

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>23 OCTOBER 2024</b>
<b>TITLE OF REPORT:</b>	<b>233442 - PROPOSED BOAT RAMP, SITING OF CRANE AND ASSOCIATED HARDSTANDING AND FOOTPATH. AT 39 GREYFRIARS AVENUE, HEREFORD, HEREFORDSHIRE, HR4 0BE</b>  <b>For: Mr Taylor per Urban Vista, Archways, River Road, Taplow, Maidenhead, SL6 0BG</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=233442">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=233442</a>
<b>Reason Application submitted to Committee – Re-direction</b>	

**Date Received: 21 November 2023      Ward: Greyfriars      Grid Ref: 350516,239500**

**Expiry Date: 31 October 2024      Local Members: Cllr Diana Toynbee (Greyfriars), Cllr Kevin Tillett (Hinton & Hunderton)**

## **1.0 SITE DESCRIPTION**

- 1.1 Located within Hereford City, the application site relates to land between Hereford Sea Cadets and Hereford Rowing Club on the northern banks of the River Wye and is accessed via Greyfriars Avenue. The site is visible from the A49(T) Greyfriars Bridge, which crosses the River Wye approximately 150 metres to the east of the site. It is crossed by a footway which leads from Greyfriars Avenue and around the western side of the Rowing Club, before running along the river bank towards the Hunderton Bridge. The site is within Flood Zone 3 (highest risk of fluvial flooding). The river at the location of the site forms part of the River Wye Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The site is outside of the Hereford Area of Archaeological Importance but within the Hereford (Central) Conservation Area.

## **2.0 PROPOSAL**

- 2.1 This application is made by Vega Marine Services Community Interest Company (CIC), which is comprised of the Hereford Rowing Club, Hereford Sea Cadets, Hereford Rugby Club and some representatives of the Leftbank Village. It seeks planning permission for the erection of a boat ramp, the siting of a crane as well as associated hardstanding and footpath. The proposed boat ramp is to provide a durable and functional access point for seamless boat launching and retrieval on the River Wye, accommodating water level variations and supporting the Hereford Sea Cadets' activities. The proposed crane would enable efficient and safe lifting of vessels on and off the river adjacent to the Hereford Rowing Club, supported by a stable base and powered through the club. An access road to a site compound is proposed

along the northern and western periphery of the site, leading on from the existing access which continues beyond the end of Greyfriars Avenue.

- 2.2 The project forms part of the River Wye Infrastructure Project and would be facilitated by the Stronger Towns Fund, which promotes investment in strategic development within the City and the wider County.

### **3.0 POLICIES**

#### **Herefordshire Local Plan - Core Strategy (2011 – 2031)**

- 3.1 The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation is accessible via the Herefordshire Council website.

SS1 Presumption in favour of sustainable development  
SS4 Movement and transportation  
SS6 Environmental quality and local distinctiveness  
SS7 Addressing climate change  
HD1 Hereford  
SC1 Social and community facilities  
MT1 Traffic Management, highway safety and promoting active travel  
E4 Toursim  
LD1 Landscape and townscape  
LD2 Biodiversity and geodiversity  
LD3 Green Infrastructure  
LD4 Historic environment and heritage assets  
SD1 Sustainable Design and energy efficiency  
SD3 Sustainable water management and water resources  
SD4 Waste water treatment and river water quality

#### **National Planning Policy Framework**

- 3.2 The National Planning Policy Framework (NPPF) is a significant material consideration. The latest version was updated in December 2023.

Chapter 2 Achieving sustainable development  
Chapter 4 Decision-making  
Chapter 6 Building a strong, competitive economy  
Chapter 8 Promoting healthy and safe communities  
Chapter 9 Promoting sustainable transport  
Chapter 11 Making effective use of land  
Chapter 12 Achieving well-designed and beautiful places  
Chapter 14 Meeting the challenge of climate change, flooding and coastal change  
Chapter 15 Conserving and enhancing the natural environment  
Chapter 16 Conserving and enhancing the historic environment

- 3.3 The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020 and the review process is currently underway. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the most relevant policies of the Core Strategy – which are considered to be those relating to meeting

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Further information on the subject of this report is available from Mr Ollie Jones on 01432 260504

housing needs, guiding rural housing provision, highways safety and safeguarding features of environmental value (amongst others) – have been reviewed and are considered to be consistent with the NPPF. As such, it is considered that they can still be attributed significant weight.

#### 4.0 HISTORY

4.1 None relevant.

#### 5.0 CONSULTATIONS

##### 5.1 Area Engineer Team Leader

Comment

5.1.1 2/4/24 - The Local Highways Authority have reviewed this application and have the following comments:

- The proposed PROW diversion would need to be at least 3 metres wide and lit. If the PROW were to be used as a vehicular access in the future, then it would need to be wider again.
- The Local Highway Authority would consider adopting the footpath to allow it become part of the wider cycle network, but it would need to comply with Herefordshire Council's 'Highways Specification for New Developments' – see below.

##### Cycleway/Footway Construction

	Nom. Size	Materials	Compacted Thickness
Surface Course	6mm	AC 6 dense surf 100/150 to DfT SHW Clause 909	25mm
Binder course	20mm	AC20 dense bin 100/150 rec conforming to DfT SHW 906	75mm
Sub-Base		Type 1 sub base conforming to DfT SHW Clause 803	150mm

Until this detail has been provided on whether this can be achieved, the Local Highways Authority is unable to provide any further comments.

##### 5.2 Conservation Manager (Trees)

No objection

5.2.1 21/3/24 - I have completed a visit to the site and confirm I do not have an objection to the application. Where development is proposed there are no trees present that have the potential to be impacted and therefore no tree reports are required.

Consequently, my opinion is the application is compliant with policies LD1 & LD3 of the County Core Strategy.

##### 5.3 Conservation Manager (Ecology)

Objection

5.3.1 20/9/24 - The shadow Habitat Regulation Assessment submitted by the applicant dated 28th August 2024 is noted and refers. The formal response by Natural England dated 10th September 2024 (their ref 486660) raising a statutory objection to this latest shadow HRA is also noted.

The reasons for the latest objection raised by Natural England fundamentally mirror their previous objection to the Council's own HRA completed 23rd May 2024 - Natural England objection dated 4th July 2024 ref 477004.

Having reviewed the shadow HRA supplied by the applicant and Natural England's objections it is clear that there are still potential adverse effects of the River Wye SAC that have not been mitigated with required scientific or legal certainty; and there remains identified adverse effects on the integrity of the River Wye Special Area of Conservation. The Council is unable to adopt the supplied shadow Habitat Regulation Assessment as its own. The objection by Natural England as the Statutory Nature Conservation Organisation for England is considered to be relevant and appropriate and is endorsed and supported by Council's Ecology Team.

A formal objection is raised and a planning permission should not be granted until this matter can be resolved with a Habitat Regulation Assessment completed and formally approved by Natural England.

5.3.2 21/5/24 – Habitat Regulations Assessment undertaken (see **Appendix 1**).

5.3.3 20/12/23 - The development is within the River Wye SAC-SSSI and has potential direct effects on features related to these designations. Including effects due to physical construction, ongoing operations and associated direct/supported increase in recreational disturbance of the River Wye from increased use of the facility, locality and waters of the River Wye by residents and visitors.

