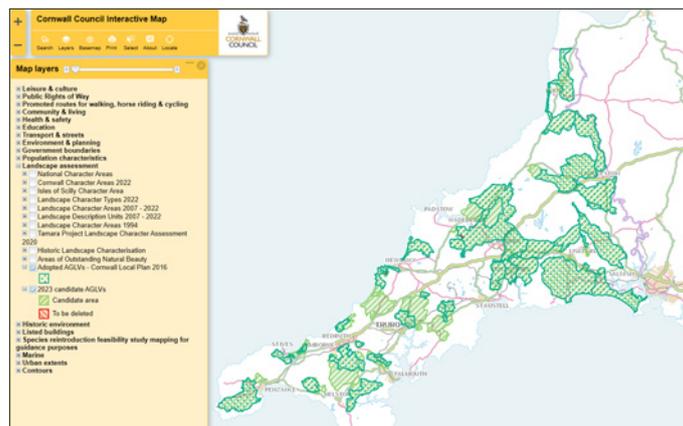
not therefore identify AGLVs or CPAs in the Local Development Framework.

Subsequently the 2013 Devon Landscape Policy Group Advice Note No. 2 noted:

Areas of Great Landscape Value were in the process of being phased out across the county as each Local Planning Authority (LPA) prepared criteria-based landscape policies linked to a shared landscape character evidence base. However, the National Planning Policy Framework now allows LPAs to retain local landscape designations and local designations are being retained in some districts.

The unitary authority of Cornwall County Council has maintained their AGLV's and the areas can be found on their planning maps.

Conversely here in the South Hams areas of land that were previously designated as Areas of Great Landscape Value are now being built on and lost. •



*In Cornwall there are still Areas of Great Landscape Value*

## The Fallacy of Miliband's Clean Power Pathway

According to the National Energy Systems Operator, 'there is no path to clean power without mass deployment of offshore wind, together with onshore wind and solar.'

This, we are told, will require a growth in offshore wind capacity of up to 35GW, from 15GW in 2023 to between 43GW and 50GW in 2030, for onshore wind to increase by 13GW, from 14GW to 27GW, and solar by 32GW, from 15GW to 47W.

Collectively this amounts to an additional 80GW of renewable generating capacity. And, because the sun does not always shine and the wind sometimes fails to blow, there also will need to be a corresponding increase in battery storage availability, from 5GW today to between 23GW and 27GW in 2030.

Given these targets are achieved, NESO say, 'the vast majority of Great Britain's generation (77-82%) will come from renewable energy for a clean power system in 2030, with the majority of this from offshore wind.'

However it will come at no small cost.

Significant additional infrastructure will be necessary to connect individual renewable power generators and meet specific demand requirements, at a cost of up to £60 billion of cumulative investment in order to deliver around 1,000 km of onshore and



*The report by the National Energy Systems Operator* over 4,500 km of offshore network and enabling projects.

But that £60 billion is only a small part of the investment necessary. A further £40 billion will be needed every year for five years

to go towards paying for the turbines and solar panels.

It is the equivalent of every household in the UK having to find an additional £1,830 every year to meet both costs.

Noticeably 'how costs translate to customers' electricity bills will depend on policy design and market dynamics that', say NESO, 'we do not attempt to predict in this report.'

Suffice to say we will all be footing the bill in one way or another.

And, as with every major Government project in living memory, the costs will almost certainly exceed those budgeted.

To again quote NESO, for those targets to be met, 'acute supply chain and workforce challenges must be overcome across nearly all generation, storage and network projects', while 'failure in any single area – generation, flexibility, networks – will lead to failure overall; all parts need to deliver to achieve clean power.'

And, as NESO admit, 'Network expansion must proceed at more than four times the rate of the last decade, delivering twice as much in half the time,' but caution 'if supply chains become excessively stretched, costs could escalate'.... 'Our clean power pathways push the limits of what is feasibly deliverable'.

The report continues:

The global race to decarbonise is straining international supply chains and compounding skills shortages. Notably, the offshore wind sector, as well as the broader electrical component supply chain, face pronounced challenges.

...Continued page 10

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### ... Sewage Regs

onstrate that the conditions for applying the concept of BTKNEEC were met.

In other words a discharge that did not take place in circumstances of an exceptional nature would only be lawful if the discharge came from a plant which was nevertheless designed and built with the best technical knowledge which could be deployed a cost which was not excessive. The Advocate General in that case appeared to suggest discharges from such a plant would be exceptional.

In its decision notice in relation to Northumbrian Water OfWat squares this circle thus (at para 2.99):-

That does not mean that the concept of BTKNEEC can only be engaged 'exceptionally', in the sense of 'rarely': whether or not it is engaged will depend on the facts of each case. But it does mean that the concept must be

invoked and justified as a departure from the default position, and that disproportionate costs under BTKNEEC cannot be assumed or simply asserted without evidence; they must be proven by the party seeking to rely on that conclusion as a reason why spilling outside exceptional circumstances does not amount to a breach of the UWWTR.

The oft repeated view that the law only permits untreated sewage to be spilt in circumstances of exceptionally heavy rainfall is therefore (still) not one which OfWat would agree with. But an operator which does spill outside a period of exceptionally heavy rainfall will have to prove (and not merely assert) that its plant complied with BTKNEEC.

It may be possible, eventually, to agree as to the best available technical solution(s). But that will leave the question – which arises so often in different forms in environmental regulation- e.g.

in relation to the protection of the bats at Bernwood- what is "excessive cost" in any particular case?

On the other side of the regulatory "fence" sits the Environment Agency and its role in drawing up the terms of, and then ensuring compliance with, the permits issued to sewerage operators. What the OEP is probably saying to the Environment Agency is that the evidence shows that, whether or not the permits the Agency has issued over the years were originally fit for purpose (i.e. they compelled those operators to only discharge untreated sewage in exceptionally heavy rain or BTKNEEC could be proved to apply), they are no longer fit for purpose. The circumstances applicable to the assets have changed. Climate change, urban creep and increased infiltration have contributed to the permits needing revision. And this revision exercise is not being done

effectively.

All in all the OEP Decision notice, coming as it does with the launch of the Cunliffe Review of the water sector on October 22 2024 and the new laws already proposed for the sector in advance of that review on September 5 2024 should lead to more effective management of our water supply and sewerage services. But it is going to cost a lot of money.

As you will probably be aware from reading page 6 of the OfWat determination average household bills for South West Water customers will increase by £113 from 2024-25 to 2029-30 before inflation. And that is under the existing regulatory regime, so not necessarily allowing for any further tightening of the regulatory standards for sewage discharges that could come about as a consequence of the changing view as to the law. •

## 8 .. Milliband's Fallacy

Shortages of construction workers and engineers across Great Britain further exacerbate project construction delays and increasing costs....

Delays in sourcing electrical components such as cabling, transformers and switchgear are hampering the delivery of network infrastructure, while the Offshore Wind Industry Council suggests more than 100,000 skilled roles are required to deliver 50 GW of offshore wind (up from 32,000).

