

Date: 18 February 2025
Our ref: 501589
Your ref: DMPA/2024/1656



BY EMAIL ONLY

Customer Services
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Dear Steffan,

Planning consultation: DMPA/2024/1656 *Bat Mitigation Report* - Self-build infill development through the conversion of agricultural building to create a dwelling and garage
Location: Eastfield Farm, Acresford Road, Netherseal, Swadlincote, DE12 8DF

Thank you for your consultation on the above dated 31 January 2025 which was received by Natural England on 31 January 2025.

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

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Natural England's advice on other natural environment issues is set out below.

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.

Where the proposed development would create additional overnight stays within the catchment of the river mease, usually, this would trigger the need for an appropriate assessment and calculation of a nutrient budget for the development, as per the guidance sent to your authority on 16th March 2022. However, Natural England advise that where a non mains drainage system discharges to a drainage field which meets certain criteria (set out below), it is likely that the amount of phosphorous from the development which would reach the River Mease SAC is insignificant.

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

- 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)

These criteria, an explanation of them, and info on assessing them, is set out within Annex F of Natural England's Water Quality and Nutrient Neutrality Advice (16th March 2022)².

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 likely significant effects cannot be ruled out.

The following advice should be taken in to account by the competent authority within the HRA.

European sites – River Mease Special Area of Conservation

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on the River Mease Special Area of Conservation and has no objection to the proposed development.

- The development includes a drainage field that appears to meet the criteria for achieving insignificant phosphorous discharge to the SAC.

River Mease Site of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection. South Derbyshire District Council should satisfy themselves that the drainage field meets the above³ criteria, following this, a likely significant effect to the River Mease SAC can be ruled out.

Other advice

Further information regarding Nutrient Neutrality can be found in the suite of documents located [here](#).

² [Natural England Water Quality and Nutrient Neutrality Advice \(16 March 2022\) - NE785](#)

³ [Natural England Water Quality and Nutrient Neutrality Advice \(16 March 2022\) - NE785](#)

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.

Should the proposal change, please consult us again.

If you have any queries relating to the advice in this letter please contact me on 07909007886

Yours sincerely

Hannah Ezard Kay
Higher Officer – East Midlands Area Delivery

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.