The supplied planning statement confirms that the development will include:

“increase footfall around the river environment”

“aim to boost the tourist numbers visiting Herefordshire”

“encourage take-up of commercial pop-up establishments along riverbanks”

There is no indication that Natural England as the appropriate statutory nature conservation organisation responsible for the River Wye SAC-SSSI have been consulted or provided advice and guidance on the development of this project and give their support/approval of the project as submitted. It is suggested that the applicant avails themselves of specific and detailed advice through Natural England's Discretionary Advice Service (DAS) and once Natural England have advised that they have no objections all the relevant information. Reports and their response can be submitted to assist the LPA in their legal duty of care and final determination.

The supplied ecological impact assessment by JH Ecology dated October 2023 is noted. This report correctly identifies potential effects from the development on fish species (a feature of the Wye SAC) both during construction and subsequent operation but no detailed, evidenced mitigation measures appear to have been provided for full consideration, approval and securing as part of the application process as is required for scientific and legal certainty under the triggered Habitat Regulations Assessment.

The report does not provide any detailed consideration, mitigation or compensation proposals for effects from the ongoing increased use of the River and its environs and the recreational pressures the development will create. This remains an identified likely adverse effect on features of the SAC-SSSI (including but not limited to fish species, otters and crayfish), both at the development site and wider upstream and downstream.

These ongoing effects and impacts includes additional lighting and illumination of the River as a result of the proposed development and a detailed before and after lighting and illumination scheme, including consideration of the actual river surface is requested with detailed mitigation

proposals to demonstrate that the development will have no effects due to illumination levels on the Wye SAC and its associated features and other nocturnal-light sensitive protected species recorded in the locality (eg bat species).

The implications of and potential pathways for pests and pathogens both during construction and ongoing use by additional recreational equipment and people – Aquatic Biosecurity – does not appear to have been considered or addressed within the supplied information including the ecology report and CEMP. These potential biosecurity risks include transmission of ‘crayfish plague’ – crayfish are an identified feature of the SAC. An updated CEMP is requested which it is suggested should be subject to consultation with Natural England DAS prior to submission as previously suggested.

The Construction Environmental Management Plan by Barhale dated August 2023 does not appear to address issues such as biosecurity measures mentioned previously, the use of cement and chemical products directly within the SAC/waterbody, the use of machinery within the SAC, effects of potential sedimentation and release of soil and particulates, including nutrients in to the river. There remain unmitigated adverse effects on the River Wye SaC due to the physical construction works required.

As currently submitted there remain unassessed-unmitigated effects from the proposed development on features of the River Wye SAC. The additional detailed information is requested to enable the required HRA and Protected Species considerations to be completed. It is strongly suggested that prior to any further information being submitted it is subject to Discretionary Advice and formal support from Natural England.

#### 5.4 **Public Rights of Way Manager**

Comment

- 5.4.1 30/11/21 - Providing the compound and works do not affect public footpath HER20 PROW have no objection to the application. If work is likely to endanger footpath users a temporary closure must be applied for.

#### 5.5 **BBLP Land Drainage Team (Lead Local Flood Authority)**

Comment

- 5.5.1 19/3/24 - Land Drainage have reviewed the submitted information as part of the proposed development at the above site and have no comment to make.

We understand that the EA have been consulted on the proposed development plans and had no objections. We would agree with their comments and acknowledge that the development is water compatible.

We would deem that the temporary road access and compound will have a negligible impact on surface water runoff and reiterate that the EA's proposed condition is sufficient.

Upon completion of the permanent works, the temporary access road and compound will be reinstated to their original pre-development condition.

Reason: To ensure there is no future impact on overland flood flows

#### 5.6 **Open Spaces Society**

No response.

## 5.7 **Ramblers Association**

No response.

## 5.8 **Herefordshire Wildlife Trust**

No response.

## 5.9 Environment Agency

Comment

- 5.9.1 14/12/23 - Thank you for your consultation on the above application received by us on 29 November 2023. We have reviewed the Flood Risk Assessment (FRA) by Barhale (dated July 2023) and have no objection to the proposed development on fluvial flood risk grounds. Please see our comments and suggested conditions below.

### Flood Risk

Based on our Flood Map for Planning (Rivers and Sea), the site is located within Flood Zone 3 (high risk zone) of the River Wye (designated statutory main river). This is correctly identified by the FRA on page 4.

Due to the proximity to the River, it is likely that part of the development will be within Flood Zone 3b. Flood Zone 3b is land that is designed to flood, having a 3.3% or greater annual probability of river flooding. This is understandable due to the nature of the development.

### Flood Defences

Flood defences in the form of high ground to the north of the site are in situ. Formal flood defences are also to the south of the site.

### Flood Risk Vulnerability Classification

The proposed development may be classified as 'water-based recreation' under 'water compatible' development as defined in 'Annex 3 Flood Risk Vulnerability Classification' of the National Planning Policy Framework (NPPF).

As per Table 2 in the National Planning Policy Guidance (NPPG), it is deemed that water compatible development in Flood Zone 3b does not require the Exception Test, however they should:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

We are satisfied that subject to the following conditions there will not be a net loss of floodplain storage in the context of the surrounding flood zone extents and that there will not be an impediment to water flows or an increase in flood risk elsewhere as a result of the proposed development.

Please see our suggested conditions below:

Condition: Upon completion of the permanent works, the temporary access road and compound will be reinstated to their original pre-development condition.

Reason: To ensure there is no future impact on overland flood flows.

Condition: There must be no raised ground levels inside or along the boundary of the site, unless agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure there is no future impact on overland flood flows.

#### Safe Access and Egress

Paragraph 043 of the NPPG advises on how a development might be made safe from flood risk. Paragraph 044 and 047 provides details on access and egress.

Given our role and responsibilities we would not make any comment on the safety of the access or object on this basis. This does not mean we consider that the access is safe, or the proposals acceptable in this regard. We recommend you consult with your Emergency Planners and the Emergency Services to determine whether they consider this to be safe in accordance with the guiding principles of the NPPG.

Furthermore, access and egress by vehicular means is also a matter for your Emergency Planners and the Emergency Services.

#### Flood Risk Activity Permit (FRAP)

In addition to obtaining planning permission, any works in, over, under or within 8 metres of the top of the bank of any Main River may require a FRAP from us under the Environmental Permitting (England and Wales) Regulations 2016.

As such a FRAP will be required by the applicant prior to development to show their construction works and the ramp design are appropriate and safe in relation to the watercourse itself.

For further guidance please visit: <https://www.gov.uk/guidance/flood-risk-activitiesenvironmental-permits>, or contact our National Customer Enquires Team by emailing: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk).

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

## 5.10 Natural England

### Objection

#### 5.10.1 10/9/24 - As submitted we consider it will:

- have an adverse effect on the integrity of the River Wye Special Area of Conservation <https://designatedsites.naturalengland.org.uk>
- damage or destroy the interest features for which The River Wye Site of Special Scientific Interest has been notified.

Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

#### European site - River Wye SAC (also notified as the River Wye SSSI)

The application site is within the catchment of the River Wye Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Wye Site of Special Scientific Interest. (See here for information on the European Site Conservation Objectives for River Wye SAC.)