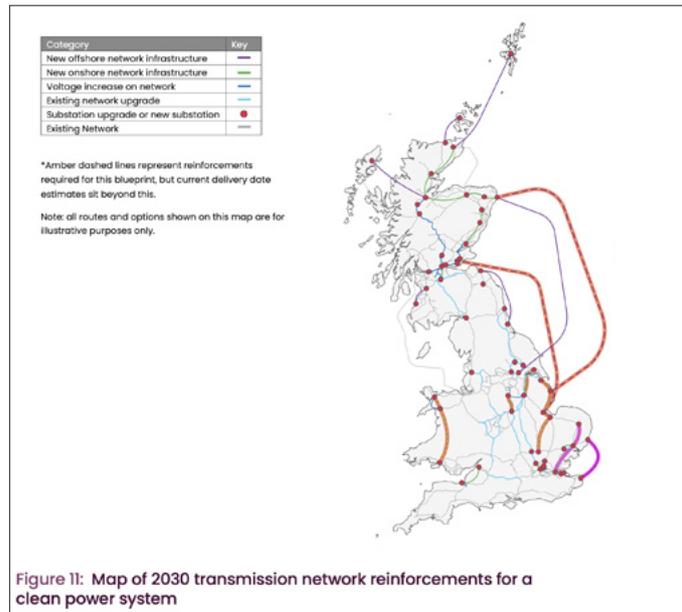
Yet even if by some miracle the additional skilled workers can be found, all targets are met and costs don't increase, we will still be burning biomass and gas on those occasions when renewables alone can't meet demand. And NESO also make the point 'our clean power pathways will require demand side flexibility at peak to grow by 4-5 times current levels... to achieve this, higher levels of smart meter penetration will be needed...' and 'our pathways assume that innovative tariffs or other retail offerings are the default from 2028'.

In other words, because so much is being gambled on the unreliability of renewables, if the wind isn't blowing or the sun isn't shining, or if everybody simultaneously decides they want to make themselves a cup of tea, and electricity demand suddenly exceeds supply, expect to have to pay considerably more in that moment.

Conversely on those occasions when the wind generates more electricity than is needed to meet demand, turbine owners will continue to be paid to stop generating. Constraint costs alone could be as much as £6 billion a year in 2030.

And here it is worth returning to the supply chain which, as Professor of Economic Policy at the University of Oxford Dieter Helm has noted:

has rarely been mentioned until very recently. All the minerals and the refining and the copper and the chips were just assumed not to only to be there but to support ever-falling costs of production, making wind turbines and solar panels ever cheaper. Things could only get better and better. Never mind the geopolitics of the supply chains. Geopolitics was assumed a risk only for the fossil fuels. When it comes to oil, there is the very real threat of Russia and China, but when it comes to the solar panels and the minerals, the geopolitics and the threat from China have been ignored, as has the



### *The significant grid reinforcements renewables will require*

plight of the Uighur labourers and the children in the cobalt mines in Congo.

Consequently some would argue it is perhaps worth considering an alternative to renewables, namely small modular nuclear reactors. Each SMR occupies the space of around two football pitches and many could be located on the sites of the old coal-fired power stations, where grid connections already exist.

Not only would adopting SMRs mean not having to cover the countryside in pylons, turbines and solar panels, but they would also require no battery storage back-up or gas-fired generators on stand-by and, unlike renewables, would have a life-span of 60 years.

Nor is the technology unproven. SMRs have been powering nuclear submarines without incident in this country since 1960 and, had any exploded, the world would certainly have known. The Rolls Royce SMR, for example, will produce 470 megawatts of electricity each hour, which is enough to power 1 million homes, equivalent to a city the size of Leeds.

With the cost of each Rolls Royce SMR initially projected at £2 billion, and with there being 28.4 million households in the UK, it would cost £56 billion to satisfy the electricity requirements of every household.

Obviously in itself that would be insufficient to also meet business and other needs. But given both the costs and challenges of NESO's proposals, and the probability that SMR costs would fall as production increased, it is an

option that should certainly be explored further.

And there is clearly a path to clean power without the mass deployment of offshore wind combined with onshore wind and solar.

As Dieter Helm warned at the start of October:

When a government commits to a path to net zero in electricity at breakneck speed within just five years, brands those who might stand in the way as nimbies, and sets out a rhetoric of confrontation, there is bound to be a reaction. When a government proclaims that bills and industrial costs will come down and they don't, its credibility slips away.

He continued:

As reality seeps through, and as the government remains in the aggressive attack mode against any who dare challenge any of its plans – from pylons to onshore wind to the associated infrastructures, and to the impacts on industry more generally – the tragedy (and the irony) is that the very desire to make a serious contribution to mitigating global warming may be lost. Climate change matters and, given there are limited resources to throw at this great challenge of our times, instead of engaging with those of a more sceptical persuasion about its policies and timetables (not scepticism about climate change itself) to sustain the precious consensus, the government's rhetoric and actions splinter it further. Sadly that splintering is already taking place.

That climate change is taking place is not in doubt. But it is surely time for our government to be realistic in its response? ●

## Tree thoughts

Hardly a leaf left on the trees! Well not quite. There are the evergreens of course, the pines and spruce that cover forestry hillsides but a surprising number of other trees keep their green through winter.

Which trees should you consider planting if you want more green in your winter garden? Yew, *Quercus ilex* (the evergreen oak), and *Magnolia Grandiflora* may suit a larger garden but trees and shrubs to suit a more limited area include Bay (*Laurus Nobilis*), Holly, evergreen *Cotoneaster* and, indeed, Olive, all of which can be pruned to limit size, increase leaf density and add variety to a garden. Palm varieties in the right conditions also stay green.

And don't forget shrubs, classic evergreens for an English garden are Camellias and Rhododendrons. *Camellia* species 'Sasanqua' such as 'Christmas Cheer' and 'Yuletide' flower in the winter and if you are feeling snow deprived try 'Snow Flurry' or 'Chantal' for white flowers. Rhododendrons normally flower in Spring but you could try variety *Dauricum* 'Mid Winter' for a splash of white.

For those whose main object is to create an evergreen hedge, ordinary Laurel (*Prunus Laurocerasus*) does a great job obscuring vision but needs regular pruning. I have seen Laurel twenty feet tall when left to their own devices and it is invasive. Yew makes a more delicate looking hedge with its feathery needle-like leaves. *Griselinia* and *Elaeagnus* (whose small flowers are scented) also make good evergreen hedges.

Another, less common hedge is *Osmanthus* (*Burkwoodii*). It is dense and slow-growing with glossy, finely toothed, dark green leaves. What makes it special are the scented, jasmine like, white flowers which appear in mid and late spring. If pruned after flowering, it will increase the blooms for the following year. *Osmanthus* thrives on free draining soils and may lose leaves in a severe winter, so it is best grown in a sunny aspect with little wind. It has the RHS Award of Garden Merit. On a final note, don't forget to prune Walnut and Birch in winter when the sap doesn't bleed. Plenty for the gardener to do in wintertime! ●

## DEJA VU? 50 and 25 years ago, from the Society's archives

### Minutes 3rd January 1974

Discussion of relations between Amenity Societies and the new local Authority – i.e after reorganisation in 1974 and creation of District Councils.

### Minutes 7th March 1974

Contact with new Local Authorities – Mrs Woods suggested a Brains Trust followed by a buffet supper early in May inviting representatives from the District Council to meet S.H.S. and the public.

### Minutes 8th May 1974

Meeting with SHDC: the Committee felt this had been very successful, 84 people attended the 'Brains Trust' 76 stayed on for the buffet supper. It was stressed by the members of the District Council that copies of letters should be sent to the local representative on the Council as well as to other bodies.

### AGM 17th April 1974: President's Address from Sir Clement Pleass

In his address the President referred to 1974 as 'a very important year in the annals of local affairs because of the complete re-organisation of local government. Politicians and bureaucrats have clearly decided that bigger is better and have created a system which places the effective power in the hands of larger units and it seems probable that the effects of the re-organisation will be to make even the management of local affairs less and less subject to the influence and wishes of the villager.

