

The Conservation of Habitats and Species Regulations (2017)

Part 6, section 63

‘Assessment of implications for European sites and European offshore marine sites’

Habitats Regulation Assessment

This is a record of the Habitat Regulations Assessment (HRA) (including Screening for Likely Significant Effects and Appropriate Assessment where required) carried out by Herefordshire Council (the competent authority) as required by Regulation 63 of the Conservation of Habitats & Species Regulations 2017 (the ‘Habitats Regulations’) relating to the following **planning application**.

This HRA is carried out in accordance with the relevant guidance documents including those by Natural England at <https://www.gov.uk/guidance/appropriate-assessment>, and David Tyldesley Associates <https://www.dtapublications.co.uk/>

The HRA is carried out by Herefordshire Council. Detailed information will need to be provided by the applicant to enable the authority to make the assessment.

The Project / Plan

1.1 Planning Application Reference Number, Description and Address

Application reference number: 230541

Address: Land South of, Barons Cross Road, Leominster, Herefordshire,

Description: Outline planning application for the erection of 118 dwellings, public open space and associated works with all matters save for access to be reserved for future approval.

Applicant: Mr C R Muller

Case officer: Chloe Smart

Location OSGR: 348618, 258519

Link to Planning Application on Herefordshire Council Website:
<http://www.herefordshire.gov.uk/searchplanningapplications>

1.2 Description of the plan or project (details)

Outline planning application for the erection of 118 dwellings, public open space and associated works with all matters save for access to be reserved for future approval.

1.3 Documents and plans considered – *delete/ add as appropriate*

Herefordshire Local Plan Core Strategy 2011 – 2031

River Wye SAC Nutrient Management Plan

1.4 Planning Policy context:

No policies relevant to HRA

1.5 Size (ha) and description (habitats etc.) of existing site

3.86ha

1.6 Surrounding land use and context in relation to designated sites

Lowland grazing

Relevant Habitats (Natura 2000) site(s)

Please select all that apply from:

- ☒ River Wye Catchment SAC (including schemes impacting on the linked River Lugg SSSI)
- ☐ River Clun SAC
- ☐ Wye Valley Woodlands SAC
- ☐ Downton Gorge SAC
- ☐ Wye Valley & Forest of Dean Bat Sites SAC (Wigpool Iron Mines SSSI)
- ☐ Other site (SAC, Ramsar)

Details of the Site:

1. River Wye SAC

The River Wye SAC covers an area of 2234.89 ha in Gloucestershire, Herefordshire, Monmouthshire and Powys.

Designated features

Qualifying habitats

The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:

- Transition mires and quaking bogs. (Very wet mires often identified by an unstable 'quaking' surface).
- Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche Batrachion* vegetation. (Rivers with floating vegetation often dominated by water crowfoot)

Qualifying species

The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:

- Allis shad *Alosa alosa*
- Atlantic salmon *Salmo salar*
- Brook lamprey *Lampetra planeri*
- Bullhead *Cottus gobio*
- Otter *Lutra lutra*
- River lamprey *Lampetra fluviatilis*
- Sea lamprey *Petromyzon marinus*
- Twaite shad *Alosa fallax*
- White-clawed (or Atlantic stream) crayfish *Austropotamobius pallipes*

Conservation Objectives of the Designated features:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

Site Condition

Site condition, for the area of the site in England, is taken from the constituent SSSI units for the River Wye SSSI and the River Lugg SSSI.

River Wye SSSI

Unit	Unit name	Condition	Condition Threat Risk	Habitat	Area (ha)	GridRef
001	TIDAL RIVER - ESTUARY TO BROCKWEIR BRIDGE	Unfavourable - Declining	High	RIVERS AND STREAMS	114.9234 ha	ST 537 956
002	BROCKWEIR BRIDGE TO MONMOUTH	Unfavourable - Declining	High	RIVERS AND STREAMS	36.3835 ha	SO 534 055
003	MONMOUTH TO ROSS	Unfavourable - Declining	High	RIVERS AND STREAMS	157.0946 ha	SO 573 185
004	ROSS TO HEREFORD	Unfavourable - Declining	High	RIVERS AND STREAMS	293.5648 ha	SO 568 320
005	HEREFORD TO BREDWARDINE BRIDGE	Unfavourable - Declining	High	RIVERS AND STREAMS	150.1955 ha	SO 418 415
006	BREDWARDINE BRIDGE TO WHITNEY TOLL	Unfavourable - Declining	High	RIVERS AND STREAMS	122.4429 ha	SO 300 461
007	WHITNEY TOLL TO HAY	Unfavourable - Declining	High	RIVERS AND STREAMS	30.8778 ha	SO 242 458