The River Wye SAC has a restore objective, further alteration to the banks of the river could prevent the restoration of both bankside and in channel habitat. The condition status of the River Wye SSSI was also downgraded to 'unfavourable declining' in 2023.

Natural England notes that a 2nd 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.

Natural England notes that the shadow HRA includes an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

The appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question either alone or in combination with other projects. Having considered your assessment, and the measures proposed to mitigate for any adverse effects, Natural England's advice is that your assessment is not sufficiently rigorous or robust to justify this conclusion and therefore it is not possible to ascertain that the proposal will not result in adverse effects on the integrity of the sites in question. We advise that your authority should not grant planning permission at this stage.

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.

Natural England Objects to this proposal on the following grounds:

It is Natural England's view as set out in our previous objection letter of July 4th 2024 (Ref 477004) that this proposal would not be compatible with the restore objective for the River Wye SAC. Whilst the shadow HRA has in part considered both the alone and in combination impacts of recreational pressure and the loss of habitat in terms of both notified species and other SAC designated features (Rivers with floating vegetation often dominated by water crowfoot, Sea Lamprey, Brook Lamprey, River Lamprey, Allis Shad, Twaite Shad, Atlantic salmon, Bullhead, White-clawed Crayfish and Otter), the impact on the river habitat as a designated feature in itself has not been sufficiently assessed, taking into account local circumstances and site specific factors.

#### Conservation of Habitats and Species Regulations 2017

Case law associated with the Conservation of Habitats and Species Regulations 2017 has established that mitigation measures are distinct and separate from compensatory measures. Permanently removing an area of habitat and offsetting this by creating or restoring habitat elsewhere (even within the boundary of the same European Site) is classified as compensation not mitigation. The measures put forward in this application are not aimed at either avoiding or reducing the likely significant effects caused by the proposed new section of reinforced bank, rather they allow those effects to occur and compensate for them elsewhere. A clear legal distinction has been established between measures which will avoid or reduce actual or possible adverse effects on habitat (mitigation) and measures which seek to create or improve habitat elsewhere (compensation).



Mitigation measures must be effective at the location at which damage is predicted to occur. Recognising damage will occur and compensating or off-setting by delivering measures elsewhere is not acceptable as a 'mitigation measure' under the Habitats Regulations but can be a 'compensatory measure' if a plan or project is being considered under the derogation provisions. As such biodiversity 'offsetting' policies do not apply for HRA scenarios. Our advice is that this proposal is very unlikely to meet the imperative reasons of overriding public interest test under these derogation provisions.

This proposal will introduce a new section of reinforced bank (concrete and rip rap), pile installation and construction of Davit Arm (Crane) foundations. It is a significant expansion of the artificial feature already present which will involve the permanent destruction of a part of river habitat as a feature (in itself) for which the site was designated. The mitigation measures proposed do not avoid or reduce the direct adverse effects that would occur to the existing habitat.

In table 2, page 28 the shadow HRA states, "There will be a loss of c.0.012ha of bankside habitat and an increase in condition of c.0.01ha of bankside habitat with the creation of native bankside trees and shrubs. The inclusion of erosion control measures, management and maintenance of natural habitat features will ensure the riverbank maintains ecological connectivity and increases suitable habitats for qualifying features such as migratory fish, otter, and white-clawed crayfish. Therefore, no significant effect on the qualifying features of the River Wye SAC is predicted, as impacts are considered to be effectively de minimus."

Natural England do not agree with the statement above on the basis that the description here is not mitigation it is compensation. There will be a permanent loss of habitat at this location including riverbed cover which is not mitigated for. It cannot therefore be assumed/concluded that the given spatial scale of loss is de minimis.

#### Habitat Restoration

This proposal is not compatible with the objectives of the River Restoration Programme (RRP), and the Site Improvement Plan (SIP) for the SAC.

The SAC Site Improvement Plan (SIP) states "This is a relatively near natural river system and needs to be maintained as such. Small scale development has occurred throughout the river and is impacting on hydromorphology and character. Ongoing work to the riverbank eases public access but causes localised erosion issues."

The SIP highlights the need to implement the River Restoration Plan (RRP). The RRP's vision for the Wye is "The Lower Wye will be a river with good connectivity to its floodplain, supporting appropriate and sustainable natural riparian and floodplain habitats. There would be minimal physical modifications and maximum dynamic natural processes. Physical modifications would be retained where there are legitimate constraints, e.g. flood risk."

The RRP identifies the following pressures: Degraded bank face vegetation (including bank protection) and lack of morphological diversity due to channel re-sectioning and bank protection. The RRP identifies the following actions, including a section which focuses explicitly on urban stretches of the river which recognises the significant constraints to full restoration in these reaches: Improve riparian zone, remove hard bank protection.

Urban specific actions: Conserve the existing riparian and river bank vegetation, Look for opportunities to improve the width, density, and diversity of the riparian zone, do not increase the number of channel modifications (e.g. creation of croys, maintaining re-sectioned banks or hard bank reinforcement, such as fishing platform revetments). New or replacement modifications should only be permitted with appropriate consent, where there is an immovable

constraint and using agreed sympathetic techniques to minimise impacts. In light of the above Natural England do not consider this proposal to be compatible with the objectives for the wye.

#### Recreational Pressure & Impacts on notified species

Natural England notes that the revised HRA includes an additional assessment of both recreational pressure and the potential impacts on notified species both alone and in combination. However no further information relating to the scale, type and quantity of boats proposed to use the ramp and river have been provided which is a source of unacceptable uncertainty, the revised HRA states “the client also foresees that the proposed boat ramp will be used ad-hoc by members of the public” (p.25). Natural England also notes that the crane / Davit arm will be used by emergency services however the impact of the physical presence of the boats, use of the crane and related noise impacts to the features of the site have not been assessed.

As set out in our previous response, the extended proposed running times from 6am to 11pm will coincide with the period where otter are active and impact cannot be ruled out, white-clawed crayfish are also generally more active at night time. No information on requirements for lighting have been provided and although the impact to otter foraging is acknowledged and an adverse effect ruled out, the in combination impact of increased recreational pressure and related impact of noise and disturbance to species including but not limited to otter which are primarily night-time active has not been considered.

The shadow HRA references a survey having identified the site as unsuitable for crayfish as there is an absence of refugia (large stones, rocks, submerged logs). This permanent structure will remove the restore ability at this location.

It is also not clear how the impact of the spread of signal crayfish that has been identified as likely to occur during the construction phase of the proposed development would be mitigated.

The shadow HRA also states that 'poor condition bankside habitat will be lost to the development' "what is being defined as 'poor condition habitat'? In table 1 it is also acknowledged that the permanent change of the bank to an artificial bank surface may also cause partial obstruction to migratory fish. Structures being built in rivers will impede the passage of migratory fish, the River Wye is notified for various migratory species including but not limited to salmon and shad.

#### Other advice

Natural England's advice on this planning application is limited to the shadow Habitats Regulations Assessment. The Local Authority should satisfy itself that there are no other impacts on the natural environment, and reconsult Natural England if necessary.

Further general advice on consideration of protected species and other natural environment issues is provided at Annex A. Should the proposal change, please consult us again.

