

Date: 09 December 2024
Our ref: 494750
Your ref: HPK/2024/0378



FAO James Stannard
High Peak Borough Council

Customer Services
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BY EMAIL ONLY

Dear James

Planning consultation: 2x semi-detached 2 bed dwellings 2x semi-detached 3 bed dwellings 1x detached 3 bed dwelling 1x detached 2 bed dormer bungalow

Location: LAND REAR OF 74 AND 76, Queens Road, Fairfield, Buxton, Derbyshire

Thank you for your consultation on the above dated 21 November 2024 which was received by Natural England on the same date.

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:

- Amendment to the nutrient budget calculations

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

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

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 Information Required:

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:

Nutrient Budget Calculations

Natural England welcome the 'Nutrient Neutrality Assessment & Mitigation Strategy' which considers the impact of the proposed development on designated sites and phosphate neutrality. The report sets out the proposed mitigation approach to upgrade an existing septic tank with a more efficient package treatment plant (PTP) elsewhere in the catchment. This mitigation option is welcomed and the selected location of the proposed septic tank upgrade appears to be appropriately located upstream of Unit 70 and 71 of the The Wye Valley SSSI.

Upon reviewing the nutrient budget calculations provided, Natural England advise that an amendment is made to Section 7.1.1.1, Step 3 of the calculation where the applicant has used the default mean concentration value of 11.6mg/l as the load from the septic tank. We would recommend amending this figure to use the PTP default mean concentration value of 9.7mg/l, as set out in the budget calculator. Natural England generally advise that the 'PTP default' discharge concentration should be used for the existing scenario when upgrading a septic tank, not the 'septic tank default'. The reason for this amendment is because there is assumed the existing septic tank discharges into a watercourse, which does not meet current regulations. Septic tanks that discharge directly to a watercourse are often required legally to be upgraded to a PTP or to incorporate tertiary treatment such as a drainage field (see the Environment Agency's General Binding Rules, and Building Regulations Approved Document H). As such, it should be assumed that the system would, as a minimum, be upgraded to the PTP and therefore reflected in the calculations with the use of the PTP default mean value figure of 9.7mg/l.

Following this, assuming the calculations continue to show an overall reduction in P input, Natural England would have no objection to the proposal; advise that your authority secured the proposed

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

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

mitigation as detailed within the Nutrient Neutrality Assessment & Mitigation Strategy’.

Surface Water

With regards to surface water mitigation, Natural England note in part 7.1 of the Nutrient Neutrality Assessment & Mitigation Strategy that onsite mitigation is not feasible for this development. However, the following CIRIA guidance on SuDS should be noted. This guidance details how onsite mitigation to reduce surface water can be achieved via the use of SuDS. This may be a viable onsite mitigation option for this development.

CIRIA have recently published guidance on ‘Using SuDS to reduce phosphorous in surface water runoff (C808F)’⁴. This guidance 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.

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 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 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.

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

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

Megan Bromiley
Higher Officer – Sustainable Development
East Midlands Area Team

⁴ https://www.ciria.org/CIRIA/CIRIA/Item_Detail.aspx?iProductCode=C808F&Category=FREEPUBS

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.