

Date: 13 May 2024
Our ref: 473750
Your ref: HPK/2023/0192



High Peak Borough Council

BY EMAIL ONLY

Customer Services
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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 23 April 2024 which was received by Natural England on 23 April 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 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:

- Certainty the proposed mitigation will be in place for the lifetime of the development.

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 considered by the competent authority within the HRA.

Technical Note 4: Natural England Response Rv1

Natural England welcome the provision of the further information requested in our previous comments, dated 29th January 2024. Our advice on this is provided below:

Section 2.2

Natural England note the further information provided, however, consider that a more precautionary approach would be to use the Nationally agreed 120lpppd water use. Nonetheless, the LPA, as the competent authority, must consider the use of 110lpppd and come to a decision regarding its suitability for the project, considering the information provided.

It is also noted that within section 3.1 (Figure 3-1) 120lpppd appears to have been used, not the 110lpppd discussed in section 2.2; as such **your authority should seek clarity with regards to which water use figure has been used within the Nutrient Neutrality calculations.**

Section 2.4

Natural England welcome the use of an occupancy rate of 2.4 people per dwelling.

Section 2.6

This is noted and Natural England have no further comment.

Section 2.7

This is welcomed and Natural England have no further comment.

Section 2.8

This is welcomed and Natural England have no further comment.

Section 2.10

Natural England acknowledge the fact there is no scenario within the calculator that would assume a 'no fertiliser' scenario in this instance and welcome the provision of further information and a bespoke FarmScoper run. This has been based upon the Phosphorous inputs from 144 sheep on the mitigation land, with no further nutrient addition (i.e. slurry spreading or inorganic fertiliser application). The outputs indicate a Phosphorous leaching rate of 0.86mgP/L, a reduction from the

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

previously assumed 1.59mgP/L. Whilst still indicating a high existing discharge rate from the mitigation land, Natural England consider the use of this figure more likely to represent the actual existing scenario than the previous calculations. Your authority should consider the updated information provided within the HRA, including the existing stocking density, to ensure you concur with the outputs provided.

Section 3

The results of the updated calculations show that overall, the development will be Nutrient Neutral (-0.13kgP/yr).

Figure 3-2 notes that the woodland leaching rate has been used for the Mitigation land's future land use, however, no further information appears to have been provided regarding how the land use change will be secured for the lifetime of the development. Our previous advice remains relevant here:

'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. '

In addition, Natural England would like to note that the neighbouring Lightwood Reservoir site (Owned by Nestle Waters), is managed by the Wildlife Trust; thus, the ongoing management of the mitigation land offers a unique opportunity to expand and enhance the value of this area for nature. Natural England would be happy to discuss this further with applicant.

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 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.

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.