#### 5.10.2 4/7/24 - As submitted we consider it will:

- have an adverse effect on the integrity of the River Wye Special Area of Conservation <https://designatedsites.naturalengland.org.uk>
- damage or destroy the interest features for which The River Wye Site of Special Scientific Interest has been notified.

Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

European site - River Wye SAC (also notified as the River Wye SSSI)

The application site is within the catchment of the River Wye Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Wye Site of Special Scientific Interest. (See here for information on the European Site Conservation Objectives for River Wye SAC.)

The River Wye SAC has a restore objective, further alteration to the banks of the river could prevent the restoration of both bankside and in channel habitat. The condition status of the River Wye SSSI was also downgraded to 'unfavourable declining' in 2023.

Natural England notes that a 2nd 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.

Natural England notes that the shadow HRA includes an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

The appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question either alone or in combination with other projects. Having considered your assessment, and the measures proposed to mitigate for any adverse effects, Natural England's advice is that your assessment is not sufficiently rigorous or robust to justify this conclusion and therefore it is not possible to ascertain that the proposal will not result in adverse effects on the integrity of the sites in question. We advise that your authority should not grant planning permission at this stage.

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.

Natural England Objects to this proposal on the following grounds:

Whilst the urban nature and the inherent recreational demands on this section of the River Wye are noted, a balance is required that also recognises the requirements of this section of the SAC as a protected site in unfavourable declining condition with a restore objective. The "creeping cumulative loss of habitat" in terms of multiple and increasing footprints has reached a tipping point in terms of the restore objective and the HRA should assess the proposal in this context.

We advise that additional work on the Habitats Regulation Assessment is therefore required to enable it to be sufficiently rigorous and robust. Natural England should be re-consulted once additional work has been undertaken and the appropriate assessment has been revised taking into account the following considerations.

This proposal is not a replacement and will significantly expand the existing boat ramp structure, including the addition of a crane, introducing a new 15m stretch of artificial bank in very close proximity to the rowing clubs existing large, concrete boat launch. The combination

of these two structures will result in a notable stretch of artificial bank being of almost no ecological value.

#### Habitat Restoration and Recreational Pressure

The River Wye SAC has a restore objective, further alteration to the banks of the river could prevent the restoration of both bankside and in channel habitat. The condition status of the River Wye SSSI was also downgraded to 'unfavourable declining' in 2023.

Whilst the vast majority of the condition issues are caused by agricultural pollution, developments close or directly adjacent to the river and recreational pressure (from a wide range of activities including angling, canoeing, boating and dog walking) are already very high, particularly in this semi-urban location. This proposal should therefore be assessed against this baseline taking into account in-combination effects with other proposals and current activities. On that basis it Natural England's view that this proposal will significantly increase recreational pressure along a greater stretch of the River Wye.

The HRA's proposed mitigation is that the banks are already damaged/disturbed therefore the works can be justified. Natural England does not agree. There is bank scour/erosion in this location and the boat launch could cause changes to the water currents, but this has not been assessed in the HRA. The proposed rock gabions will provide little benefit to the designated features of the River Wye, they can result in vertical channel incision and result in the deflection of scour to further points downstream in the river. If the proposal is to also use them in an area where scour is currently taking place it is likely that regular maintenance would be required. The addition of rock and rip rap to rivers is not in keeping with the naturalness of the river.

#### Impacts on notified species: Otters, White-Clawed Crayfish and Freshwater Fish

The current HRA does not consider the increased impacts of the proposal on each of the species the site is notified for. The HRA should assess the in-combination effects of the added recreational impact / pressure on this already heavily disturbed stretch of river. In addition if the proposed timing of 6am to 11pm are an extension of current use then the impact of this on notified species also needs to be considered.

Otter, a notified species of the River Wye SAC, use the river and riparian habitat. Otters are a European protected species under the Conservation of Habitats and Species Regulations 2017. Potential impacts affecting otters could occur as a result of riparian habitat loss or degradation, disturbance to resting and feeding sites in or near water bodies. The proposed running times from 6am to 11pm will coincide with the period where otter are active and impact cannot be ruled out here, white-clawed crayfish are also generally more active at night time.

No information relating to the scale and type of boats proposed to use the ramp and river are provided or use of a crane to lift the boats in and out of the water with regards to the impacts of the physical presence of the boats and noise to the features of the site.

The HRA assessment does not assess the impacts of this proposal on freshwater fish with regards to the loss of suitable habitat and shelter as a result of the increase in the developed area of the existing bankside habitat.

The HRA does not include an in combination assessment.

#### Other advice

Natural England's advice on this planning application is limited to the Habitats Regulations Assessment. The Local Authority should satisfy itself that there are no other impacts on the natural environment, and reconsult Natural England if necessary.

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

Should the proposal change, please consult us again

- 5.10.3 8/12/23 - Despite the proximity of the application site to a European Site, The River Wye SAC/SPA/RAMSAR, the consultation documents provided do not include information to demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment. Natural England advises that a Habitat Regulations Assessment is required as the proposal has the potential to impact the SAC It is Natural England's advice that the proposal is not directly connected with or 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. Natural England must be consulted on any appropriate assessment your authority may decide to make. Please note that the usual 21 day deadline will apply on receipt of the consultation.

## **6.0 REPRESENTATIONS**

### **6.1 Hereford City Council**

Comment

- 6.1.1 8/3/24 - Hereford City Council Planning Committee notes the changes made to planning application 233442, however Councillors stand by their original comments and would prefer the pontoon in line with the original Stronger Hereford project
- 6.1.2 14/12/23 - Hereford City Council Planning Committee has no objection to planning application 233442, though Councillors noted that they would instead like the stairs to be a pontoon.

### **6.2 Third Party Representations**

- 6.2.1 28 representations received in objection to the application. The comments can be summarised as follows; -
- Hereford and District Angling Society has not seen the extent of land proposed to be subject of the application
  - Should any part of the application site encroach on property owned by the Hereford and District Angling Society, consent has not been given for encroachment which would be considered trespass.
  - Article 13(7) requires at least 21 days advance notice of the application to be served on land owner
  - Yellow planning notices were not on display
  - Visual impact – harm to conservation area.
  - Natural England have not been consulted
  - River bank in this location hosts otters, water rats, voles, kingfishers, herons.
  - Why is the Angling Association not listed as a consultee?
  - River Wye in this location is a high quality location for fishing.
  - Submission shows foundations / piling proposed on land owned by Angling Society
  - Steps and crane may present obstruction to fishing rights that benefit the Angling Society.
  - Proposal would lead to considerable bank erosion, undermining the integrity of the SAC.
  - The siting of the development is wrong
  - Waste of public funds which is significant and disproportionate to the benefits that would be realised

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Further information on the subject of this report is available from Mr Ollie Jones on 01432 260504

