

Date: 18 December 2023
Our ref: 455992 RECONSULTATION
Your ref: HPK/2023/0447



High Peak Borough Council

BY EMAIL ONLY

Customer Services
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Dear James Stannard

Planning consultation: 2no. new build semi-detached homes on the former vacant land on Heath View road, with two car park spaces provided for each dwelling

Location: Land off, Brierlow Road, Harpur Hill, Buxton, Derbyshire

Thank you for your consultation on the above dated 12 December 2023 which was received by Natural England on 12 December 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 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:

- Details of mitigation measures to ensure the development is Nutrient Neutral.

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Natural England's advice on other issues 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 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

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

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.

Further information required:

The Nutrient Neutrality Assessment provided indicates that the proposed development will contribute 0.07kg TP/yr to the Peak District Dales SAC (River Wye component). It also notes an input of 7kg TN/yr, however, Nitrogen neutrality is not required within this catchment; Nitrogen has been included in the calculator erroneously. The reasons for this are set out in the [Evidence Base document](#).

As a result, mitigation is only required for 0.07kg TP/yr.

However, the report states that 'Nutrient Mitigation Credits' will need to be applied for from Natural England. At present, there is not a nutrient credit scheme active within this catchment; as such, this cannot be relied upon at mitigation for this development. Bespoke mitigation is required. This could include:

- Implementation of SuDS at the development site. CIRIA's 'Using SuDS to reduce phosphorous in surface water runoff (C808F)'³ can be used to evidence a reduction in the surface water contribution of phosphorous to the River as calculated within stage 3 of the Nutrient Budget calculator. Of note, it states that where surface water is discharged via infiltration, a phosphorous removal rate of 100% may be assumed.
- Retrofitting inefficient Package Treatment Plants/Septic Tanks elsewhere upstream in the catchment.
 - o Replacing old, poorly performing non-mains drainage PTPs or Septic Tanks of nearby properties with more efficient systems can prevent significant quantities of nutrients from flowing to the river. This reduction can be used to mitigate new development.
- Greywater Harvesting
 - o Greywater harvesting measures may be suitable to reduce the water use of the development; this can be calculated at stage 1 of the calculations.
 - o However, any water efficiency measures must be secured for the lifetime of the development, and maintained for the lifetime of the development, to ensure they function as intended.
- Land use changes either on site or elsewhere upstream in the catchment.
 - o The Nutrient Neutrality calculator allows the calculation of phosphorous inputs to the river from different land use types.
 - o It is thus possible to calculate the Phosphorous reduction that could be created via land use change (e.g. altering land from high input agriculture to no input woodland could create a significant reduction in phosphorous input to the River, which can be used to mitigate new development).

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

³ https://www.ciria.org/CIRIA/CIRIA/Item_Detail.aspx?iProductCode=C808F&Category=FREEPUBS

- The FAQs section of [this document](#) contains a useful table of potential mitigation measures.

Further Information

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 Dutch Nitrogen Cases. A summary of these can be found 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.

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

Should the applicant wish to discuss the further information required and scope for mitigation with Natural England, we would be happy to provide advice through our [Discretionary Advice Service](#).

Please consult us again once the information requested above has been provided.

Yours sincerely

Robbie Clarey
Planning & Environment Lead Adviser

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.