To guard against these possible effects it is vital that, not only Parish Councils, should use their utmost endeavours to ensure that their views are made speedily, forcibly and continuously known to the District Council and to the permanent officials, but also that Amenity Societies, such as ours, should do the same.

I therefore appeal to all members who can spare the time to volunteer to work on the Society's committees. Without such help our views will not be effectively presented.'

*Open the first pages of the SHS minutes from 1974 and 1999, and two subjects appear in those years which have resurfaced again today, if in a slightly different form.*

*The first is local government reorganisation. 1974 saw the removal of local urban and rural district councils based on towns, and the formation of larger and generally more remote district councils. In our immediate area the South Hams District Council was set up based in Totnes. The new Labour government is suggesting another major re-shaping, abolishing district councils and creating larger unitary authorities (probably a Devon-wide one, in our case). This is intended to devolve more powers from Westminster to the unitary authorities, as well as being a cost saving, but will it mean in practice that local government becomes even more remote from the everyday lives of local people and their issues? These are some of the questions discussed in 1974.*

*Another recurring issue was the need for assistance from members – the chairman's words at the 1974 AGM are just as true today!*

### AGM 1974: Chairman's Remarks from Mr. Saunders

The Chairman stressed, once again, the urgent need for more help from members and thanked all, who in the past had given their time and energy to committee work ... Mr. Saunders said 'we cannot expect committee members to go on for ever and of course, changes are bound to occur. There must come a time when people feel that they have done their share and it is then we need someone to come forward to replace them'.

*At that AGM twelve committee members were re-elected en bloc, and three new members were also elected. Membership stood at just over 900, and it was hoped it would reach 1,000 over the ensuing year.*

*In 1999, one of the first topics on the SHS committee agenda was the discussion on the current County Structure Plan and the housing figures it proposed for the South Hams area, which had caused a number of local objections. As ever, the Society was not opposed to the right development in the right places, but along with other local objectors considered the housing allocations over the Plan period to be excessive as did the then MP for Totnes,*

*Since 1999 Structure Plans and other local plans have come and gone, together with countless hours of work to try and establish suitable development to meet the needs of our area and its inhabitants. The need for affordable rented housing has only increased, and will not be solved by simply building more houses. The latest proposals, which will be discussed elsewhere in this newsletter, are for the setting of mandatory housing targets for local councils (so much for devolution on that issue!) and changes to the National Planning Policy Framework in order to remove obstacles to development. It is to be hoped that central government will work with local people and councils and take their local knowledge into consideration – which completes the circle back to where we began, with local government reorganisation ...*

*Anthony Steen, who was also campaigning on the housing issue.*

### Minutes 4th January 1999

Mr. Reed and Mr. Watling had also attended Mr. Steen's public meeting in Totnes on 12th December, on the housing issue. Mr. Brownlee drew attention to the Times newspaper's Green Field campaign, which gave case studies of counties forced to accept excessive housing allocations: he had drafted a letter on the situation in the South Hams.

### Minutes 1st February 1999

Planning: the Conservative leader William Hague had paid a flying visit to the area recently and he chairman, Mr. Brownlee and Mr. Reed had been invited to a breakfast meeting he was addressing on 26th Jan. The Structure Plan had been an important topic: they had had a short personal discussion with Mr. Hague, who seemed to have taken on board local objections to the proposed housing figures.

... There was continued concern about the housing figures, including a recent front-page article in the Western Morning News on parliamentary committee recommendations of a shift in emphasis to 'brown-field' sites and making better use of existing housing stocks.

... the number of dwellings allocated, which still stood at 11,900 in the South Hams, including 4000+ which were already scheduled. SHDC were also disputing the position of the new settlement, and the numbers involved. There was a need to ensure an adequate percentage of housing for local needs: this could be specified by the council in developments over a certain size, although local housing was not necessarily included in the allocation figures. •

**Subscriptions are now due!**

## Changes to Sheerwater will add to Salcombe changes



*Sheerwater as it currently stands (above)*

We wrote about this application to replace the existing seven-bedroom dwelling with one substantially larger on page 9 of our October Newsletter.

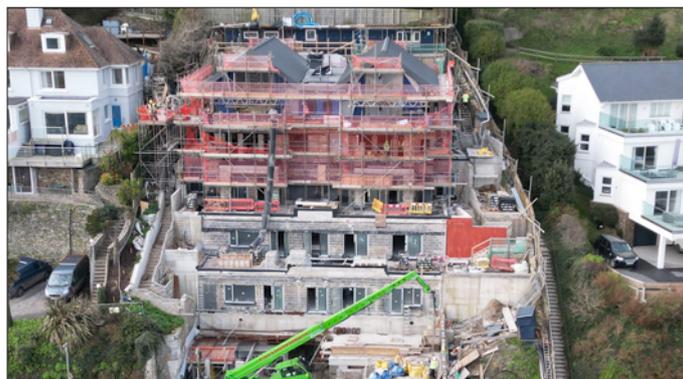
Trees alongside Devon Road had already been felled, we noted, and further vegetation would need to be removed. Inevitably the proposed new build would also boast a far greater expanse of glass.

Making matters worse it would also be another boundary-to-boundary development, so adding to the three already built or under construction, one nearby at Overcombe on Devon Road, as well as those at Herwood and Spion Lodge, both below them on Bennett Road.

In combination these and other developments were denuding the previously predominant greenery of the estuary hillside, we complained, imposing in its place a parade of concrete and glass of often little apparent aesthetic or architectural connection.

We submitted our objection on 20 September. Describing the applicant's claim that 'there is no overall adverse impact in the massing, volume and overall impact' as at best 'creative', we argued that 'the proposed four storey elevation will look significantly larger than the two storey appearance of the existing building'.

The increase in the built form on the site would leave insufficient space for an effective mitigating landscaping scheme, an outcome made worse by the earlier



*Spion Lodge (above) and Herwood (below)*



removal of trees, and as a result would fail to conserve and enhance the landscape and scenic beauty of this part of the South Devon National Landscape when viewed from the Estuary.

Six days later the Town Council submitted their response. Echoing one of our concerns they wrote:

The comments and calculations on volume and massing are misleading as are the floor plans which have been superimposed with the existing survey outline. There are

still no volume calculations that we can find nor calculations in terms of floor area.

However their own estimate suggested the overall floor area of what was being proposed would represent a 47% increase over the existing dwelling.

They also noted 'the site sits in the Character and Density policy area B, which describes the character as 'existing low density development, mature gardens and trees.' The applicants have misread the

character of the area and have not designed accordingly.'

The Town Council were also concerned about light pollution and the impact from the use of render.

On 2 October the Tree Officer commented on 'the unusually high levels of visual sensitivity of the site' but offered 'no objection on arboricultural merit' given that there are 'no on-site protected trees that may act as a constraint to the proposed rebuild of the dwelling'.

Finally, on 29 October, the Landscape Officer responded, noting that 'the scheme now is largely as presented at recent pre-application stage (0911/24/PR4)' and that 'there is no in principle landscape objection to the demolition and replacement of the existing dwelling'.

'The landscape scheme', she continued, 'has been carefully considered, and developed in discussion with Officers during the pre-application stage', and 'as the dwelling would be viewed in the context of surrounding residential development, and would replace an existing building no special architectural merit, there would be no harm to the visual qualities and essential characteristics of the NL in terms of its landscape and scenic beauty.'

Consequently, although the application is still to be determined it is probably safe to assume that despite both our and the Town Council's concerns, the case officer will recommend approval. •

## An unsuitable conversion



*The isolated barn being proposed for commercial use*

If approved, we had argued in our objection, the proposed barn conversion would be damaging to the heritage coast landscape, the South Devon National Landscape, the historical environment, the dark skies, and further add to the erosion of tranquillity and footpath user experience.