- There is an existing adequate launch site at Hereford Rowing Club which is in close proximity and underutilised
- Bishops Meadow would be a better location / improved access and parking.
- Disruption during construction would be unacceptable due to poor vehicular access.
- Insufficient parking.
- Access is permissive across Rowing Club land and could be revoked without notice
- Proposal includes making the river shallower next to the ramp, not detailed in written documents.
- Proposal includes making the river shallower next to the ramp, not detailed in written documents.
- Adverse impact on SSSI.
- Impact on views towards the Hunderton Bridge
- Proposal includes making the river shallower next to the ramp, not detailed in written documents.
- Current footway / path is adequate
- Should planning permission be granted, condition should restrict development until after June 2025 to avoid clash with fishing matches
- Floating rafts of vegetation and gravel trays / rip-wrap would obstruct fishing access.
- Adverse impact on tourism
- Herefordshire Council have sponsored this application, so the applicant is the Local Planning Authority.
- Potential for antisocial behaviour

6.2.2 35 representations received in support of the application. The comments can be summarised as follows; -

- Useful addition for the club
- Development would promote safe, low environmental impact and inclusive access to the river.
- Support local businesses – wider range of trade from river tourism
- Enhanced access to water sports for young people
- Quicker access to river for emergency services, if required
- Improved access to the river
- Help to improve public health mental wellbeing
- Would encourage tourism
- Safe platform to launch and recover boats
- Provision of teaching and supervision fixture
- Reduced risk of injury

6.2.3 3 representations received making general comments. These can be summarised as follows; -

- Useful addition for the club
- Development would promote safe, low environmental impact and inclusive access to the river.
- Support local businesses – wider range of trade from river tourism
- Enhanced access to water sports for young people
- Quicker access to river for emergency services, if required
- Improved access to the river
- Help to improve public health mental wellbeing
- Would encourage tourism
- Safe platform to launch and recover boats
- Provision of teaching and supervision fixture
- Reduced risk of injury

6.2.4 The full comments are accessible via the Herefordshire Council website.

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=233442&search-term=233442](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=233442&search-term=233442)

## **7.0 OFFICER APPRAISAL**

### **Principle of development**

- 7.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 7.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy. The National Planning Policy Framework (NPPF) is also a significant material consideration.
- 7.3 The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and was updated in November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any applications. In this case the relevant policies have been reviewed and are considered entirely consistent with the NPPF and therefore can be attributed significant weight.
- 7.4 The Core Strategy supports tourism proposals along the River Wye in Hereford through Policy E4, which promotes opportunities for tourism and recreational activities. It encourages sustainable tourism development that utilizes the county's natural assets, such as its landscape and rivers, while preserving these assets and enhancing the overall environment. Additionally, it favours proposals that promote cycling, walking, and heritage tourism, including the development and enhancement of long-distance routes.
- 7.5 Policy SC1 aims to protect, retain, or enhance social and community facilities, emphasising safe accessibility through walking, cycling, and public transport. This policy also supports the development or enhancement of higher education, training, and skills facilities.
- 7.6 The River Wye flows to the south of Hereford's city centre and has played a crucial role in the city's history and development. Currently, various groups such as anglers, canoeists, rowers, and swimmers compete for recreational use of the river. This is exemplified by the site's proximity to the Hereford Sea Cadets, the Rowing Club, and Hereford Rugby Football Club. The land adjacent to the river, which is at risk of flooding, is suited for less vulnerable uses, shaping the development of this area over time.
- 7.7 There has been significant local objection raised by the Hereford and District Anglers Association and its members. They have raised several issues, highlighting a conflict surrounding the recreational use of the River Wye at this particular location. Their concerns indicate that the proposed development would depend on third-party land, which could lead to direct conflict.
- 7.8 Although a procedural matter, the Local Planning Authority is satisfied that the appropriate notice has been served on other landowners, in accordance with Article 14 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). Therefore, it is not for the Local Planning Authority to consider potential implications for the applicant in obtaining consent from respective landowners to access the land and carry out the development. Instead, it must focus on assessing the acceptability of the proposed

development in planning terms. The granting of planning permission does not override any other legal constraints, such as ownership issues.

- 7.9 The proposed development would enhance the facilities available to both Hereford Rowing Club and the Sea Cadets, who use the river for recreational purposes integral to their activities.
- 7.10 The applicant has set out that the proposal intends to provide the following social and community benefits; -
- Enable inclusive 'access for all' facilities to the river.
  - Increase footfall around the river environment.
  - Aim to boost the tourist numbers visiting Herefordshire.
  - Encourage take-up of commercial pop-up establishments along riverbanks in the vicinity of new power outlets.
  - Ensure greater safety and security of the riverside walks.
  - Assist emergency teams, lifeboat services, and river operators for launching and recovery of river craft in time critical situations.
- 7.11 Clearly, the development would create a more attractive community facility overall, increasing opportunities for tourism by capitalising on the river's proximity to the city centre and its sustainable location. This, in turn, has the potential for wider social and economic benefits for Hereford through increased visitor numbers.
- 7.12 While the development may facilitate the establishment of pop-up businesses along the river, as stated in the applicant's supporting documentation, this aspect does not form part of the current application and would require separate planning permission and/or licensing as needed.
- 7.13 It is also recognised that emergency services use this location to launch craft onto the River Wye. The proposed development would improve emergency access, thereby potentially reducing response times.
- 7.14 It should be noted that regardless of private ownership of the River Wye, a public right of navigation exists between Hay-on-Wye and Chepstow. Thus, while the proposal may intensify the existing use of facilities and the river in this location, the right to utilise the river for recreational purposes is already established.
- 7.15 Several concerns relating to the principle of the development have been raised. Direct impacts on other recreational uses, such as environmental degradation and bank erosion (e.g., angling), are discussed in the following sections of this report.
- 7.16 Other sites have not been considered for this proposal, as they would not be suitable for realising the benefits that this scheme aims to deliver in terms of enhancing existing community facilities.
- 7.17 Therefore, the proposals, in principle, can be supported in light of Policies E4 and SC1 of the Core Strategy, as they aim to enhance existing community facilities while promoting sustainable tourism that capitalises on the city's asset—the River Wye. However, careful consideration of environmental constraints is necessary, and these will be discussed further below.

### **Visual / landscape and historic environment impact**

- 7.18 As noted in several objections, there are multiple designated heritage assets in the wider area. These include the Wye Bridge (Old Bridge) SAM / Grade I-listed, the Cathedral Church of St Mary & St Ethelbert SAM / Grade I-listed, St Nicholas Church Grade II-listed, Waterfields



Grade II-listed, Nos. 24, 26 & 28 Barton Road Grade II-listed, All Saints Church Grade II\*-listed, and the Broomy Hill Pumping Station, which is Grade II\* listed (Water Tower Grade II-listed). Additionally, the Hunderton Bridge is considered a non-designated heritage asset.