River Lugg SSSI

Unit	Unit name	Condition	Condition Threat Risk	Habitat	Area (ha)	GridRef
001	RIVER LUGG (WYE SAC)	Unfavourable - Declining	High	RIVERS AND STREAMS	58.8726 ha	SO 530 455
002	BODENHAM WEIR TO LEOMINSTER	Unfavourable - Declining	High	RIVERS AND STREAMS	20.4404 ha	SO 503 573
003	LEOMINSTER TO MORTIMERS CROSS	Unfavourable - Declining	High	RIVERS AND STREAMS	36.2719 ha	SO 448 623
004	MORTIMERS CROSS TO PRESTEIGNE	Unfavourable - Declining	High	RIVERS AND STREAMS	26.8469 ha	SO 366 648

Other Relevant Documents

There is a Site Improvement Plan for the River Wye which can be found at [Site Improvement Plan: River Wye - SIP199 \(naturalengland.org.uk\)](#)

Stage1: Preliminary Screening including Likely Significant Effects (LSE)

Completed by:

Jenny Engwell

Date: 28th September 2023

Table 1: Initial Screening

Does the project or plan qualify for exemption from the HRA process?

Is the project or plan directly connected with or necessary for the conservation management of the habitat site (provide details)? If so the project may be considered exempt from the HRA process.	No
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If the proposal is considered exempt from the HRA process? Has this been consulted upon and agreed with Natural England?	N/A
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Table 2: Screening for Likely Significant Effects (LSE)

Key issues considered:

<input checked="" type="checkbox"/> Foul water	<input checked="" type="checkbox"/> Water pollution
<input checked="" type="checkbox"/> Surface water	<input type="checkbox"/> Water abstraction
<input type="checkbox"/> Aerial Emissions (ammonia, N deposition & acid deposition)	<input type="checkbox"/> Recreational impacts
<input type="checkbox"/> Construction or Demolition processes	<input type="checkbox"/> Protected species impacts (direct)
<input type="checkbox"/> Direct impacts inside SAC boundary (habitats)	<input type="checkbox"/> Protected species impacts (indirect)
<input type="checkbox"/> Impacts upon supporting habitats	<input type="checkbox"/> Other

Details of key issues & identification of potential effect pathways

<p>The proposed development includes the proposal of an onsite treatment plant. The site is within the River Lugg SSSI/River Wye SAC catchment in which Natural England's Nutrient Neutrality applies.</p> <p>The additional phosphate load generated by the proposed development has the potential to result in a likely significant effect on the River Wye SAC. A potential effect pathway has been identified and an Appropriate Assessment is therefore required.</p> <p>The mechanism for dealing with surface water discharges from the site appears not to be fully developed and agreed between the applicant and Welsh Water and there are no comments from the Council's Drainage Engineers on the case file. At this time the potential effect pathway of surface water cannot be ruled out.</p> <p>No other potential effect pathways have been identified.</p>
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Are there any potential effects of the project or plan when considered alone?	Yes
Are there any potential effects of the project or plan in <u>combination</u> with other projects or plans?	<p>Potentially Yes</p> <p>A range of other developments resulting in additional foul flows within the catchment could potentially act in-combination with this proposal.</p>

Natural England consultation reference and summary (if available):

There are currently no comments from Natural England
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Summary of LSE test conclusions

☐ **No likely significant effects – no Appropriate Assessment required and planning permission can be legally granted. A consultation with NE is not required where a proposal is ‘screened out’.**

☒ **Likely significant effects – Appropriate Assessment required.**

And, where relevant:

☐ **Further information to inform the Appropriate Assessment required** – the applicant is advised to provide the relevant information as detailed below.

Further information required to inform the Appropriate Assessment	No
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Stage 2: Appropriate Assessment

Completed by:

Jenny Engwell
Date: 28 th September 2023

Appropriate Assessment statement including alone, impacts in-combination and discussion of proposed mitigation measures

Complete the tables and boxes below, deleting as necessary. Where information is taken from supporting documents this should be quoted and fully referenced. Any documents not available on the Council's website should be provided to Natural England when they are consulted.

Table 3: Impacts of the plan/ project alone

Complete boxes as appropriate below and delete boxes for potential effect pathways which are not relevant:

Foul Water Package Treatment Plant – Not meeting 7 Criteria for Nutrient Neutrality and requiring phosphate credit purchase

The proposed development is for 118 dwellings and includes the proposal of an onsite treatment plant. The site is within the River Lugg SSSI/River Wye SAC catchment in which Natural England's Nutrient Neutrality applies.

