

Date: 29 January 2024
Our ref: 461223
Your ref: HPK/2023/0192



High Peak Borough Council

BY EMAIL ONLY

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

Dear Rachael Simpkin

Planning consultation: Construction of 116 dwellings
Location: Land at Hogshaw, Fairfield, Buxton SK17 7HN

Thank you for your consultation on the above dated 19 December 2023 which was received by Natural England on 19 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:

- Amendments to the Nutrient Budget Calculations in line with the Natural England Nutrient Neutrality Methodology.
- Evidence and rationale for the phosphorous export rates used for the development site and mitigation site.
- Certainty the mitigation will be in place for the lifetime of the development.

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

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

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

¹

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

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.

Nutrient Budget Calculations

Water Use Per Person

Paragraph 3.18 of the Nutrient Assessment states that a 110l per person per day (pppd) water use is used, including a 10l pppd buffer. This is not in line with natural England's Nutrient Neutrality Methodology, which uses the Building regulations lower water use figure of 110l pppd + 10l buffer. Natural England advise that this 120l pppd water use should be adopted as a precautionary approach.

Occupancy Per Household

Paragraph 3.19 of the Nutrient Assessment states that the use of an average occupancy of 2.29 people per dwelling is used. However, this is based on ONS information from the North West. The Development site is located within the East Midlands, and as such, ONS data for the East Midlands should be used. This data indicates that average occupancy has fluctuated between 2.31 and 2.39 since 2015. As a result, Natural England advise that the standard occupancy rate of 2.4 (as used within the Natural England Nutrient Neutrality Methodology) should be adopted as a precautionary approach.

Existing Land Use at the Development Site

The Site Location plan and Planning Layout appear to illustrate altered Red Line Boundaries for the development site when compared to the Nutrient Assessment and Nutrient Mitigation Site Appraisal. It is unclear whether the 4.2ha site is the area shown on the site location plan and planning layout, or the Nutrient Reports. From Aerial photography, the western portion of the development site (shown on the Nutrient reports) appears to include an area of woodland. Clarity should be sought as to where the boundary of the 4.20ha development boundary lies in relation to the woodland; any woodland within the site should be reflected within stage 2 of the Nutrient budget calculations.

Table 3.20 of the Nutrient Assessment indicates that the development site is currently in use as lowland grazing. Due to the location of the site, it may be more appropriate for the Less Favourable Area (LFA) land use to be used. Natural England would advise that evidence and rationale should

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

be provided for the land use selected.

Existing Lane Use at the Mitigation Site

The Nutrient Mitigation Site Appraisal indicates that the existing land use at the mitigation site is LFA, which in this instance is estimated to have a phosphorous leaching rate of 1.59kg P/ha/yr. This high phosphorous leaching rate indicates that for land classified as LFA in this area, the application of fertiliser is an assumption of the FarmScoper model (which informs the calculator based on census information).

Based on the information provided, and aerial photography, the mitigation site appears unlikely to receive nutrient input via fertiliser application. This is due to its upland location, topography, and the presence of rocky outcrops and heathland encroachment into the field. As a result, the phosphorous leaching rate of 1.59kg P/ha/yr may be unrepresentative of the true leaching rate from this site. To justify this high leaching rate, Natural England would recommend that your authority seek further information and evidence from the applicant which shows the mitigation site has received regular nutrient input over the last 10 years. Where any form of nutrient enrichment is undertaken, it is a requirement of the 2018 Reduction and Prevention of Agricultural Diffuse Pollution Regulations to undertake soil testing and to hold a Nutrient Management Plan. This information would be sufficient to evidence the nutrient enrichment of the mitigation site, and, as the best available evidence for the site, could be used to verify the suitability of the 1.59kg P/ha/year leaching rate.

Where this cannot be provided and/or the mitigation site has not received nutrient input, Natural England would recommend that a bespoke FarmScoper run is required to provide a more appropriate phosphorus leaching rate from the site, i.e. an upland grazing scenario where no fertiliser input is assumed.

Securing Mitigation for the Lifetime of the Development

In addition to the issues raised above, Natural England note that the proposed mitigation area is to be taken out of agricultural use (i.e. to be fallowed), however, no information is provided regarding how this area is intended to be managed for the lifetime of the development. Your authority must have certainty that the mitigation area remains fallow for the lifetime of the development, in order for any Phosphorous reduction to be realised.

The use of a Section 106 agreement is likely to be required to achieve this certainty; in addition to details of the long term plans for the mitigation area. For example, the implementation of woodland planting in the mitigation area would provide additional certainty that the phosphorous mitigation will remain in perpetuity, as the presence of woodland will reduce the likelihood of the area being re-used for agriculture. Alternatively, the implementation of a biodiversity led management plan, which would secure the non-agricultural use of the area for the lifetime of the development, could serve the same purpose.

Natural England would strongly advise consideration of these, or alternative, nature based solutions to achieve the required certainty that the phosphorous mitigation will remain for the lifetime of the development. The mitigation area may also provide an ideal area to create a nature rich place, which can not only deliver nutrient neutrality, but also contribute to Biodiversity Net Gain, via [Stacking](#), where additional biodiversity credits could be sold to other developers. This would also contribute to the wider goals for Nature Recovery and the Nature Recovery Network.

Other Advice

Nutrient Offsetting for other development within the catchment

It is noted in section 4.10 of the Nutrient Mitigation Site Appraisal, that the additional phosphorous reduction that could be realised via fallowing of the entire mitigation area could be used to mitigate other schemes within the catchment. Should the applicant wish to explore this route, we would recommend that this is done so in collaboration with the local planning authority, in order to ensure

the nutrient credits are accounted appropriately.

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 on 07767556842

Should the proposal change, please consult us again.

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.