

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>10 APRIL 2019</b>
<b>TITLE OF REPORT:</b>	<p><b>182236 - PROPOSED RE-PROFILING WORKS TO INCLUDE: SOUTHERN LAND SPIT AT THE EASTERN END OF THE LAKE TO BE LOWERED AND DIVIDED INTO THREE ISLANDS. SMALL ISLAND CLOSE TO BIRD HIDE ON THE SOUTHERN SIDE OF THE LAKE WILL BE CLEARED OF TREES, LOWERED AND DIVIDED INTO THREE SMALLER ISLANDS. THE SOUTHERN HALF OF THE WESTERN ISLAND WILL BE RE-PROFILED AT BODENHAM LAKE NATURE RESERVE, BODENHAM, HEREFORDSHIRE.</b></p> <p><b>For: Miss Cowling per Miss Sophie Cowling, Lower House Farm, Hereford, Herefordshire, HR1 1UT</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182236&amp;search=182236">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182236&amp;search=182236</a>
<b>Reason Application submitted to Committee – Council Owned Land</b>	

**Date Received: 15 June 2018**

**Ward: Hampton**

**Grid Ref: 352392,251078**

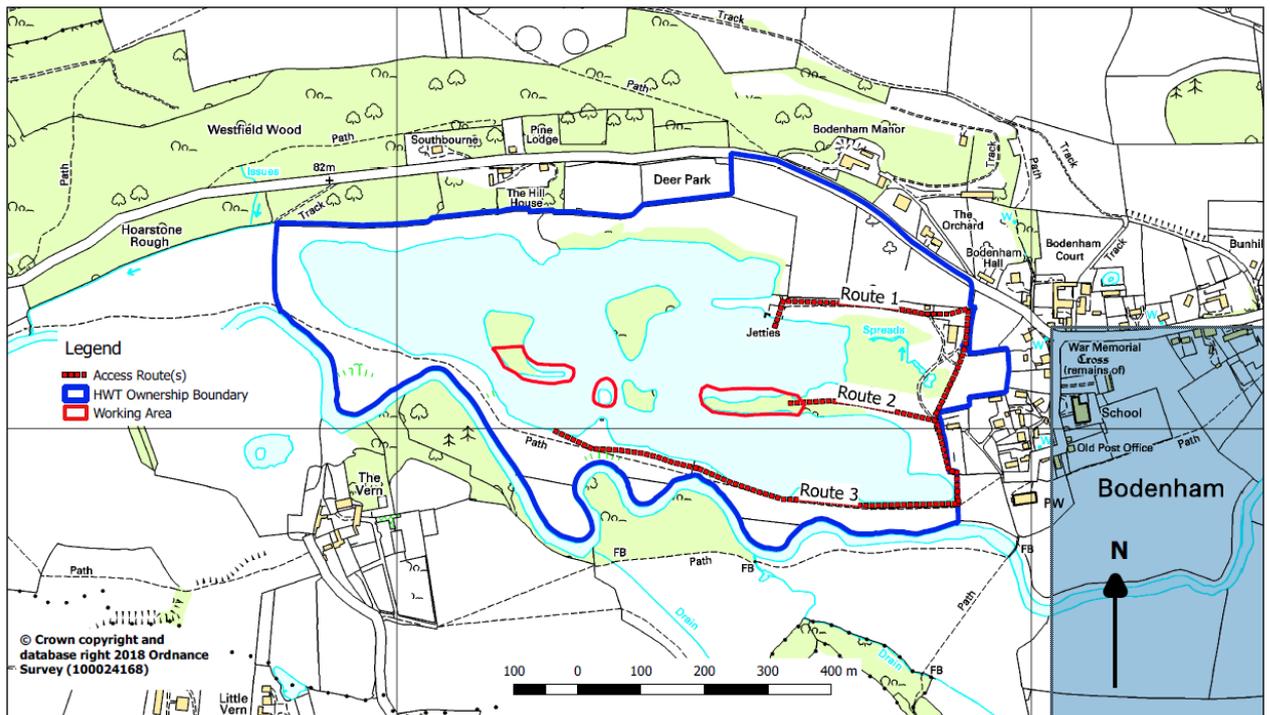
**Expiry Date: 20 March 2019**

Local Member: Councillor BC Baker

## **1. Site Description and Proposal**

- 1.1 This application seeks permission for the re-profiling of Bodenham Lake in connection with an expansion to works to create reedbeds within the lake. Work has already begun on application 162877 which sort permission for the first phasing of re-profiling of the lake as part of a planned habitat creation project, which aims to improve its wildlife value.
- 1.2 Bodenham Lake was formed by the extraction of gravel and is the largest water body in Herefordshire. The Lake is found in the Parish of Bodenham, on the southern side of Dinmore Hill, to the east of the A49. The old part of the village of Bodenham, with the Church and school, is located to the east of the Lake. Bodenham Lake is a designated Local Wildlife Site and is open to the public for leisure activities, such as walking, sailing and observing bird life.
- 1.3 The Lake lies in the floodplain of the River Lugg which us a tributary to the River Wye. The River Lugg is a SSSI and a SAC due to its conservation value. Bodenham Lake is an important overwintering and breeding area for birds and other aquatic wildlife. As a consequence approximately half of the 44.50ha site is managed as a wildlife refuge with restricted public access for recreational activities including sailing and birdwatching.

- 1.4 The re-profiling works are being constructed on islands within the centre of the lake, therefore machinery is having to be tracked and/or pontooned across the lake. The block plan below shows 3 possible routes to the islands. The re-profiling of the islands involve importing clean fill to create shallows. The margins are to be regraded. The aim of the works is to improve marginal plant growth and improve reedbeds which are crucial for otter and wildfowl.