The proposed treatment plant is The DeSaH integrated onsite system with nanofiltration technology with a discharge of 0.1ml/l TP. It is proposed that this PTP would be adopted by an OFWAT Registered Sewerage Undertaker.

It should be noted that the developer has not provided evidence that they have fully investigated the potential for a mains foul sewerage connection at this site. They have moved to a scheme based on a packaged treatment plant without having provided evidence as to why the preferred option of mains connection is not technically possible or viable for the site.

Budget Calculation

The proposed development is for 118 dwellings and has been assessed using the NE budget calculator.

Assumed occupancy is 2.3 person per dwelling.

Water usage is 110L per person per day (agreed as locally acceptable).

Site Area – 3.86ha.

The **Waste Water P load** of the development is calculated to be:

Development proposal	118 dwellings
Additional population	271.4 people
Waste Water Volume	29,854l/day
P-coefficient of PTP	0.1mg/l
TP discharged to watercourse	2,985.4mg/TP/day
Convert mg to kg/day	0.002985 kg/TP/day
Convert to kgTP/year	1.09kgTP/yr

Waste Water total phosphate load 1.09kg/TP/yr.

There are some issues with the later parts of the calculation, in some places there is disagreement between figures used by the applicant and those which the Council have on record for the same (particularly soil type and rainfall) and there are places where the applicant has deviated from the standard NE Methodology. Below is the calculation as provided by the applicant and areas of disagreement or conflict are identified alongside the calculation.

The **Current Land Use** is Lowland.

The **Current P Leaching Load** is 2.13 kg TP/yr. It should be noted that soilscales records the site as 'slightly impeded drainage' but it is understood that on site testing has demonstrated impeded drainage and I am satisfied that the site derived information should be used here. It should also be noted that rainfall of 735 is what the Council has for this site where the calculation has used 675.1 - 700 range in the calculation. Correcting the rainfall to the Council's figure (based on CEH data) would raise the current leaching from the site to 3.38kg TP/yr.

The **Post Development Land Use** is Residential Urban Land. The **Annual phosphorus export post development** is 2.29kg TP/yr. Nutrient Neutral have chosen to deviate from the standard NE Methodology here and have applied the Modified Rational Method. They have assumed 47% of the site is hardstanding where the standard methodology would assume that figure to be 80%. The standard methodology would result in the post development export rising to 5.30kgTP/yr. The Council generally does not accept amendments to the Urban Runoff Co-efficient at outline application stage especially on large sites where layout is not fixed. There is considerable potential for site design to change at Reserved Matters putting the budget calculation into question and leaving no route for the development to purchase additional credits or secure other mitigation. Although it is possible to control impermeable surfacing through conditions limiting hard standing and the removal of PD rights on the site this is not the Council's preferred approach for large scale outline application.

Further, Nutrient Neutral have applied a reduction to the site phosphate export based on the provision of a stormwater filter. This element is not clear within the surface water drainage design for the site which appears to still be a matter of discussion between the applicant and Welsh Water and therefore has not been considered here due to lack of certainty.

The **Phosphate Balance for the Site** is:

Waste Water Total P Load post treatment	1.09 kg TP/yr
Historic landuse	2.13 kg TP/yr (with queries over rainfall)
Post development P export	2.29 kg TP/yr (with queries over the methodology)
Landuse net change	0.16 kg TP/yr (with uncertainties)
Phosphate budget	1.25 kg TP/yr (with uncertainties)
P budget + 20% buffer	1.5 kg TP/yr (with uncertainties)

It should be noted that the application of a 64% reduction of P in surface water would reduce the figure to the point that a betterment would be provided. There is considerable uncertainty around elements of the calculation and the Council is not satisfied with the calculations at the current time.

Surface Water and Water Pollution

There is uncertainty around the proposed method for addressing surface water from the site. Welsh Water have recommended a condition requiring that no surface water from the site be allowed to discharge to public sewer to avoid hydraulic overloading.

The applicant has provided a 'Response To Lead Local Flood Authority & Welsh Water Comments on the Flood Risk Assessment' by RMO (20th June 2023) which states:

'- The applicant has demonstrated that infiltration is not a viable means of disposing of surface water generated by any new areas of hard standing and roof areas. The results of the BRE 365 soak away tests have been provided as part of the Flood Risk Assessment.

- There are no watercourse running through the site or on any of the boundaries.

- We are therefore left with the option of connecting to the existing surface water sewer which runs along the northern boundary of the application area. We would be open to Welsh Water undertaking hydraulic modelling of this existing sewer based on the proposed surface water flows from the development and such a requirement should be a condition on any consent.'

