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Your ref: DMPN/2021/1336



South Derbyshire District Council

BY EMAIL ONLY

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Dear Neil Thompson

Planning consultation: Prior notification Change of Use of Agricultural Building to Dwellinghouses
Location: Land at Seal Wood Lane, Linton, Swadlincote

Thank you for your consultation on the above dated 21 September 2021 which was received by Natural England on 21 September 2021.

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

Natural England has no objection to the matters proposed within this prior approval notification.

However, to meet the requirements of the Habitats Regulations, we advise that a further application under regulation 77 of the Habitats Regulations is required, prior to any building works beginning, in order to assess the potential impacts this development could have on the [River Mease SAC](#). This application should include details of foul drainage.

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 Mease or its tributaries.

Below is our advice on this development. We have set out the requirements which we believe would prevent an adverse effect on the River Mease SAC from this development. As we have provided our advice at this stage, there would be no obligation for the LPA to re-consult Natural England on the second application (under regulation 77).

River Mease Special Area of Conservation:

The proposed development lies within the catchment of the River Mease SAC¹, which is currently in unfavourable condition and is failing its conservation objectives. This is as a result of numerous factors, including high levels of phosphorous in the water. Any addition of phosphorous from foul water (including via mains Sewage Treatment Works) or pollutants from poorly treated surface water will contribute to the site's unfavourable condition and the failing of its conservation objectives.

¹ <https://magic.defra.gov.uk/magicmap.aspx>

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.

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.

Further Advice on Mitigation

Foul Water Drainage

The National Planning Practice Guidance and [Building Regulations Approved Document H](#) give a hierarchy of drainage options that must be considered and discounted in the following order:

1. Connection to the public sewer
2. Package sewage treatment plant (which can be offered to the Sewerage Undertaker for adoption)
3. Septic Tank
4. If none of the above are feasible, a cesspool

Connection to the Mains sewer system:

Our preference is for foul water drainage to be connected to the mains sewer subject to capacity at the relevant sewage treatment works and capacity in the Developer Contribution Scheme (DCS). The contribution to the scheme is dependent on the estimated discharge of phosphorous into the River Mease as calculated by the LPA.

Currently, capacity within DCS is known to be limited; If there is no capacity in the scheme, a bespoke solution may be delivered by applicants to mitigate the level of phosphorous generated by a proposed development within the River Mease SAC catchment.

Additionally, in some cases near the boundary of the catchment, where developments are connected to mains, the sewer network takes their foul water to a sewage treatment works outside the catchment. Where this is the case, we would anticipate no adverse impacts on the River Mease SAC. We note that this development appears to be close to the northern boundary of the catchment, and therefore if it were to connect to mains, there is a possibility for the need for any mitigation to be bypassed.

When none of the above are possible and a non-mains drainage solution is proposed, the LPA should satisfy itself that the solution proposed, whether a package treatment plant, septic tank or sealed cesspool, will not result in any harmful discharges of foul water from the application site into the River Mease or its tributaries.

It is worth noting that the [Building Regulations \(H – Drainage and Waste Disposal\)](#) state: 'Foul drainage should be connected to a public foul or combined sewer wherever this is reasonably practicable. For small developments connection should be made to a public sewer where this is within 30m provided that the developer has the right to construct the drainage over any intervening private land'.

Package Treatment Plant / Septic Tank:

Neither Package Treatment Plants nor Septic Tanks treat foul water for phosphorous. As a result, effluent discharging from these systems will contain high phosphorous levels and additional treatment measures are necessary to attenuate phosphorous before it reaches the River Mease or any of its tributaries. Please see [this document](#), along with the related records at the bottom of the web page for further information regarding phosphorous discharging from PTPs/Septic Tanks.