- 1.5 Planning permission has already been granted for stage one of these works with three areas of reedbed to be created on the west and south-western edges of the lake (application 162877). Herefordshire Wildlife Trust are now seeking permission to expand re-profile works, to focus on the islands, as shown on the block plan below. The islands are covered in a uniform habitat of scrub and immature woodland that has grown up over the past few decades.



- 1.6 The majority of the works include clearing trees and lowering the level of the south eastern spit to allow aquatic vegetation to establish; and clearing trees and reprofiling two islands to enhance habitat for ground nesting birds.
- 1.7 The application has been supported with the following documents:
- Re-Profiling, Floating Wetland and Birdhide Installation Method of Work and Environmental Risk Assessment
  - Design and Access Statement
  - Flood Risk Assessment

## 2. Policies

### 2.1 The Herefordshire Local Plan - Core Strategy

The policies that are considered to be of relevance to the consideration of this application are:

SS1	-	Presumption in Favour of Sustainable Development
SS4	-	Movement & Transportation
SS6	-	Environmental Quality and Local Distinctiveness
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
E4	-	Tourism
LD1	-	Landscape and Townscape

- LD2 - Bio-diversity and Geo-diversity
- LD3 - Green Infrastructure
- SD1 - Sustainable design and energy efficiency
- SD3 - Sustainable Water Management and Water Resources
- RA6 - Rural Economy

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

[https://www.herefordshire.gov.uk/info/200185/local\\_plan/137/adopted\\_core\\_strategy](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

## 2.2 National Planning Policy Framework (NPPF)

The following paragraphs and sections are considered to be relevant to this application:

- Section 1 - Introduction
- Section 2 – Achieving Sustainable Development
- Section 15 - Conserving and enhancing the natural environment

## 2.3 Bodenham Neighbourhood Development Plan

- Policy BNDP 7 : Local Community facilities
- Policy BNDP 8: Protection of landscape and important open space
- Policy BNDP 10: Protection and enhancement of the built environment
- Policy BNDP 12: Open Space

The Bodenham Neighbourhood Development Plan was made on 21 September 2018. It now forms part of the Development Plan for Herefordshire.

