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Your ref: HPK/2022/0376



High Peak Borough Council

BY EMAIL ONLY

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Dear Rachael Simpkin

Planning consultation: Full planning permission for 20 apartments and two extensions to the rear elevation.

Location: Grove Hotel, Grove Parade, Terrace Road, Buxton, Derbyshire, SK17 6AJ

Thank you for your consultation on the above dated 09 February 2023 which was received by Natural England on 09 February 2023

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.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on [The Peak District Dales Special Area of Conservation \(SAC\)](#). Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Alterations to the occupancy/flow rate calculations to ensure they comply with nutrient neutrality principles.

Natural England's detailed advice is set out below.

Peak District Dales Special Area of Conservation:

The proposed development lies within the catchment of Unit 70 and 71 of the River Wye SSSI¹. This site is in unfavourable condition and is failing its conservation objectives as a result of nutrient enrichment. Point Source, i.e. foul water discharges from development (including via mains sewage treatment works), are one of the main contributors to nutrient enrichment. As such, any development which will cause an increase in overnight stays within the catchment must calculate a nutrient budget and provide mitigation which will prevent any increase in nutrients entering the River.

Natural England have updated our advice regarding the Peak District Dales SAC and the River Wye

¹ <https://magic.defra.gov.uk/magicmap.aspx>

SSSI. Our full updated advice was sent to your authority on 16th March 2022.

For more information regarding the site's designated features, condition assessment and conservation objectives visit Natural England's [Designated Sites View](#).

Habitats Regulations Assessment (HRA)

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

The following advice should be taken in to account by the competent authority within the HRA.

Nutrient Neutrality

Natural England welcome the Nutrient Neutrality Report provided by the applicant, and advise that where a proposed development will give rise to a reduction in foul water discharge due to overnight stays, it is unlikely that the development will have an adverse impact on the Peak District Dales SAC. As such, we concur with the principle of the report, however, advise that the calculations must be altered to align with Nutrient Neutrality and ensure consistency across the catchment.

Existing Use

Occupancy

The calculations provided use an average occupancy of 2 people per room in the hotel. We consider this occupancy rate to be suitable, however, the calculations as they stand indicate the hotel would be at 100% capacity at all times. We consider this to be unlikely; as such, advise that an additional occupancy rate for the hotel should also be applied (i.e. the average percentage that rooms are occupied). This should either be based on national or locally specific data, where available, and provided with a justification.

Proposed Use

Occupancy

The calculations provided use room size to dictate the number of occupants likely to reside within the proposed apartments. Natural England advise that the average occupancy figure (a used within the Nutrient Budget calculator) should be used (2.4) for residential development, in line with Nutrient Neutrality guidance. Whilst it is possible to use alternative occupancy rates for different sized residential units, the LPA must consider local evidence to support this, as well as ensuring consistency in applying the same occupancy rates for all development within the catchment². In the absence of agreed alternative occupancy rates, use of the average 2.4 occupancy would be appropriate. Due to the number of 3 bed apartments, this occupancy figure may lead to a reduction in predicted occupancy.

Water use by non-overnight stay customers

The calculations for existing foul discharge currently include water use by drinkers. Natural England advise that only contributions from those staying overnight should be considered, i.e. those causing an increase in population within the catchment. This is based on the assumption of the nutrient neutrality methodology that those visiting the pub to eat/drink are likely to live within the catchment; thus their contribution is already taken into account within the background, or will be taken into

² Detail of the considerations required when considering alternative occupancy rates are provided at pages 13-15 of the [Nutrient Neutrality Methodology](#).

account within new residential/hotel developments.

Residential Water Use

We note that residential water use rates have been taken from British Water Flows and Loads 4. Whilst this is a precautionary approach, it may be possible to reasonably use a lower residential water use figure than 150l per person per day. The Nutrient Neutrality Budget Calculator uses a residential water use rate of 120l per person per day, which is based on the Building Regulations lower water use figure of 110l, plus 10l built in as additional precaution. The Building Regulations³ do state that to assume this water use rate, the planning permission must '(a) specify the optional requirement in paragraph (2)(b) [110l]; and (b) make it a condition that that requirement must be complied with'. Where the above are applied, Natural England consider a water use rate of 120l per person per day could reasonably be assumed.

Surface Water

As the proposal will not alter the surface water drainage from the site, we consider impacts from surface water on the Peak District Dales SAC to be unlikely.

Summary

Where the above are considered, and updated calculations indicate there would still be a reduction in foul water discharging from the site due to overnight stays, we would consider impacts to the Peak District Dales SAC to be unlikely.

On the other hand, where the above are considered and updated calculations indicate there will be an increase in foul water discharging from the site due to overnight stays, we would advise that further mitigation is required to ensure the development is nutrient neutral.

Other Advice

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A. The LPA should also be aware of the recent rulings, and implications of, the People Over Wind and the Dutch Nitrogen Cases. Details of these are attached below in Annex B.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Should the developer wish to discuss the detail of measures to mitigate the effects described above with Natural England, we recommend that they seek advice through our [Discretionary Advice Service](#).

If you have any queries relating to the advice in this letter please contact me on 07767556842

Should the proposal change, please consult us again.

Yours sincerely

Robbie Clarey
Lead Adviser – East Midlands Area Delivery

³ <https://www.gov.uk/government/publications/sanitation-hot-water-safety-and-water-efficiency-approved-document-g>

Annex A – Additional Advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Protected Species

Natural England has produced [standing advice](#)⁴ to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)⁵. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

⁴ <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

⁵ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.0](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.0](#) and is designed for use where certain criteria are met. It is available as a beta test version.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.0](#) and is available as a beta test version.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green

infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).

Annex B - Recent Rulings

Competent authorities undertaking HRAs should be aware of a recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of *People Over Wind and Sweetman vs Coillte Teoranta* (ref: C-323/17). The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required. The Court's Ruling goes against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.

As a result, Natural England advises that any “embedded” mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should no longer be considered at the screening stage, but taken forward and considered at the appropriate assessment stage to inform a decision as whether no adverse effect on site integrity can be ascertained. In light of the recent case law, any reliance on measures intended to avoid or reduce harmful effects at the likely significant stage is vulnerable to legal challenge. You may also want to seek your own legal advice on any implications of this recent ruling for your decisions

Your authority should also be aware of a recent Ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of *Coöperatie Mobilisation* (AKA the Dutch Case) ([Joined Cases C-293/17 and C-294/17](#)).

The *Coöperatie Mobilisation* case relates to strategic approaches to dealing with nitrogen. It considers the approach to take when new plans/projects may adversely affect the ecological situation where a European site is already in ‘unfavourable’ conservation status, and it considers the acceptability of mitigating measures whose benefits are not certain at the time of that assessment.

Competent authorities undertaking HRA should be mindful of these cases and should seek their own legal advice on the implications of these recent rulings for their decisions.