It therefore appears that there is remaining uncertainty around the method of surface water treatment on the site and disposal from the site and therefore the phosphate reductions set out in the Nutrient Neutral report relating to provision of storm filters etc cannot be taken as certain. There is no route by which a complete assessment of impacts of surface water discharges upon the River Wye SAC can be carried out at this point and a potential adverse impact on the integrity of the SAC cannot be ruled out.

Table 4: Mitigation Requirements and Outcomes

Mitigation would be likely to be required to address the phosphate budget of the site but given that the need for onsite treatment has not been proven, that the calculations do not follow the standard methodology, that calculations include variations on the method which cannot be considered to be certain and that uncertainties remain around surface water discharges the need for mitigation and method by which it would be secured has not been agreed at this time.

Table 5: Remaining Impacts

The developer has not provided evidence that they have fully investigated the potential for a mains foul sewerage connection at this site. They have moved to a scheme based on a packaged treatment plant without having provided evidence as to why the preferred option of mains connection is not technically possible or viable for the site. Therefore the Council does not consider that the impacts set out within the Shadow Habitat Regulation Assessment (HRA) Screening Report and Appropriate Assessment by Sarah Belton are certain.

The developer has used the Modified Rational Method to deviate from the standard NE methodology for phosphate budget calculations. Given that this application is outline and that layout is not fixed the Council do not consider that this methodology is acceptable and that it provides sufficient scientific or legal certainty around the potential impacts of the scheme to allow a favourable conclusion to the HRA process.

Further uncertainties remain around surface water discharges from the site and the application of any further phosphate reduction in those processes. These cannot be considered certain at this time.

There remains potential for the development to result in an adverse impact on the integrity of the River Wye SAC and therefore planning permission cannot legally be granted.

Table 6: Consequences for Conservation Objectives of the Designated Site

Impacts on maintaining the favourable condition of the site	Yes
Disruptions or delays in progress towards achieving the conservation objectives of the site	Yes
Alterations to natural progression or other natural changes within the site	Yes
Loss of key habitat/ species features. Fragmentation or isolation of key species and habitats. Impacts to diversity, distribution, density, balance, area or population(s) of key species or habitats that are indicators of the favourable condition of the site, including from disturbance	Yes
Alterations to the ecological relationships and balance between species and habitats that are key to the structure/ function of the site	Yes
Alterations to nutrient balance or other processes vital to the functioning of the ecosystem	Yes

Table 7: Integrity Test

Will there be an impact upon the Integrity of the Designated Site?

The developer has not provided evidence that they have fully investigated the potential for a mains foul sewerage connection at this site. They have moved to a scheme based on a packaged treatment plant without having provided evidence as to why the preferred option of mains connection is not technically possible or viable for the site. Therefore the Council does not consider that the impacts set out within the Shadow Habitat Regulation Assessment (HRA) Screening Report and Appropriate Assessment by Sarah Belton are certain.

The developer has used the Modified Rational Method to deviate from the standard NE methodology for phosphate budget calculations. Given that this application is outline and that layout is not fixed the Council do not consider that this is methodology is acceptable and that it provides sufficient scientific or legal certainty around the potential impacts of the scheme to allow a favourable conclusion to the HRA process.

Further uncertainties remain around surface water discharges from the site and the application of any further phosphate reduction in those processes. These cannot be considered certain at this time.

Therefore the Council considers that this application may have an adverse impact on the integrity of the River Wye SAC and therefore planning permission cannot legally be granted at this time.

Table 8: Are there Alternative Solutions to the proposal?

If adverse effects on the integrity of the site, either alone or in combination, cannot be ruled out through avoidance or mitigation then alternative solutions must be considered.

N/A

Please Note: Where there are no satisfactory alternatives then consideration may be given to whether the proposal could follow the Imperative Reasons of Overriding Public Interest (IROPI) route. Is this option is under consideration for a plan or project then specialist legal advice should be sought and followed.

Conclusion of the Appropriate Assessment:

☐ Herefordshire Council, as a Competent Authority under the Habitat Regulations 2017, Part 6, section 63(5) concludes that **there would be NO** adverse effects on the integrity of the Special Area of Conservation; subject to appropriate mitigation being secured via the planning conditions listed above. Planning Permission can legally be granted.

Or

☒ Herefordshire Council, as a Competent Authority under the Habitat Regulations 2017, Part 6, section 63(5) concludes that **there would be an** adverse effect on the integrity of the Special Area of Conservation. Planning permission **CANNOT** legally be granted.

Please Note: The authority must consult Natural England on the draft HRA and must have regard to the advice of Natural England before granting planning permission.