[https://www.herefordshire.gov.uk/directory\\_record/3031/bodenham\\_neighbourhood\\_development\\_plan](https://www.herefordshire.gov.uk/directory_record/3031/bodenham_neighbourhood_development_plan)

## 3. Planning History

3.1 **182981** – Approval of conditions 5, 8 and 9 of application 162877. Approved 31/8/2018

3.2 **162877** – Re-profile Bodenham Lake in three areas; install floating bio-matrix and erect a bird hide. Approved.

## 4. Consultation Summary

### Statutory Consultations

#### 4.1 **Environment Agency: No objection**

We have no objection to the proposed development and would offer the following comments at this time.

As highlighted in the Flood Risk Assessment (FRA), produced by Herefordshire Wildlife Trust, the majority of the Bodenham Lake islands fall within Flood Zone 2 of the River Lugg (Medium Probability as defined in the Flood Zone and Flood Risk Tables (Table 1) of the Planning Practice Guidance). No material is to be imported to the site and any impacts of the re-profiling of the islands would be negligible. There are no residential properties falling within Flood Zone 3 (High Probability) at Bodenham upstream of the lake. The River Lugg hydraulic model ends just upstream of the lake at Bodenham village but the works are too minor in scale and nature to request additional modelling to be undertaken.

In addition to planning permission, the works may require a Flood Risk Activities permit under the Environmental Permitting Regulations (EPR) where works may act to affect a Main River or

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Further information on the subject of this report is available from Ms Rebecca Jenman on 01432 261961

its floodplain. Please see the gov.uk web site (<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> ) for additional information or contact the Partnerships & Strategic Overview team (Email: [ps0.midwest@environment-agency.gov.uk](mailto:ps0.midwest@environment-agency.gov.uk)) for further clarification. It may be that the island re-profiling itself does not require a permit as it falls outside of Flood Zone 3 but a new access track in close proximity to the River Lugg (Route 3 shown on the Location Plan) may require a permit given its proximity to the watercourse.

We are supportive of the ecological benefits of the works and have had pre-application discussions with the Wildlife Trust with regards matters within our remit.

#### **4.2 Natural England: No objection**

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

#### Internal Council Consultations

#### **4.3 Ecologist: No objection**

It is noted that these are the second phase of works to improve the ecological potential of this nature reserve leased and managed by Herefordshire Wildlife Trust from the Council.

The works are appropriate and relevant to enhancing the biodiversity value of the site and the works are being undertaken by experienced contractors under the management and guidance of a recognised Wildlife Trust and 'competent' body. The Phase 1 works appear to have been completed to a good standard with minimal disruption to the wildlife and visitors using the site, there is no reason to think the same will not be true of phase 2 if permitted.

The site is adjacent to the River Lugg (River Wye) SAC/SSSI and so a Habitat Regulations Assessment is required. This HRA appropriate assessment will need to be approved by Natural England PRIOR to determination of this application. Subject to this approval being received the supplied ecological report remains appropriate and valid and the method of Work and Environmental Risk assessment from Phase 1 remains valid and appropriate and should be implemented through a condition for phase 2 should planning consent be granted.

#### **4.4 Landscape Officer: No comments received**

#### **4.5 Highways Officer: No objection**

#### **4.6 Historic Buildings Officer: No objection**

Recommendations: No objections. It is not felt that the proposals would have an adverse impact upon those aspects of the setting of listed buildings nearby which contribute to their significance.

#### **4.7 PROW: No objection**

#### **4.8 Environmental Health Officer (Land Contamination): No objection**

I refer to the above application and would make the following comments in relation to contaminated land issues only.

Former quarries such as this may be considered a potentially contaminative use and something which the applicant should be mindful of. But given what's proposed, it would seem unreasonable to recommend an assessment be carried out. As such, I've no comments to make.

