

Date: 30 November 2023
Our ref: 454809
Your ref: 4/22/2364/0F1



Christopher Harrison
Principal Planning Officer

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BY EMAIL ONLY

Dear Christopher

Planning consultation: 4/22/2364/0F1

Location: Former Cleator Mills Site, Cleator

Thank you for your consultation on the above dated 17 October 2023 which was received by Natural England on 26 October 2023

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.

Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON The River Ehen Special Area of Conservation (SAC)

As submitted, the application could have potential significant effects on The River Ehen Special Area of Conservation (SAC) and the River Ehen Site of Special Scientific Interest (SSSI). Natural England requires further information to determine the significance of these impacts and the scope for mitigation. The following information is required:

Natural England requires an amended or new HRA, with each stage of the assessment clearly labelled and formatted. Furthermore, the HRA must clearly distinguish between temporary demolition and construction phase risks, impacts, and mitigation and long-term permanent operational phase risks, impacts, and mitigation.

Clarity is required as to how the mitigation identified will be delivered. How will adherence to the mitigation measures be monitored or overseen, and who will be responsible for ensuring the necessary mitigation is secure? This should all be detailed in an amended or new HRA.

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 further advice on designated sites/landscapes and advice on other issues is set out below.

Additional Information required

On the basis of information provided, Natural England advises that there is currently not enough information to determine the significance of impacts and the scope for mitigation required to conclude no adverse effect at stage 2 of the HRA. Natural England therefore advises that your authority should not grant planning permission at this stage.

Natural England advises that additional information should be submitted by the applicant in order for your authority to fully assess the proposal. This would then provide an opportunity for your authority to repeat the HRA to assess the likelihood of significant effects of the project and any mitigation provided. All impacts to designated features of the SAC that require mitigation need to be escalated and assessed through the Appropriate Assessment (AA), giving weight to the significance of the potential impacts. Mitigation included in the AA needs to be measurable and secured. Natural England must be consulted on any appropriate assessment your authority may decide to make.

It should be noted that the concerns raised in Natural England's previous response on the 10/08/2023 still apply as the applicant has not provided evidence to address Natural England's initial comments.

The following additional information should be requested from the applicant:

Table 1

Clarification is required regarding how Table 1 is subsequently used or referenced in the HRA. Is it intended to be a comprehensive list of the scope of likely impacts?

Table 2: ALSE

This section of the HRA (Stage 1, as set out in Table 2) should detail all phases of the proposal. This includes temporary demolition and construction phase risks and impacts as well as long-term permanent operational phase risks and impacts. This stage of the HRA should identify and set out clearly all potential risks and pathways for likely significant effects on the River Ehen SAC and its interest features.

The HRA should include reference to possible direct damage to river or riparian habitat from works adjacent to the site. If this has been scoped out, then evidence must be provided to explain why. Clarification is needed to confirm that no work will take place within the boundary of the SAC/SSSI. This would also include the flood embankments, and evidence should be provided that the proposal has no requirement to maintain or upgrade these.

As noted by the Environment Agency, the current HRA makes no reference to the potential for contaminated land risk due to the site's previous industrial uses. This should be covered in the HRA, and if scoped out, then reference must be made to the relevant evidence. If scoped in, then relevant assessment and mitigation measures must be set out.

Further detail is required in the ALSE-

The issues likely to be relevant during construction and operational phases for development proposals adjacent to watercourses include:

- Potential for direct damage, modification, displacement, and/or disturbance to protected species and riverine or riparian habitat;
- potential for sediment or other polluting run-off to enter the river, both during the construction period (including earthworks, storage, and use of machinery, materials, and fuels) and any potential siltation, run-off, or other pollution arising from the development in its construction or operational phase. Any discharge (including foul drainage) and/or run-off or drainage from the site from the site must not lead to a deterioration in water quality in the watercourse;
- potential for impacts derived from the use and/or disturbance of contaminated land;
- Potential for the introduction and/or spread of invasive, non-native species
- Potential flood risk issues and pollution during a flood event

The applicant's HRA states, "As the absence of a freshwater pearl mussel population in close proximity to the site has not been determined," Natural England can confirm that the presence of Freshwater Pearl Mussel populations must be assumed throughout the SAC for the purposes of the Stage 1 and 2 assessments. Siltation and pollution effects, for example, could be damaging to any population for some distance downstream; they do not need to be in close proximity to be affected. With reference to the statement "not expected to be carried out within the boundaries of the river Ehen itself," the HRA process requires sufficient levels of certainty. Therefore, Natural England requires clear confirmation that no work will take place within the boundaries of the SAC.