In addition the site lacked suitable access to the highway, which itself is a narrow access lane that has also to cater for a significant number of unauthorised campsites along the way. The National Trust shared our concern.

In her report the Case Officer wrote:

The proposal would result in the creation of a single open-market dwelling house in an unsustainable isolated rural coastal location devoid of services and facilities and poorly served by sustainable transport options, heavily reliant on the use of a private car. There is no evidence that the proposal requires a coastal location and no exceptional circumstances to justify the proposal in this isolated location.

She recommended refusal. But, because two pre-application submissions had offered some support for the principle of the proposed development, the Council's Head of Development Management asked that the application should be considered by

the Development Management Committee.

However the day before the DMC was due to meet, the application was withdrawn.

Since then a further application, 3673/24/NAU, has been submitted to determine if prior approval is required for a proposed change of use under Class R of agricultural buildings to a flexible commercial use for Class E (Commercial, Business or Service).

Accompanying the application was a notification letter from the applicant's architect providing details that the building meets with the Class R criteria.

We disagreed, arguing that the barn's lean-to extension was not part of the barn and therefore did not fall within Class R but, even if it did, it had not been built until the Spring of 2020, and to qualify for Class R it would have had to have been in use as part an established agricultural unit on the requisite date of 3rd July 2012.

We also wondered how a barn can be used for flexible commercial use for Class E (Commercial, Business or Service) when it sits in a field with no vehicle access track?

The application awaits determination. •

## Coronation Boathouse refused

As our objection makes clear, were this application to be approved, the change from the historical maritime boathouse use to a holiday let will inevitably lead to harm to a building that can 'illustrate important aspects of the nation's history as both are uncommon survivals regionally and nationally of structures that represent evolved maritime pursuits and traditions'.

Fortunately the Case Officer did not disagree, noting:

Officers consider the proposed development to not have been demonstrated to be the optimum

viable use. It is accepted that income generation is desirable but it cannot be given weight in the planning balance to justify changes that result in avoidable harm. Nor can the reinstatement of a suitable repair regime be considered a 'public benefit'.

As for the applicant's statement that the ground floor would continue to be used for boat storage, the Case Officer commented:

These assurances are contradicted by the recent application for, and granting of, a License for storage and distribution of wine from the boathouse.

The application was refused.

## Woolwell a threat to health



*The development as it is being proposed*

It was only after the Care Quality Commission had released their latest report in to conditions at Derriford Hospital at the start of November that the Society considered it necessary to comment upon this application.

Even though the two sites in question had been allocated for 2,000 homes in the Joint Local Plan the Society were concerned that unless properly mitigated any development would have a negative impact on the health, not only of residents of Plymouth and the South Hams, but of the wider area.

The Care Quality Commission had made it clear that currently:

Treatment and care was not always provided in a safe way. Patients did not have timely access to assessment or treatment. There were long waits for patients in ambulances and within the department. Patient risks were not always monitored safely or effectively following triage. The service could not move patients promptly to medical and surgical wards. Patients experienced delayed discharges. However, staff were doing their best to mitigate risk at a time of very high occupancy in the department.

while in responding to this application the University Hospitals Plymouth NHS Trust emphasised that Derriford:

is currently operating at full capacity in the provision of acute and planned healthcare. The proposed development will create a potentially long-term impact on UHP's ability to provide its services in a safe, accessible and sustainable manner to current and new

residents.

Consequently the Trust sought a contributions of £738,826 and £162,181 from the two sites respectively to help mitigate the gap in the funding created by each potential patient from this development. This equates to a contribution of only £450.50p per dwelling.

However, as 'acute care patients would nevertheless continue to be treated' in the words of the Officer Report (14.3.5), regardless of whether or not that funding was provided, the LPA has chosen to decline that request.

As a result the Trust will have to find the money from its own resources, and that will inevitably need to come at the expense of other services the Trust provides, in all probability meaning that residents not requiring acute care will have to wait longer for planned treatment.

In addition the increase in traffic generated by the developments would only further add to the existing congestion on the A386, causing further delays to ambulances trying to reach Derriford.

Finally we also noted that the applicant had no intention of developing the site themselves, but instead wished to obtain consent and then sell that consent on to one or more housebuilders.

As a consequence there was every possibility that the LPA would therefore be approving a development for which there is no evidence that an actual developer exists. •

## Two appeals now decided



### *Office use in this location would be inappropriate*

In our October Newsletter we noted that there was currently nothing further to report on the three outstanding appeals mentioned in our July Newsletter, namely those at Ledstone, Butterford and Land to the East of Thornlea View, Hope Cove.

Since then Hope Cove has been determined. The Inspector concluded:

the proposal would cause significant harm to the character and appearance of the area and the National Landscape and moderate harm to the Undeveloped and Heritage Coast.

She also agreed that the development would not meet local housing market needs and that:

the amount of market housing proposed exceeds the amount necessary to make the scheme viable and to deliver the affordable homes.

For these and other reasons the appeal was dismissed.

The Ledstone appeal was submitted earlier this year in May, with the applicant arguing 'the proposals are entirely appropriate, as defined in the National Planning Policy Framework, and the adopted Local Plan Policy.'

In our response to this appeal we noted that when the case officer had originally recommended refusal she had written:

Most of the objections received have stated that the proposal would breach the original conditions placed on the site when planning permission was granted for the stable. Whilst this is true, as condition 6 prohibited commercial use of the stables, that condition only relates to that planning permission, and there is nothing

to prevent an applicant from applying for a different use; this is new application which will be assessed on its own merits against current policy, and the imposition of a condition 23 years ago would not preclude the landowner from applying for the use now.

We disagreed, pointing out to the Inspector the condition related not to the planning permission, but to the development itself. We also noted the proposed change of use was not fit for purpose without significant changes being made to the building itself, and that therefore the plans submitted were not realistic.

In dismissing the appeal the Inspector agreed with the case officer that condition 6 only related to the original application and so would not prohibit commercial use. But fortunately the Inspector was less than impressed by the appellant's arguments, deciding:

The proposal would provide new business accommodation and in doing so it would accord with the general thrust of national and local policy to support economic growth. However, the remote location of the site and the nature of the local highway network is such that an office use in this location would be inappropriate. I have taken account of the appellant's arguments but have concluded that the scheme would conflict with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

Unfortunately Butterford still awaits determination where, although the appeal began earlier this year on 22 April, no date for a site visit has yet been set. ●

## Coast Path visual eyesore



### *Vermin were to be seen scrambling out of one of the bins*

In our objection to this householder application for a proposed two storey extension and a new "gabled" to the front of Bar Lodge we argued the location had, in our opinion, been overdeveloped and that the proposal would lead to further visual deterioration of the setting.

We were also concerned that along the lane that forms part of the South West Coast Path, although outside the site and in the National Trust land ownership area, an open bin storage area had been created. This, we argued, could only be described as a visual eyesore. It was also a health hazard. Two of the bins were visibly damaged and, while we were there, we witnessed vermin scrambling out of one of the bins.

We also noted that the plans show an oil tank positioned a mere one metre from a window

and door entrance, noticeably less than the 1.8 metre minimum needed to conform to fire regulations.

In response, and in recommending approval, the Case Officer commented:

the scheme as proposed will not worsen or take away the opportunity for bins to be stored on the site and this is already an existing situation which also involves neighbouring dwellings outside the remit of this application. Consequently, the current issue with bin location does not constitute a material planning consideration within this application.

So it would seem the health hazard is to be permitted to remain.