- 7.19 The site is also located within the Hereford (Central) Conservation Area. As such, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires the Local Planning Authority to give special attention to preserving or enhancing the character or appearance of a conservation area when exercising planning functions. Similarly, Section 66 imposes a duty to consider the impact on listed buildings.
- 7.20 These duties are reflected in the policies of the development plan, particularly Policy LD4, as well as the principles outlined in the NPPF. Chapter 16 of the NPPF emphasises that heritage assets, being irreplaceable resources, should be conserved in a manner that reflects their significance so that they can continue to contribute to the quality of life for both current and future generations.
- 7.21 In line with NPPF principles, the applicant has submitted an Archaeology and Heritage Statement. This statement assesses the significance of the relevant heritage assets and the potential impact the development may have on them.
- 7.22 The most noticeable visual changes resulting from the development would be the installation of the crane and the construction of the boat ramp. Both elements are designed with functionality in mind and are suited to their intended purpose. The re-routing of the public right of way and the creation of a new access road are not expected to result in any significant change, though it is recommended that the finer construction details be secured through planning conditions.
- 7.23 The proposed crane would stand just under 5 metres in height and would be positioned in front of the Hereford Rowing Club. As a result, it would be viewed in the context of the club and its associated hardstanding, including the existing steps to the river. From the vantage point of the Greyfriars Bridge, the crane would be visible along with other nearby development such as the Sea Cadets building, the Rugby Club building, and the floodlighting. Thus, the crane is considered to fit satisfactorily within the existing context of the site and would not appear as isolated development, nor would it cause unacceptable visual harm or disrupt the character of this section of the riverbank.
- 7.24 The proposed boat ramp would be located in front of the Sea Cadets building and would measure approximately 15 metres in length. It would be stepped (rather than a true ramp) and supported by cantilevered steel members to reduce its impact on the riverbed. The ramp would be built on foundations of steel-encased piles. Although this ramp is separate from the much larger facilities at the Rowing Club, its design is less intrusive, as it would be elevated from the riverbank. While it would result in a visual change, it would still be in keeping with the existing development and the associated infrastructure found along the northern banks of the river.
- 7.25 The proposal does not involve the removal of any hedgerows or tree cover along the riverbank. As such, the overall verdant character of the river corridor when viewed to the west would not be negatively affected by the development.
- 7.26 Taken together, the proposed additions are considered relatively minor in nature. It is considered that the development would not result in any discernible harm to the character and setting of the identified heritage assets, including the Conservation Area. Therefore, the scheme is considered to comply with the expectations set out in Policies SD1, LD1, LD3, and LD4 of the Core Strategy.

### **Access and highway safety**

- 7.27 In line with Policy MT1 of the Core Strategy, Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if it would result in an unacceptable impact on highway safety or if the residual cumulative impact on the road network would be severe.
- 7.28 In this case, the proposal would not alter the lawful use of the site, and the public right of navigation along the River Wye between Hay-on-Wye and Chepstow remains. However, it is reasonable to anticipate that the proposal would enhance the site's attractiveness, potentially leading to an increase in visitor numbers and trips.
- 7.29 The proposal does not involve changes to the existing access points for the Hereford Rowing Club and the Sea Cadets, nor does it alter the number of parking spaces currently available. The plans include extending the current access road to the immediate rear (west) of the Sea Cadets building to accommodate a site compound. While limited details have been provided regarding the construction and management of this access, these could be addressed through a condition requiring the land to be restored to its pre-development state after completion.
- 7.30 Although some concerns were raised about the site's accessibility, the application must be assessed on its own merits. The development pertains to an established lawful use within a sustainable location, where reliance on private vehicles for access is not essential. There are also public car parks available within a reasonable walking distance of the site.
- 7.31 The proposal includes an additional footpath that would provide more space between pedestrians and the Hereford Rowing Club, as well as the proposed crane. While the proposal does not obstruct the current public right of way, an application for a diversion order has been submitted. If successful, the existing route could be closed. While the Local Highways Authority's (LHA) comments are acknowledged, the new footpath may offer an enhanced pedestrian route compared to the existing one. Therefore, requiring it to meet adoptable standards for vehicular access is not deemed reasonable in this context.
- 7.32 Considering the above, the proposal is not expected to have an unacceptable impact on highway safety, nor would it cause severe cumulative effects on the local road network. The development is therefore considered to be in accordance with Policy MT1 of the Core Strategy, as well as the principles outlined in the NPPF.

#### **Impact on residential amenity / other uses**

- 7.33 The proposals pertain to the existing lawful recreational use of the River Wye. While the development may potentially increase visitor numbers and the overall use of the river, it is not expected to adversely affect the amenity of the nearest residential properties along Greyfriars Avenue. The application is accompanied by a Construction Management Plan, and it is recommended that a condition be imposed to ensure the development is carried out in accordance with this plan.
- 7.34 Additionally, it may be considered reasonable to impose a condition restricting construction hours to mitigate potential noise and disturbance to nearby residential properties.
- 7.35 The concerns raised by the Hereford and District Angling Society are acknowledged. Although the proposal may lead to increased recreational use of the river (e.g., rowing, canoeing), these rights of use already exist. The granting of planning permission does not override any private rights held by members of the Angling Society. The management and resolution of any conflicts related to the river's recreational use in this area are not within the scope of a planning determination and as such do not amount to reasonable grounds for the refusal of permission.

#### **Ecology and impact on the River Wye SAC and SSSI**

- 7.36 Policy LD2 of the Core Strategy seeks to ensure that development proposals conserve, restore, and enhance biodiversity assets in Herefordshire. Important sites, habitats, and species must be retained and protected in accordance with their status. The NPPF, particularly Chapter 15, provides relevant guidance and principles.
- 7.37 The application site lies within the River Wye SAC/SSSI, both of which have been identified as areas of concern due to the potential adverse effects of the proposed development. The physical construction of the boat ramp, ongoing operations, and anticipated increase in recreational use pose risks to the features of the SAC and SSSI. Notably, the transmission of crayfish plague, which threatens white-clawed crayfish—a key species of the SAC—has also been highlighted by the Council’s Ecologist. A Habitat Regulations Assessment (HRA) must be undertaken in accordance with Regulation 63 of the Conservation of Species and Habitat Regulations 2017 (as amended). When an ‘Appropriate Assessment’ is undertaken, Natural England is a statutory consultee in the process.
- 7.38 The initial submission, while outlining the constraints, failed significantly to set out detailed and evidenced mitigation measures for consideration and approval, as required by the HRA process.
- 7.39 Following initial concerns raised by the Council’s Ecologist regarding the unassessed, unmitigated risks, the applicant supplied a revised Construction Environmental Management Plan and a revised Ecological Impact Assessment. In terms of construction, this set out some biosecurity measures to prevent invasive species, as well as siltation control to avoid soil erosion in water bodies and pollution mitigation to prevent environmental damage. The details specified how machinery and equipment would not enter the water channel, and construction would be scheduled outside the migration and spawning periods of relevant fish species to protect aquatic life. Additionally, it was outlined that no night work was planned, and vibration would be limited to the hydraulic insertion of load-bearing steel framework above normal water levels to minimise disturbance. Furthermore, the proposed use of pre-cast concrete steps and a cantilever galvanized steel framework would aim to minimise liquid concrete usage, prevent contamination, avoid riverbed disturbance and protect habitats by utilising already disturbed areas and employing rock gabions to prevent bank erosion.
- 7.40 The details also laid out habitat mitigation and enhancement measures, including artificial gravel beds and rock gabions to provide crevices for wildlife, along with promoting best practices for aquatic environment use and biosecurity. To protect nocturnal wildlife activity, a condition limiting the use of the launching facilities and river access to between 6 a.m. and 11 p.m. was considered by the Local Planning Authority, balancing operational flexibility with wildlife preservation.
- 7.41 With the above additional information submitted, a positive HRA (including Appropriate Assessment) was undertaken by the Council as the competent authority and submitted to Natural England as the statutory consultee. However, Natural England did not agree with the Council’s conclusions that there would be no adverse effect on the integrity of the designated site. They highlighted the need for a comprehensive HRA to evaluate cumulative habitat loss from existing and proposed developments, which could exacerbate recreational pressures and further degrade critical habitats. Key concerns included the expansion of artificial bank structures, potential harm to protected species like otters and white-clawed crayfish, and risks posed by increased recreational activities and disturbances. The HRA was deemed insufficient as it did not adequately assess the impacts on wildlife or account for the cumulative effects of ongoing and proposed developments along this already heavily disturbed section of the river.
- 7.42 Following the above unfavorable outcome, the applicant decided to advance a shadow Habitat Regulations Assessment (sHRA). This was submitted to Natural England for their consideration and reviewed by the Council’s Ecologist. Natural England maintained their

previous objection to the proposal, remaining wholly unconvinced that the proposed development would not give rise to any adverse effects on the integrity of the SAC.

