

Date: 02 August 2024
Our ref: 468906
Your ref: HPK/2023/0447



High Peak Borough Council

BY EMAIL ONLY

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

Dear James Stannard

Planning consultation: Additional Drainage & Nutrient Data provided. 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 15 July 2024 which was received by Natural England on 15 July 2024

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 could:

- 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:

- Securing the proposed land use changes for the lifetime of the development
- Securing the SuDS implementation as detailed in the Updated Drainage Layout

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 updated Nutrient Budget Report illustrates that with the implementation of land use changes (from open urban land to Residential Urban Land, Woodland and Shrub) and soakaways, the proposal will be Nutrient Neutral (Overall reducing Phosphorous input to the SAC by 0.06kg TP/yr).

It is noted that within the Nutrient Budget Report, the SuDS calculations appear to be utilising the incorrect site area. 0.03ha is used, however, this appears to be the size of the soakaways themselves, not the area of the site that will discharge to the soakaways (0.09ha). Nonetheless, this error has only meant that a lower P removal rate as a result of the implementation of the soakaways has been assumed. As such, because the calculations indicate that the proposal would already be nutrient neutral (-0.06kg TP/yr), this error has meant the calculations are more precautionary.

Securing Mitigation Measures:

The calculations assume the existing land use is open urban land. Your authority should satisfy themselves that this land use is most appropriate. The Nutrient Neutrality [Generic Methodology](#) defines this as: *'Open urban – urban land that is primarily hardstanding but is not primarily used for housing or industry. This may include but, not limited to, roads, small greenspace areas, and buildings'*. Natural England do not have local knowledge of the site, but from aerial photography it is clear the site is brownfield & so may fall within this category.

Natural England advise that the implementation of the Soakaways, as detailed in the updated Drainage strategy report, should be secured via an appropriate planning condition, to ensure the calculated level of phosphorous removal is realised.

Natural England also advise that the land use change, including creation of 0.05ha of woodland, and 0.10ha of Shrub, must be secured for the lifetime of the development. It may be appropriate to

¹

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

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

implement a condition for the creation of a Landscape and Environmental Management Plan (LEMP), as recommended at section 4.5 of the Nutrient Budget Report. Your authority must have certainty that this land use change will be maintained for the lifetime of the 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

Should the proposal change, please consult us again.

Yours sincerely

Robbie Clarey
Senior Sustainable Development Officer

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.