He went on to add that the position of the oil tank was an issue to be dealt with by building control, while he did not accept the extension extending forward from the existing property would have an adverse impact. ●

## Wills Marine remains undecided



### *Kingsbridge Town Council also questions implementation*

On 10 July the Local Planning Authority received an application to establish application 28/1382/00/F, consent for which was given more than 20 years ago, had been lawfully commenced, remained extant, and that as a consequence it would be possible to add nine new apartments and two new retail units on the Wills Marine site in Kingsbridge – one in the yard and one at ground floor level of the apartment building.

In our objection we had argued, as we reported on page 10 of our October Newsletter, that the original application had not been

implemented as required.

Separately the Town Council questioned whether the remaining development, namely the retail showroom to be built in the current yard, could be lawfully implemented as a 450mm wide boundary wall on the north west boundary had been built where the external wall of the retail unit permitted by 28/1382/00/F (and subsequent amendments) would be positioned as reported in the withdrawn planning application 1355/24/NMM.

As it stands, the application continues to await determination. ●

## The Times will soon be Changin...

To quote from an earlier February Newsletter:

Every day a tree disappears, a new house is built, a beauty spot is threatened, and it is only through societies such as ours that something can be done to prevent further destruction of our precious and fast diminishing heritage ...

Already the dreaded phrase "an area ripe for development" is being used in the South Hams. Let us see that it is used with discrimination. We cannot sit back in silence.

Today, in our crowded island, positive plans are needed for both town and country. Man must be made to beautify his surroundings, not destroy or defile them.

Those words were published more than 61 years ago, in 1963. And the area still faces many of those same threats. But in that time the Society has never sat back in silence.

In the last two years alone we have responded in no little detail to three separate Government consultations, namely those for the 'Levelling-up and Regeneration Bill', for 'Permitted Development Rights' and, most recently, the 'Proposed reforms to the National Planning Policy Framework and other changes to the planning system'.

Over the same period we also submitted a response to the Devon & Severn Inshore Fisheries and Conservation Authority's consultation on proposed amendments to commercial and recreational Netting Permit Conditions in the Kingsbridge and Salcombe Estuary – the outcome of which was as we hoped.

And we submitted our response to 'The Devon and Torbay Devolution Consultation' which, we argued, would almost certainly result in the loss of local control over key issues such as planning. Any decision to become part of a Combined County Authority, we said, should be delayed until after the then forthcoming general election, once the new Government's intentions were known.

Sadly, we failed. With no little trepidation we now await the forthcoming English Devolution White Paper, which may well see the abolition of South Hams District Council.

Should that happen certain local politicians will have much to answer for.

Separately our events lead and Kingsbridge resident Cathy Koo was invited by the District Council's conservation officer to

provide, in conjunction with our planning lead Les Pengelly, the Society's initial thoughts about the Kingsbridge Conservation Area, how its existing features could best be maintained, and whether the boundary should be extended and, if so, where.

At the same time we have also held a regular fortnightly series of 'Crabshell Conversations' each Spring and Autumn in the upstairs restaurant of the Crabshell Inn in Kingsbridge, school half-term holidays permitting, along with a number of other meetings in both Totnes and Kingsbridge.

For these events our speakers have included local political leaders, members of Parliament and the chief Executive of the Plymouth and South Devon Freeport, along with others who knew what they were talking about, including the former Government's food czar Henry Dimbleby.

Subjects have included Food Security, Food Safety and the Future of Agriculture, sewage pollution in Kingsbridge and

across the South Hams, Going Green, Writers and Writing, the Freeport, Affordable Housing and Neighbourhood Plans, along with many of the other consultation topics mentioned earlier.

Regrettably many of those issues are, sadly, still ongoing. The Government seems convinced our area continues to remain ripe for development, currently telling us we will have to build no fewer than 910 new dwellings each year, an increase of more than 75% over the existing Joint Local Plan annual target. Unopposed yet more of our countryside will be covered in concrete without doing anything to solve our housing crisis.

As to who chooses where those additional homes will be built is also unknown. Control over such matters may well be removed to Exeter or elsewhere, and in the meantime a 'presumption in favour of sustainable development' could yet apply, permitting developers to pick and choose sites on the basis of profit rather than need.

The fight against inappropriate and damaging development will inevitably remain a primary focus for the Society. Consequently we are exceptionally fortunate to continue to have as our planning lead Les Pengelly, who is at times ably assisted by several of our members.

Such is the quality of the letters of representation the team submit to the Local Planning Authority, Planning Inspectors regularly quote their words when determining appeals.

Sadly there is little doubt their workload is going to increase in the coming years.

Both our Environment Lead Martin Fodder and our Trees Lead Peter Breach are likely to come under similar pressure.

To ensure that you are kept up to date with all we have been doing – and to spread the word to a wider audience, we publish a quarterly Newsletter, constructed a new website and published a number of articles in the local press, and maintained and regularly updated a Facebook page.

So should you wish you can read all of our objections, our consultation responses and our local press articles on our website.

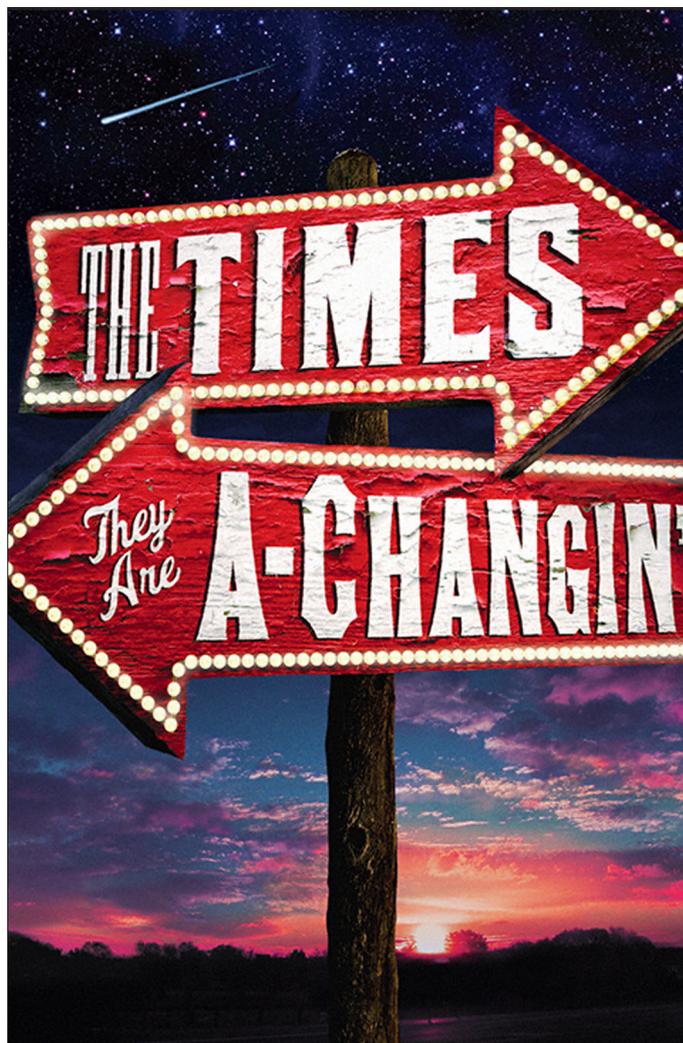
And finally our events lead Cathy Koo also taken the Society's gazebo to many of the Shows around the South Hams each summer to both meet existing members and recruit others to our number. As a result of her efforts, and those of our membership secretary Kate Bosworth, member numbers have increased by 85% in the past three years.