The development site is located in Flood Risk Zone 3, as identified by the Environment Agency. Consequently, the HRA needs to consider the specific risks associated with a flood event during the temporary and operational phases and set out any proposed mitigation. Natural England notes that the HRA refers to the dilution effect of the river in relation to pollution events during flooding. It is not a robust assessment to state that a flood would wash pollution away. In view of the location in Flood Zone 3, there would appear to be a need to have an adverse weather/flooding plan, both for the construction phase and the operation of the site. The flood risk assessment and drainage strategy refers to the need for control measures to mitigate flood risk across the site. The requirement for such control measures should be clearly detailed for the purposes of the HRA. Furthermore, the HRA references flood defences as listed on the Environment Agency map. The additional information regarding flood defences does not address the concerns raised in Natural England's previous response; therefore, the advice in our previous response still applies. That is, Natural England would not consider any future work to upgrade or extend these defences along the edge of the River Ehen to be consistent with the conservation objectives for the SAC.

Stage 2: Appropriate Assessment

It is assumed that Section 6 onwards constitutes the Stage 2 Appropriate Assessment. It would be helpful if the Stage 1 conclusions were first clearly stated as an explanation of the reasons for progression to Stage 2 AA and then used subheadings to clearly set out this stage. For this reason, the following text at 6.1 is unclear: "Utilising the information gained through existing reports accessible on the Cumberland Council planning portal and a subsequent desktop study, the project has been screened to identify whether potential effect pathways between the project and the designated sites are present that are likely to result in significant effects upon the designated sites." This appears to be a reference to the Stage 1 screening.

6.2 and 6.2.1 of the assumed AA appear to be generic text relating to air quality and not specific to the proposal.

6.3 refers to the risks of impacts on water quality, which is an essential part of the HRA and of central importance to the assessment of risk to the SAC. However, the text appears to partially dismiss the risk on the basis of flooding and dilution, as follows:

"However, due to the large volumes of water required for a flooding event, which would primarily remove hydrocarbon-based contaminants from the site, any contaminants would likely remain on the surface of the water and not interact with the mussel population in the Ehen riverbed, as well as being diluted by the high quantities of water."

Natural England does not consider this to be a robust or appropriate assessment of the water quality risk to the SAC and its interests. Natural England advises that the full range of potential water quality and pollution risks must be set out and assessed, and the relevant mitigation identified. This should be clearly and systematically set out, preferably in a table format.

6.7.1. As per comments above, this section does not identify the full range of risks to Freshwater Pearl Mussels. Natural England strongly disagrees with the following statement: "Therefore, impacts to freshwater pearl mussels are expected to be low in the absence of mitigative measures to prevent discharge into the River Ehen SAC (measures outlined in Section 7)." Natural England advises that impacts would be high and adverse in the absence of mitigation measures.

6.7.2 As for the FWPM above, this section does not identify and assess the full range of risks and impacts to Atlantic Salmon. The issue of flood risk must be dealt with in the HRA as per the comments above. Natural England advises that impacts would be HIGH and ADVERSE to Atlantic

Salmon in the absence of mitigation measures.

In-combination Assessment

Natural England advises that the in-combination assessment should refer to any relevant plans or projects, not just planning applications. As a result, a review of any relevant Environment Agency permits would also be required. With reference to the seven planning applications mentioned in the text, the statement that “the applications are not considered to have adverse effects on the integrity of the SAC, either alone or in combination” is required to be supported with evidence and an explanation of any conclusions drawn as a clear audit trail within the HRA. Further clarification is required for the following text: “The developments identified in Table 3 have some potential to result in in-combination impacts should best practice pollution prevention and containment measures not be adhered to (i.e., those close to and/or adjacent to the SAC),” “The projects in Table 3 have been reviewed and assessed for in-combination impacts, and it is considered that no significant in-combination impacts will occur, and as such, any impacts to the designated site will be negligible.” Natural England notes that in this statement no LSE is concluded, whereas reference to no AEOL was made in the previous statement above.

Mitigation

The mitigation in Section 7 should be reviewed in light of the comments above and clarified in relation to the temporary and permanent/operational phases. Furthermore, the documents detailing the mitigation measures must be referenced to ensure they are secured as part of the permission for the development.

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.

If you have any queries relating to the advice in this letter please contact me at rachel.carpenter@naturalengland.org.uk.

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

Rachel Carpenter
Sustainable Development Lead Advisor