To attenuate phosphorous generated by a proposed development Natural England expect that a PTP or Septic Tank would discharge to a drainage field which meets the following standards:

- a) The drainage field is more than 50m from the designated site boundary (or sensitive interest feature) **and**;
- b) The drainage field is more than 40m from any surface water feature e.g. ditch, drain, watercourse, **and**;
- c) The drainage field is in an area with a slope no greater than 15%, **and**;
- d) The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times **and**;
- e) The drainage field will not be subject to significant flooding, e.g. it is not in flood zone 2 or 3 **and**;
- f) There are no other known factors which would expedite the transport of phosphorus for example fissured geology, known sewer flooding, conditions in the soil/geology that would cause remobilisation phosphorus, presence of mineshafts, etc **and**;
- g) To ensure that there is no significant in combination effect, the discharge to ground should be at least 200m from any other discharge to ground. The density of discharges to ground should also not be greater than 1 for every 4ha² (or 25 per km²)

It would be advisable for the LPA to seek confirmation from the Environment Agency that the foul water drainage solution proposed is technically fit for purpose.

Cesspit:

Cesspits do not treat foul discharges at all and should be considered a last resort as a result of issues with sustainability, cost, overflows and leaks. Where a cesspit is proposed, the final destination of the effluent should be considered. We advise that where a cesspit is the only viable option, an appropriate planning condition should be imposed to ensure the cesspit is emptied by a licensed waste disposal company and transported **outside the catchment** for treatment and discharge. The LPA should satisfy itself that the cesspit will be emptied outside the catchment of the River Mease in perpetuity/for the duration of the use of the development.

Other Advice

Surface Water Drainage

Our preference remains for a surface water drainage scheme which disposes of all surface water from new roofs, converted roofs, new hard surfacing etc. harmlessly on site in a sustainable way by means of Sustainable Drainage Systems (SuDS), incorporating systems to clean the water. Guidance on sustainable drainage systems, including the design criteria, can be found in the [CIRIA SuDS Manual \(2015\) C753](#).

Maintenance of the sustainable drainage system proposed is essential to ensure that it continues to function as designed and constructed. The long-term monitoring and maintenance of the surface water drainage system should be secured by condition or legal agreement.

² NECR170 identifies evidence that suggests that the maximum density of these systems should be not more than one for every 4ha.

Where a sustainable drainage scheme is not practicable and discharge to mains is proposed, this would also be subject to capacity within DCS. The LPA should then adjust the contribution to DCS and ensure that Severn Trent Water has no objection to the proposal. Whilst surface water contains little phosphorous, a contribution to DCS is still required as any water entering the treatment works will be discharged at the permitted concentration, thus, any increase in volume of water entering the treatment works will lead to an increase in phosphorous entering the river.

For technical advice on surface water drainage, the LPA should refer to the relevant Lead Local Flood Authority (LLFA).

Biodiversity Net Gain

Biodiversity net gain is a demonstrable gain in biodiversity assets as a result of a development project that may or may not cause biodiversity loss, but where the final output is an overall net gain. Net gain outcomes can be achieved both on and/or off the development site and should be embedded into the development process at the earliest stages.

The government is intending that it will mandate net gains for biodiversity on new developments in England to deliver an overall increase in biodiversity. Natural England therefore suggests that your authority may want to advise the applicant to follow the net gain approach and take the opportunity within this proposal to be an exemplar development which can demonstrate a net gain in biodiversity.

- The new and improved Biodiversity Metric 3.0 has recently launched, alongside the Small Sites Metric (Beta Test Version) and the Environmental Benefits from Nature Tool (Beta Test Version). The tools can be accessed [here](#) and include user guides and technical supplements.

With the launch of the Small Sites Metric, it should be much more manageable for the net gain approach to be taken for smaller developments, such as that proposed within this application. The advantage of using a recognised metric to deliver net gain is that it provides a clear, transparent and evidence-based approach to assessing a project's biodiversity impacts that can assist with "de-risking" a development through the planning process and contribute to wider place-making.

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

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 02087204183

Should the proposal change, please consult us again.

Yours sincerely

Robbie Clarey
Lead Adviser – East Midlands Area Delivery

Annex A – Additional Advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Protected Species

Natural England has produced [standing advice](#)³ to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)⁴. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

³ <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

⁴ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where on-site measures are not possible, you should consider off-site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.0](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.0](#) and is designed for use where certain criteria are met. It is available as a beta test version.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.0](#) and is available as a beta test version.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green

infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).

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.