Sadly both Cathy and Kate, along with our Treasurer Debbie Board, will be standing down at our AGM this coming April, leaving only Les, Martin, Peter, our Secretary and Archivist Nicola Fox and fellow Committee member Simon Thompson to carry on the struggle.

Along with their replacements, help will also be needed to produce our quarterly Newsletter, manage our website and update our Facebook page.

And without your assistance the Society will simply not be able to continue to do all that it does.

Should you think you might be able to help and you would like to find out more simply email [southhamsociety@gmail.com](mailto:southhamsociety@gmail.com). We very much look forward to hearing from you. •



## An Absurd Spectacle? Protecting Bechstein's Bat

Sheephouse Wood lies 70 miles north west of London in the Vale of Aylesbury. It is "a large well-structured block of ancient pedunculate oak woodland carrying a wide range of stand types, some of which are relatively uncommon in the region and one of 12 deciduous, oak-dominated woodlands with associated copses, all of which are well connected across the intervening farmland by hedgerows, tree lines and riparian habitats.

The overall area is referred to by Natural England as Bernwood and it contains what is thought to be England's largest population - about 300 - of Bechstein's Bat. This population is described in a report entitled 'The Bernwood Population of Bechstein's Bats A Non-Technical Summary of the Evidence June 2024' for Natural England (like the other sources I refer to in this article the document is readily Googleable).

Bechstein's Bat was first recorded at Bernwood in 2009 and research there has been carried out ever since. From 2012 this was done on behalf of HS2 following the identification of the proposed route of the railway. Important roosts, core foraging areas and bat commuting routes between them were plotted. Between 2011 and 2022 57 confirmed "maternity roosts" were identified along with 81 "day roosts". The maternity roosts comprised three colonies, none of which were in Sheephouse Wood.

Sheephouse was however a "core foraging area" for the bats and key commuting routes run to it and around it as can be seen from the maps at the end of the Non Technical Summary of Evidence.

The International Union for the Conservation of Nature suspects that the global population of Bechstein's has declined by a fairly staggering 30% in the past 15 years. It is classified as Near Threatened - which means that it is close to qualifying as Vulnerable, Endangered or Critically Endangered in the near future. It is one of the UK's rarest bats. The total population of Bechstein's bat in England is thought to be in the region of 21,600. A favourable population size in England would be 28,000: that would give it a status where the species could be regarded as thriving in England and expected to thrive sustainably in the future.

The status of Bechstein's Bats elsewhere in Europe appears to



*Bechstein's Bat*

be no better - see <https://biodiversity.europa.eu/species/1473>

HS2 will pass along the edge of Sheephouse Wood. Trains will travel at up to 360km/h. An HS2 train will take only around 8 seconds to pass Sheephouse Wood. What would in any event be a fleeting impression of it will be further compromised because the train will at the same time be going through the 900 metre Sheephouse-Wood-Bat-Mitigation-Structure.,

The Sheephouse Wood Bat Mitigation Structure has become infamous. It started with remarks made at a rail industry conference at the beginning of November by Sir Jon Thompson, the Executive Chair of HS2 Limited. He was discussing the cost, difficulties and delays in constructing HS2. This is what he said:-

Bechstein's Bat was "not a protected species in Europe" and it was "pretty available" in most of Europe/Northern Europe. Bechstein's Bat was "deemed to be a protected species in England even though there's lots of them" HS2 had gone to Natural England and asked what Natural England wanted to do about this and been told that it needed to build a bat mitigation structure. HS2 call this structure "a shed" and "this shed cost more than one hundred million pounds to protect the bats in this wood" there was "no evidence by the way that high speed trains interfere with bats"

Sir Jon said this was his favourite example of such cases-of which there were "loads of examples"- as it involved a bat which he said he did not think was very rare.

A slew of press coverage followed, the headlines included this in the *Daily Mail*:

HS2 blows £100million on a 'shed'

to protect bats - even though 'there is no evidence that high-speed trains interfere' with the mammals

Subsequently the Prime Minister referred to the bat mitigation structure in his speech on the Plan for Change: 5 December 2024 (the "milestones" speech referenced elsewhere in this newsletter):

...even the projects we do approve...Are fought tooth and nail... Nail and tooth... Until you end up With the absurd spectacle of a £100m bat tunnel... Holding up the country's single biggest infrastructure project. Driving up taxes and the cost of living, beyond belief. I tell you now...This Government will not accept this nonsense anymore. We will streamline the approval process in the forthcoming Planning and Infrastructure Bill...

That part of the Prime Minister's speech provoked strong adverse reaction from conservationists. Chris Packham described it as being "a betrayal of our beloved biodiversity ... a mistake". He continued:

The words 'absurd spectacle' applied to bat conservation amidst the corruption and grotesque mismanagement of HS2 will ring long in the ears of more than Pipistrelles, Natterers and Noctules.

In the meantime, without directly referring directly to what Sir Jon had said, Natural England posted a blog in which it sought to correct what it said was "inaccurate" coverage about Natural England's involvement.

Natural England had not required HS2 Ltd to build the reported structure, or any other structure, nor advised on the design or costs. The need for the structure had been identified by HS2 Ltd more than 10 years ago, following extensive surveying of bat populations by its own ecologists in the vicinity of Sheephouse Wood.

HS2 had an obligation throughout the whole route to abide by legislation that exists to protect nature.

Natural England and HS2 have a team that worked closely together to ensure that this duty was observed, so the rail line could be completed without harming important wildlife.

Natural England "was consulted by HS2 on whether the proposal designed to mitigate the impact of the railway on rare and protected bats was sufficient to comply with environmental law".

Natural England advised that it was:

for HS2 Ltd to make choices, consider risks and factor in costs when deciding how to comply with environmental law - that could be by choosing a route which avoids species and sites protected for nature or by investing in mitigations to limit the harm when the route passes through sensitive sites.

HS2 itself had provided evidence in its 2013 Environmental Statement that bats would be at risk of colliding with high-speed trains, threatening the conservation of Bechstein's bat and other species.

Bats in England and Wales are legally protected under two separate schemes but for present purposes it is only necessary to refer to one of them. The Conservation of Habitats and Species Regulations 2017 (the 2017 Regulations), which implemented the EU's Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive'). The Regulations/the Directive continue in force as Retained EU law.

Bats are a 'European protected species' listed in Sch 2. Reg 43 of the 2017 Regulations making it a criminal offence punishable by a fine and/or prison sentence of up to six months to deliberately capture, injure or kill bats, to deliberately disturb bats or to damage or destroy a breeding site or resting place of a bat. The Directive and the 2017 Regulations provide further protection for protected species and their habitats by requiring public authorities to take account of the need for that protection when they exercise their functions and powers.

Every EU country is obliged to give effect to the Habitats Directive so Sir Jon was wrong to say that Bechstein bats were not protected in Europe. All bats are protected. Incidentally it is dif-

...Continued page 17

## ← 16 ... **Bechstein's Bat**

Bechstein's bat agrees with his view that Bechstein's is "pretty available" in Europe. It is not. See above.

For present purposes we are concerned with the legal concept of "disturbance" to bats. Disturbance is defined as including any disturbance which is likely to impair bats' ability to survive, to breed or reproduce, or to rear or nurture their young or to hibernate or migrate; or

to affect significantly [their] local distribution or abundance.

The European Commission is empowered to publish guidance as to the application of the offences of disturbing or damaging/destroying a breeding site or resting place and in proceedings for those offences a court must take into account of that guidance. The Commission's 'Guidance document on the strict protection of animal species of Community interest under the Habitats Directive published on 12 October 2021' (the '2021 Guidance') continues to have effect in the UK (it replaced an earlier version published in 2007).