- 7.43 Natural England first highlighted that the sHRA does not sufficiently address the impact of the development on the designated features, taking into account local circumstances and site-specific factors.
- 7.44 A key failing of the submission is that the measures proposed, as detailed in the sHRA, are primarily compensatory, not mitigatory. This distinction is crucial: mitigation must prevent or reduce adverse effects at the location of impact, whereas compensatory measures allow for damage in one area while attempting to offset it elsewhere. This approach is not compliant with the Conservation of Habitats and Species Regulations 2017, which require effective on-site mitigation.
- 7.45 The proposal includes the provision of a new section of reinforced bank with pile installation and the construction of a davit arm crane. This would extend the existing artificial features along the riverbank and would lead to some permanent destruction of part of the river habitat, which in itself is a feature for which the site was designated. The sHRA acknowledges a loss of approximately 0.012 hectares of bankside habitat while proposing the creation of new habitat to offset this loss. However, Natural England argues that the permanent loss of habitat—particularly riverbed cover—cannot simply be compensated by habitat creation or restoration elsewhere, as explained above. This loss undermines the integrity of the SAC and violates the restoration objectives established for the site. Furthermore they say that the statement that impacts would be “effectively de minimis” lacks a thorough scientific basis and that given the complexity of the ecological dynamics within the SAC, such assertions require strong empirical evidence that the proposed measures would adequately protect sensitive species and habitats.
- 7.46 While the sHRA identifies increased recreational use as a potential concern, significant issues remain regarding the lack of detailed information on the scale, type, and quantity of boats expected to use the proposed ramp and the river. The sHRA indicates that the ramp would be utilised “ad hoc by members of the public,” creating unacceptable uncertainty about the level of recreational activity and its potential impact on sensitive species. The assessment does not adequately address the implications of the physical presence of boats, the operation of the crane/davit arm by emergency services, or the associated noise impacts on the site’s features. These omissions prevent a comprehensive understanding of how such activities may adversely affect species, particularly otters, which are active during the proposed extended operational hours from 6 a.m. to 11 p.m. Similarly, the submission acknowledges that white-clawed crayfish are generally more active at night, yet it fails to consider the cumulative effects of increased recreational pressure, noise, and disturbance on these nocturnal species. A survey is referenced that identifies the site as being unsuitable for crayfish; nevertheless, the proposal would impede the ability for this to be restored.
- 7.47 The proposed development, particularly the introduction of reinforced bank structures and other modifications, is also inconsistent with the objectives of the Site Improvement Plan (SIP) for the River Wye SAC and the associated River Restoration Plan (RRP). These plans emphasise minimising physical modifications and preserving the natural river ecosystem, which the sHRA does not adequately consider.
- 7.48 In conclusion, Natural England’s objection to the sHRA reiterates the principal concerns raised when responding to the HRA undertaken by the Council. It outlines its failure to comprehensively assess the ecological impacts, mischaracterisation of compensatory measures as effective mitigation, and lack of rigorous scientific evidence. Given these deficiencies, Natural England advises against granting planning permission for the proposed development, as adverse effects on the integrity of the River Wye SAC and its designated features cannot be ruled out.

- 7.49 The Council's Ecologist acknowledges the sHRA submitted by the applicant and recognises the subsequent objection from Natural England, which reiterates concerns similar to those raised in their previous objection regarding the Council's own HRA.
- 7.50 Upon reviewing both the sHRA and Natural England's objections, the Council's Ecologist has concluded that significant potential adverse effects on the River Wye Special Area of Conservation (SAC) have not been adequately mitigated with the necessary scientific or legal certainty. Consequently, the Council cannot adopt the sHRA as its own assessment.
- 7.51 The objection from Natural England, as the statutory consultee for the natural environment in England, is deemed highly relevant and appropriate. The Council's Ecologist fully endorses this objection and formally raises their own concerns, emphasising that planning permission should not be granted.
- 7.52 Under the Conservation of Habitats and Species Regulations 2017, specific and rigorous legal tests for derogation provides very limited circumstances under which the Local Planning Authority may grant planning permission for development that would give rise to adverse effects on designated sites. Such derogations are exceptional and may only be granted if strict legal criteria are fully met. The three requisite legal tests are as follows:
1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site.
  2. The proposal needs to be carried out for imperative reasons of overriding public interest.
  3. The necessary compensatory measures can be secured.
- 7.53 The current proposal is not considered to meet these tests for derogation. The proposal is inherently site-specific, relying on its geographical proximity and relationship with the River Wye; thus, alternative sites located away from the river cannot be considered feasible or appropriate solutions. Furthermore, while the proposal does offer certain benefits, it is considered to fall overwhelmingly short of meeting the threshold of needing to be carried out for imperative reasons of overriding public interest. The scale and nature of the proposed development do not rise to a level that justifies overriding the protections afforded to the designated site, under the aforementioned regulations. Finally, because the proposal does not fulfill the requirements of the first two tests, the consideration of compensatory measures is unnecessary, as their implementation would not be justifiable in the absence of a valid derogation. The proposal does not pass all three tests, and as such an HRA derogation notice form is not considered to be a reasonable action in this case.
- 7.54 The proposal is therefore contrary to Policy LD2 of the Herefordshire Local Plan – Core Strategy, the NPPF, and the Conservation of Species and Habitats Regulations 2017.

### **Drainage and flood risk**

- 7.55 The application site expectedly lies within Flood Zone 3 and it is anticipated that much of this would be within Flood Zone 3b – land designed to flood. The applicant has supplied a Flood Risk Assessment (FRA) as required.
- 7.56 The proposed development may be considered 'water compatible' as per the definitions given at Annex 3 of the NPPF; it would be 'water-based recreation'.
- 7.57 The development must be sited in this location in order to fulfil its intended function, intrinsically water-related. The exception test is not required and the Environment Agency are satisfied that the proposed development would not give rise to any increased flood risk elsewhere (due to reduction or changes to flood storage). Subject to conditions to ensure that the development would remain operational and safe for future users, a number of conditions are recommended.

