

Date: 18 December 2023
Our ref: 460007
Your ref: HPK/2023/0461



High Peak Borough Council

BY EMAIL ONLY

Customer Services
Hornbeam House
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T 0300 060 3900

Dear James Stannard,

Planning consultation: HPK/2023/0461 New dwelling on the side garden of 12 Lascelles Road - renewal of planning approval HPK/2019/0440 re-submission of HPK/2022/052312

Location: Little Mount, Lascelles Road, Buxton, Derbyshire, SK17 6RA

Thank you for your consultation on the above dated 30 November 2023 which was received by Natural England on 30 November 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

NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of the Peak District Dales Special Area of Conservation
- damage or destroy the interest features for which the Wye Valley Site of Special Scientific Interest has been notified.

The LPA, as competent Authority, should undertake a HRA for this development and in doing so ensure that there will be no harmful discharges of foul or surface water from the application site into the River Wye or its tributaries.

Natural England advise that the development may have an impact on the Peak District Dales SAC without the following:

- Greywater harvesting and SuDS measures must be secured and maintained for the lifetime of the development to ensure they function as intended

Peak District Dales Special Area of Conservation:

The proposed development lies within the catchment of Unit 70 and 71 of The Wye Valley SSSI¹, a component site of the Peak District Dales SAC. The site is currently in unfavourable condition and failing to meet its conservation objectives because of nutrient enrichment in the water. 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 SSSI. Our full updated advice was sent to your authority on 16th March 2022².

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.

Further Advice on Mitigation

The proposed development will create additional overnight stays within the catchment of units 70 & 71 of the Wye Valley SSSI. As a result, Natural England advise your authority that this development should utilise the Nutrient Neutrality methodology. Natural England's detailed advice can be found within the guidance sent to your authority on 16th March 2022³.

Below is some further advice regarding this particular development and the application of the Nutrient Neutrality Methodology:

Foul Water

The proposed development will contribute +0.01kg of phosphorus annually, incorporating water use reductions via the use of a greywater recycling system. The Local Planning Authority need to determine and be satisfied that that the greywater harvesting system will function as intended and be secured in perpetuity.

Surface Water

In line with CIRIA C808 guidance, the proposed use of SuDS in the form of permeable paving, soakaways and filter drains to discharge of surface water will result in a 100% phosphorous removal rate.

We note that the report includes the consideration of SuDS components treating nitrogen content. However, in the Peak District Dales (SAC) catchment only phosphorus inputs from proposed developments are required in Nutrient Neutrality calculations. Further information regarding this can

¹ <https://designatedsites.naturalengland.org.uk/SiteDetail.aspx?SiteCode=S2000186&SiteName=wey%20valley&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>

² <https://publications.naturalengland.org.uk/publication/4792131352002560>

³ <https://publications.naturalengland.org.uk/publication/4792131352002560>

be found in the Nutrient Neutrality [Evidence Pack for the Peak District Dales SAC](#).

Conclusions

As a result of the implementation of Greywater Recycling and SuDS, and subject to these measures being secured for the lifetime of the development, Natural England would concur with the report's conclusion of onsite phosphorous neutrality from this development.

Other Advice

Further information regarding Nutrient Neutrality can be found in the suite of documents located [here](#).

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 281 (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 at

Should the proposal change, please consult us again.

Yours sincerely

Megan Bromiley
Planning & Environment Lead Advisor
East Midlands Area Team

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.