The Directive permits derogations from protection for species in certain limited circumstances (Article 16). Natural England has the power to licence what would otherwise be a breach of Regulation 43 for specified purposes including:

preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

However Natural England must not grant a licence unless it is satisfied:

(a) that there is no satisfactory alternative; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

The concept of "favourable conservation status in their natural range" of a species is critical: it is the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations. According to Article 1 (i) of the Directive it will be taken as 'favourable' when:

population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

In *Morge v Hampshire County Council* the Council, which was both the transport authority and planning authority, applied to itself for planning permission for a proposed busway between Fareham and Gosport. The busway was to follow the path of an old railway line. There were a number of designated nature conservation sites nearby and the surrounding area had become thickly overgrown with vegetation, creating an ecologi-

cal corridor for various flora and fauna following the closure of railway. A survey concluded that whilst there were no roosts on the site the removal of trees and vegetation would result in a loss of good quality bat foraging habitats. That would have a moderate adverse impact at local level on foraging bats for nine years or so. However the impact would then reduce because of mitigating measures to only slight adverse/neutral. Whilst the busway would sever a particular flight path followed by common pipistrelle bats, increasing their risk of collision with buses this, given the planned measures to mitigate this risk, would not have a "significant" impact on bats at a local level.

Following the survey Natural England withdrew a previously expressed objection. HCC's planning officers prepared a decision report and HCC's Regulatory Committee concluded with the grant of planning permission for the scheme by a majority of six to five with two abstentions.

Under 2017 regulations HCC had to "have regard to the requirements" of the Habitats Directive "so far as they may be affected by the exercise of" HCC's functions. The relevant function here was deciding whether to grant itself planning permission to build the busway. Morge argued that HCC had failed to comply with the obligation to 'have regard'.

The first question for the Supreme Court was the level of disturbance which triggered the prohibition in article 12(1)(b) of the Habitats Directive. The

Commission's Guidance (then in its 2007 form) made it clear that not every conceivable disturbance to a specimen would be a disturbance prohibited by the Directive. The Commission gave an example: a sporadic disturbance to a wolf by scaring it away from entering a sheep enclosure in order to prevent damage should not be considered a disturbance under article 12. There had to be 'room for manoeuvre' in determining what was a disturbance for that purpose. The Supreme Court decided that:

Article 12 afforded protection specifically to species and not to particular specimens of the species, nor to habitats even though the disturbance of habitats could indirectly impact on species.

The prohibition on detriment to favourable conservation status under Article 12(1)(b) did not prevent there being an assessment of the nature and extent of the negative impact of HCC's proposed construction of the busway on the species and

whether that negative impact was sufficient to constitute a "disturbance" of the species

consideration had to be given to the rarity and conservation status of the species and the impact of the disturbance on the local population of a protected species

individuals of a rare protected species were more important to a local population than individuals of a more abundant protected species

disturbance of species which were declining in number were likely to be more harmful than disturbance to species which were increasing in numbers

...Continued page 18



Sheepphouse Wood Bat Protection Structure

## ← 17 ... **Bechstein's Bat**

Therefore a case by case approach with careful reflection on the characteristics and survival chances of the species concerned was required when determining whether there the level of “disturbance” would be prohibited by article 12(1)(b). On the material presented to it, HCC had been entitled to come to the view that the level of disturbance to the bats would not be prohibited.

But secondly and in any event HCC's only obligation was to “have regard” to the requirements of the Habitats Directive when deciding whether to grant itself planning permission. It was for Natural England, not HCC, to enforce the Directive/Regulations by bringing criminal proceedings. If they did then the planning permission would not be a defence.

Given that Natural England had the primary responsibility for ensuring compliance with the Directive it would not be right to place a substantial burden on HCC as the planning authority to do so. Natural England had said it was satisfied that the proposed development would be compliant with article 12 of the Directive and had withdrawn its objections to the development so the HCC was entitled to presume that Natural England was correct.

Morge is critical to understanding and analysing what happened in relation to the Bat Mitigation Structure at Sheephouse Wood but, before explaining why, I shall deal with one other case, also concerning a bat and one which is even more rare than Bechstein's – the barbastelle bat, Keir, v Natural England and Anor. Keir was concerned with the duty of Natural England as the enforcement authority.

HS2 and its contractor needed to fell trees in Jones Hill Wood, Bucks, to build the line. There were bats in the vicinity. Natural England granted a licence to the contractor to do the felling work. Various detailed conditions were imposed including that any bat discovered had to be relocated to a suitable roost or to a suitable foraging/commuting habitat and felling was prohibited until temperatures were such that the bats would have emerged from hibernation. A number of defined compensation features including 24 replacement roost features (specific designs of “bat boxes”) and the planting of 3.2ha of woodland habitat and fruit trees on an adjacent site were required. The issue for the Court

was whether there was an arguable case that Natural England should not have granted the felling licence. It was agreed that in order to grant the licence Natural England had to be “satisfied” that the work proposed would not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

In considering this question it was necessary to apply the Precautionary Principle. This principle of law has developed though the EU cases and was applied to the Habitats Directive In Waddenzee [2004] ECR I-7405. The question in Waddenzee was whether commercial cockle fishing should be permitted in an environmentally sensitive area. The European Court of Justice ruled that cockle fishing could only be licensed if the Member State's relevant authority had been certain that it would not adversely affect the integrity of the site. That would be the case where no reasonable scientific doubt remained as to the absence of such effects. The same point was made in Tapiola [2020] CMLR 1 by the Advocate General, the case referred to by Mr Justice Holgate in his judgment in Keir.

Accordingly it is not necessary for it to be absolutely certain that a proposed activity will not have an adverse effect. But it is clearly a very high protective, precautionary, hurdle. In other words, if in doubt, do not allow it.

In Keir Mr Justice Holgate said that the identification of the “conservation status” of a species is itself a multi-factorial judgment about the sum of the influences acting on the species in question, affecting its distribution and populations in what is judged to be a long-term period. That overall judgment had to be

made comprised of a number of elements, or, building blocks, including the mitigation and compensation measures to be secured by the licence.

Mr Justice Holgate went into considerable detail in explaining the evidence before him. At the risk of over simplification it came to this:

Only one of the trees that HS2 wanted to fell was considered to have the potential to support a barbastelle breeding site. It was not suggested that there was evidence that it had or had previously done so. And that one tree was “not a typically favoured roost site”.

The surrounding landscape was not at carrying capacity for [Natterer's bat or barbastelle] and if bats from Jones Hill Wood were displaced, their colonies would continue to persist within the local area,

The removal of part of the woodland would have an impact no higher than at the “local level” even based on the worse case scenario that a maternity colony was assumed to be present.

Due to –

- the large areas over which these particular bats forage,
- the wider available foraging resource (adjacent woodlands in the vicinity) and
- the extensive habitat creation measures to be delivered

the activities authorised under the licence would not be detrimental to the maintenance of the population of the bat species concerned at a favourable conservation status in their natural range.

Mr Justice Holgate concluded that Mr Keir had not made out a case for an interim injunction. It is critical to appreciate the assessment was made despite the application of the Precautionary Principle.

### **The 2017 Act**

The High Speed Rail (London-

West-Midlands) Act 2017 (“the 2017 Act”) authorises the construction of the HS2 high speed railway – it takes effect as a deemed planning permission (S.20). But the 2017 Act does not disapply the licensing regime under the 2017 Regulations or grant any licence to do anything which would disturb bats (or any other protected species). So, as in Morge, the grant of planning permission by the Act to build the railway would not provide a defence HS2 if it broke the 2017 Regulations by causing a “disturbance” to the Bechstein's bats. And whether there was such a disturbance would have to take into account the high level of protection afforded to Bechstein's Bat by the Directive/the 2017 Regulations as understood by reference to the Precautionary Principle. HS2 passes (or is taken to pass) the other broad limb of the Directive requirement for derogation: there are “imperative” reasons of overriding public interest of a social or economic nature for constructing it.