## Other matters

- 7.58 Some concerns have been raised with respect to the public consultation undertaken by the Local Planning Authority. Despite claims that initial notices were removed, the Local Planning Authority can confirm, for the avoidance of any doubt, that a full 21-day consultation period involving the display of site notices has taken place between 18 June and 9 July 2024. Any further representations received will be provided as an update to this report (where not received prior to publication).
- 7.59 As already touched upon, in accordance with the requirements of the Development Management Procedure Order 2015 (as amended), the required notice has been served on any other the land-owner.
- 7.60 The Hereford and District Angling Society are not a statutory consultee and therefore would not be consulted on the application individually. Notwithstanding this they are aware of the application and have made representation.
- 7.61 Concerns about antisocial behaviour would typically be handled through site management and enforcement by the applicant rather than planning conditions, particularly since the intended use is not an inherently noisy one

## Conclusion

- 7.62 The proposed development aims to enhance tourism and improve an established community facility related to river-based recreational activities in Hereford. It would be expected to boost tourism, improve emergency access, and provide inclusive facilities while preserving the area's historic character. The visual impact is considered minimal, and no significant concerns have been raised regarding residential amenity or highway safety. The proposal is also deemed suitable in relation to the site's flood risk and would not exacerbate any risk elsewhere. Although concerns have been raised, the development itself would not infringe upon other recreational rights on the River Wye. However, the scheme presents unresolved adverse impacts on the integrity of the River Wye SAC. Both the Council's Ecologist and Natural England have found the proposed mitigation measures insufficient, leaving significant risks to protected habitats and species. While the development offers anticipated social and economic benefits, the environmental harm it poses renders the development unsustainable in the round. Consequently, the proposal is not considered in accordance with principal policies as contained within the development plan, and there are no material considerations which indicates a decision should be made, other than for refusal.

## 8. Recommendation: That planning permission be refused for the following reason:

**The application site is within the catchment of the River Wye Special Area of Conservation (SAC), which is a European designated site and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Wye Site of Special Scientific Interest. There is a requirement for a Habitat Regulations Assessment (HRA) to demonstrate beyond reasonable scientific doubt that the proposed development would not have any adverse effects on the integrity of the SAC. The submitted details fail to provide sufficient evidence that the proposed development would avoid adverse impacts on the SAC. The information provided in support of the application does not adequately address the potential ecological impacts or propose effective mitigation strategies to protect the sensitive features of the designated site; the measures do not avoid or reduce likely significant effects caused by the proposed new section of reinforced bank but rather would allow those effects to occur and compensate for them**

elsewhere. The proposal is also contrary to the objectives of the SAC Site Improvement Plan (SIP) and would not assist in the positive implementation of the associated River Restoration Plan (RRP). The submission also fails to adequately detail, with certainty, the extent to which the proposal would give rise to increased recreational pressures at the site. Consequently, the Local Planning Authority cannot be satisfied that the development would not harm the integrity of the designated site and cannot adopt a positive HRA, thus failing to comply with the requirements set out in the Conservation of Species and Habitats Regulations 2017 (as amended). Therefore, the proposal is contrary to Policy LD2 of the Herefordshire Local Plan – Core Strategy and the principles set out within the National Planning Policy Framework.

**Informative:**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reason for the refusal, approval has not been possible.

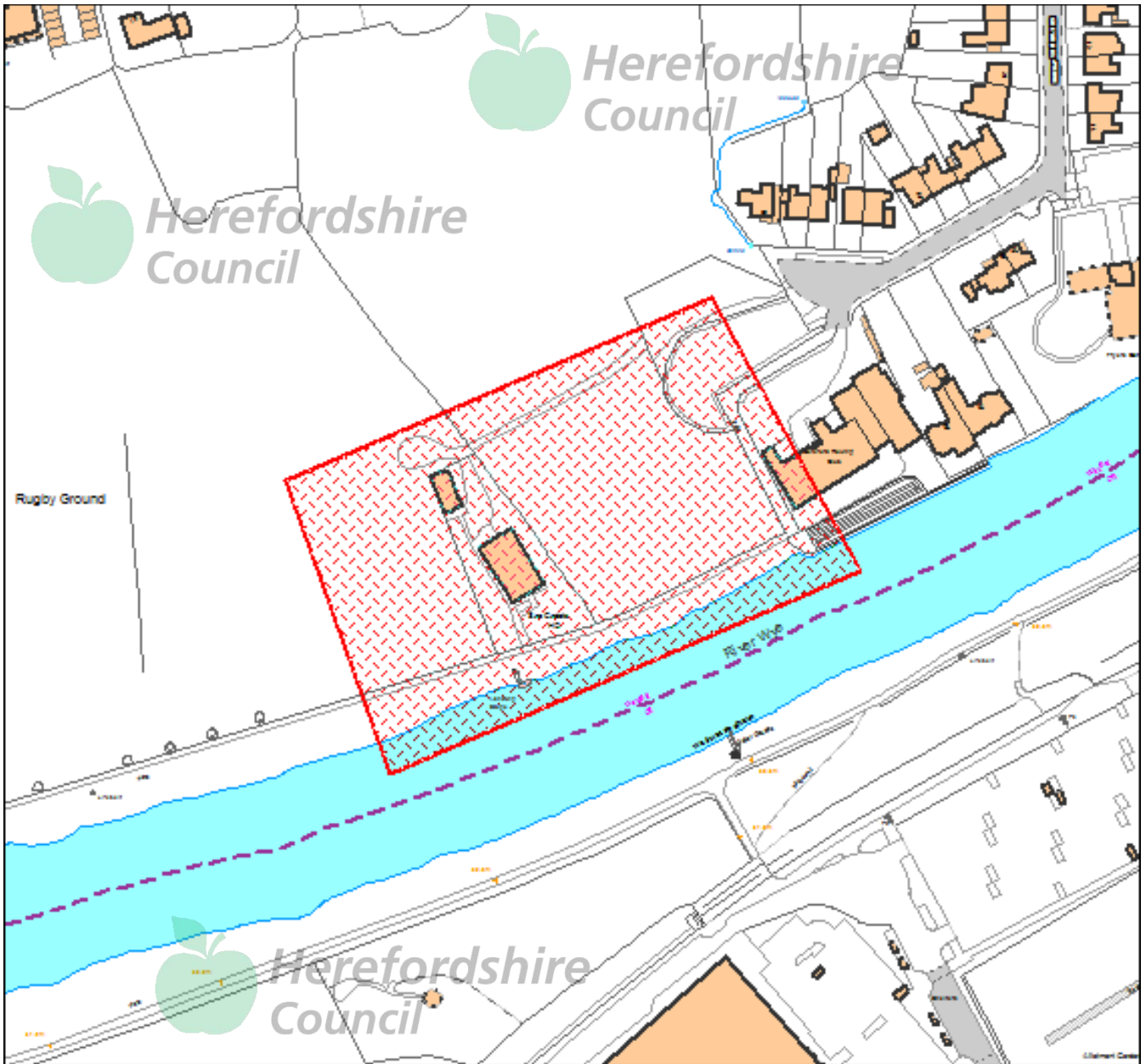
Decision: .....

Notes: .....

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**Background Papers**

None identified.



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**APPLICATION NO:** 233442

**SITE ADDRESS :** 39 GREYFRIARS AVENUE, HEREFORD, HEREFORDSHIRE, HR4 0BE

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Further information on the subject of this report is available from Mr Ollie Jones on 01432 260504