

Date: 14 January 2022
Our ref: 379740
Your ref: TR010044



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Dear Menaka

**NSIP Reference Name / Code: TR010044 A428 Black Cat to Caxton Gibbet Road
Improvement scheme – Report on the Implications for European Sites (RIES)
User Code: 20028237**

Thank you for notifying Natural England of the publication of the Examining Authority's Report on the Implications for European Sites (RIES) in your email of 17 December 2021.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England has reviewed the RIES and is satisfied that this presents a detailed account of the information submitted throughout the Examination by the applicant and interested parties, up to Deadline 6 (14 December 2021), in relation to potential effects on European sites.

The RIES indicates that the Applicant's HRA Report identified five European sites for inclusion within the assessment. The RIES confirms that the Applicant's no 'likely significant effect' (LSE) conclusions regarding the Ouse Washes Special Protection Area (SPA), the Ouse Washes Special Area of Conservation (SAC), the Ouse Washes Ramsar site and Portholme SAC were not disputed by Natural England or any Interested Party.

The RIES notes that during examination, the Applicant's conclusion of no LSE on Eversden and Wimpole Woods SAC, was disputed by Natural England and the Cambridgeshire Councils. Natural England considered that there was insufficient information available to rule out LSE with regard to the Eversden and Wimpole Woods SAC bat population, noting that barbastelle bats have been recorded travelling up to 20km from their roost and the A428 scheme is located approximately 8km at its nearest point from Eversden and Wimpole Woods SAC. Considering the possibility that barbastelle bats functionally linked with the SAC could be affected by the project, Natural England advised the Applicant to undertake further autumn and winter bat survey work through 2021. The Cambridgeshire Councils agreed that the survey work requested by Natural England should be carried out and the results incorporated into an updated assessment.

The RIES notes that the Applicant agreed to undertake the further bat surveys requested and agreed the proposed scope of the additional surveys with Natural England and the Cambridgeshire Councils. Periodic survey updates and interim findings have been submitted to

the examination and the Barbastelle Bat Survey and Mitigation Technical Note [REP4-044][REP5-006] reported on discussions between the Applicant and Natural England regarding the effectiveness of bat mitigation measures. The survey findings appear to support the results of the existing baseline data (i.e., no functional linkage) and therefore indicate that the Proposed Scheme will have no adverse effect on the integrity of the SAC barbastelle population. Natural England has confirmed that it is satisfied with this based on the information currently provided, and subject to the completion and reporting of the remaining surveys.

The RIES indicates that despite provisional agreement between Natural England and the Applicant over the findings of the 2021 surveys and the effect of the Proposed Development on the SAC, the parties remain in disagreement over the procedural matter of whether this issue should be assessed at the HRA screening stage or within an Appropriate Assessment (AA). The RIES notes that the Applicant maintains that there is no need to alter the conclusion of the original NSER as the supplementary survey data substantiates the previously established baseline. In contrast, Natural England considers that there was uncertainty with respect to the original conclusion of no LSE, and therefore it should progress sequentially to the AA stage with the additional surveys being used to inform this. The RIES states that according to the Applicant, Natural England's view is that the volume of survey work being presented goes above and beyond what would be appropriate at the LSE screening stage.

With reference to the above Natural England can confirm that its position remains that the level of survey and assessment undertaken to inform the NSER equates to an Appropriate Assessment, as required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and European Court of Justice caselaw, cited in the NSER, including 'People Over Wind'. On this basis we believe that the NSER should be re-labelled as an Appropriate Assessment.

Natural England welcomes that the Applicant has committed to providing an updated NSER or Shadow AA report to the examination at Deadline 8 on 14 January 2022.

Natural England
14 January 2022

For further information please contact:
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