### **So who decided what & why?**

The full story of the communications that passed between HS2 and Natural England in relation to Sheephouse Wood and Bechstein's Bats will no doubt be told one day. I have set out Sir Jon's version and Natural England's versions above.

The critical difference between them appears to be whether Natural England advised (or perhaps led HS2 to believe) that the proposed Bat Mitigation Structure had to be built or whether it merely advised that the proposed Bat Mitigation Structure would be sufficient. It does not appear to be suggested that Natural England had previously advised HS2 that any alternative or lesser form of mitigation would not be sufficient.

What is clear is that HS2's November 2013 Environmental Statement said that:

bats (including Bechstein's) had been recorded crossing the proposed HS2 route along the western boundary of Sheephouse Wood.

without additional mitigation, the ongoing loss of individuals of these species over several generations, particularly where roosts are present close to the Proposed Scheme could have an adverse effect on their conservation status significant at the national level for Bechstein's bat.

As I have mentioned already the commuting routes used by the

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bats are shown in maps contained in the Natural England report referred to above and they do indeed appear to intersect with and follow the route of HS2.

So HS2 themselves seem to have proceeded on the basis that, contrary to what Sir Jon told the conference, there was evidence that

the 700 tonne HS2 trains travelling at 360 km/h that will pass Sheephouse Wood every couple of minutes or so will "interfere" with 13g Bechstein's Bats that cross their path and

such unfortunate meetings would be likely to happen given the bat's foraging/commuting predilections at Sheephouse Wood.

There is plenty of evidence that these unsurprising propositions are correct. Natural England cited just some of it in the response blog referred to above. Research by Dr Fiona Matthews (of whom more below) indicates that the deleterious effects of high speed trains will not be limited to actual impacts. Bats will be put off from crossing the line altogether.

At para 7.5.13 on p 131 HS2's Environmental Statement said that:

the Sheephouse Wood mitigation structure would be provided to avoid potential impacts on bats crossing the HS2 corridor adjacent to Sheephouse Wood.

The structure would extend from the south of Sheephouse Wood to its northern extent, a distance of approximately 800m and provide a physical barrier to bats.

it had been assessed as 'a box shaped enclosure' up to approximately 10m above rail level.

In its written evidence to Parliament in 2014 Natural England had said it was pleased to note the proposed 'Sheephouse wood mitigation structure' which had the potential to reduce disturbance of species and habitats". It advised that the avoidance and mitigation measures proposed were sufficient to address any adverse impacts.

So contrary to the suggestion by the Prime Minister that the particular part of the HS2 project was "fought tooth and nail" so as to end up with an "absurd spectacle" it rather looks as though HS2 itself, right at the beginning had:

recognised a risk to the conservation status of Bechstein's Bat and proposed a 10 m high by 800 m long box to prevent the bats from colliding with the trains.

It is quite right to say that subsequently Bucks County Council challenged the design and form



*Bechstein's Bat*

of the structure. That challenge was dismissed by the planning inspector on 17 January 2024. But the essential proposal for a 10m high x 800m long structure of some kind, which would have to stand up to the considerable forces generated by high speed trains, was in place in 2013. If there was some other way of adequately protecting the favourable conservation status of the bats it does not seem to have been put forward by HS2 for consideration.

Sir Jon refers to the structure as a "shed". It is in fact a (necessarily) fairly sophisticated piece of engineering – see 'Design of porous tunnel for ecosystem protection in High Speed Two railway in UK' by S. Massinas and others. The Treasury commissioned a review by Arup in 2021. Arup concluded that the structure remained the most viable solution (albeit it budgeted at the time at £40m – it is far from clear why that figure has gone up so much and what Sir Jon's figure of £100m includes).

### Was it the right decision?

In an article published in ENDS Report on 13.12.2024 Dr Matthews, a Professor at Sussex University and an expert on bats and their conservation, was quoted as saying that:

It would be very difficult to find a conservationist in the country that thinks the bat tunnel is good value for money.

She considered that how many bats would actually benefit or the number that would be killed was unknown. According to the ENDS Report Dr Matthews saw the problem as being that the project had become embroiled in process, government silos, contractors and subcontractors.

Ultimately, the sheer cost of the project could have been much better spent on habitat creation and restoration [for the Bechstein's

bat]...

....It would have helped if someone had taken a more strategic view.

A report in *The Times* on 4.12.24 under the headline "Keir Starmer takes on nimbys holding major projects 'to ransom'" states the Prime Minister has instructed ministers to plan laws that would streamline complex environmental rules so as to end "case-by-case negotiations" of measures to deal with ramifications for wildlife, required under the 2017 regulations.

### Conclusions

It has been said that "Hard Cases make bad laws". I would suggest that a misrepresented Hard Case like this one is a very poor foundation to make a law that might reduce protection for what is left of an already badly depleted biodiversity in England. (It is right to acknowledge that at the same time the Government appears to be seeking to create and improve habitats in National Parks and National Landscapes – see Defra's announcement published on 16 December).

There is a strong case for looking critically at the process by which it came to be decided that such a large and complex structure had to be built. Dr Matthews seems to be suggesting that there were other ways of spending the sums involved to achieve the twin goals of building the railway yet not damaging further the already sub-optimal conservation status of Bechstein's Bat. Bat conservation does appear to contemplate, at least where necessary, the bats being moved to a new location – or at least persuaded to alter their foraging and roosting patterns by mitigation steps and the cases of Morse and Keir show that this is not inconsistent with the (very strong) protection given by the Habitats Directive/the 2017 Regulations

What does seem fairly clear is that what the Prime Minister described as an "absurd spectacle", the mitigation structure, was not because of pressure from anoraked tree huggers or over zealous conservationists working in NGOs but because of the view taken by HS2's own advisers and employees as to what needed to be done.

£100M does seem a lot of money to protect at most 300 or so bats, i.e. £330,000 per bat. But HS2 will be there indefinitely and anyway how can you put a monetary value on the survival of a species?

Actually there is a purely economic argument for preserving bats as natural insect suppressors: their value to US agriculture as such was estimated at \$22.9 billion per annum (at 2011 prices). See Boyles et al 'Economic Importance of Bats in Agriculture' Science Vol 332 1 April 2011. I have not been able to find a similar exercise being done in relation to England – although the figure would obviously be much smaller. That said, attempts have been made to put a monetary value on biodiversity in England, see "UK natural capital accounts: 2024 Estimates of the financial and societal value of natural resources to people in the UK" and "The Economics of Biodiversity: The Dasgupta Review" published by HM Treasury.

Whilst putting an economic angle on biodiversity those publications do not begin to assist in calculating how much the Bernstein's Bats at Bernwood are "worth". And even if they all disappeared because of the railway then there would still be more than 21,000 left in England. Money would have been saved, the carbon cost of constructing the mitigation structure would have been avoided.

Perhaps 21,000 Bechstein's ought to be enough? The trouble is that so many other things that we have done and continue to do to the countryside are deleterious, hence the suspected 30% decline in Bechstein's bat populations over just the last 15 years referred to above.

The imperative of building houses and 21st century infrastructure should not result in our destroying what remains of our once rich biodiverse environment, or one day there will not be any Bechstein's Bats left at all. But you will be able to get to Birmingham from London in 49 minutes. •

**Martin Fodder**