## 5. Representations

### 5.1 Bodenham Parish Council: No objection

5.2 **Two letters of objection** from members of the public have been received. The letters are summarised below:

- Digging up existing swan nesting areas and other equally protected species of wild fowl is in breach of the royal decree to protect swans and their habitat.
- Any soil and excavations placed over the existing wildlife in residence along the shore and lake bed will destroy a habitat that has been flourishing since the 1970's when Bodenham Lake was sold by Redland Aggregates to Leominster District Council as it was then.
- the proposed works contradicts the caveats placed upon the lake by Herefordshire Council which were designed to protect wildlife, flora and fauna.
- Re- profiling works already undertaken at Bodenham Lakes have created significant sedimentation via run-off.
- The works pose a risk to freshwater invertebrates, fish and bird and mammal species due to lowered Biological Oxygen Demand
- operations already breach the Wildlife and Countryside Act 1981 and Water Framework Directive (WFD). To carry out further re-profiling without redressing the damage and providing assurance that mitigation will be implemented would be nothing short of irresponsible.
- Tree felling on the islands should not be carried out as these are currently providing shade and protection for nesting birds. 2Whilst creation of exposed island habitats is necessary to improve biodiversity on this site, clear felling existing habitat is not the solution.
- Whilst creation of exposed island habitats is necessary to improve biodiversity on this site, clear felling existing habitat is not the solution.
- The topography (size, aspect and slope) of the proposed re-profiled and new island areas needs to be considered more carefully, as existing islands that have been created as a result of the previous re-profiling effort are less than adequate.
- Appropriate placement of official signage needs to be ensured to communicate clear messages to visitors using the site.

5.3 Two letters of support have been received from members of the public.

- The work being carried out at Bodenham lake can only enhance and expand the diversity of this wonderful wildlife location in Herefordshire.
- To compliment the work that has already been done the Island reprofiling will not only supply suitable habitat for waders, and water fowl to breed it will also improve the habitat for young fish, reptiles and waters edge plantlife
- The habitat management is very carefully and extensively researched and carried out with due care to ensure any impact on any form of life is fully mitigated; this is why the proposed works would not be undertaken until after the bird nesting season.
- The reprofiling of the existing islands should in fact encourage more birds/waterfowl to nest, and provide a safer haven from some of their predators, currently the islands are so overgrown and steep sided they discourage rather than encourage a diverse range of species.
- The Herefordshire Wildlife Trust, provide excellent training for their volunteers to ensure we create as little disturbance for the existing inhabitants and plant life as possible, to enable us to enhance all habitats where possible/practicle.

5.4 The consultation responses can be viewed on the Council's website by using the following link:-

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=181583&search=181583](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=181583&search=181583)

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## 6. Officer's Appraisal

### *Policy context and Principle of Development*

- 6.1 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions on applications for planning permission and appeals must be taken in accordance with the development plan, unless there are material considerations that indicate otherwise.
- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the made Bodenham Neighbourhood Development Plan (BNDP). Policy LD2 of the CS is considered to be the most relevant to the proposals as it deals specifically with biodiversity and geodiversity. The policy states that proposals should conserve, restore and enhance the biodiversity and geodiversity assets of the County including through the retention and protection of nature conservation sites and habitats and important species, restoring and enhancing of these assets on site and by creating new biodiversity features and wildlife habitats. The BNDP identifies Bodenham Lake as an important community asset with policy BNDP9 seeking to ensure that all new development protects and, where possible, enhances the River Wye SAC / SSSI and its catchment from the impacts of development.
- 6.3 Similarly, the NPPF states that the planning system should contribute to and enhance the natural environment by providing net gains in biodiversity and permitting development proposals where the primary objective is to conserve or enhance biodiversity.
- 6.4 The overall aims of the re-profiling works are to enhance the current habitat value of Bodenham Lake by clearing trees and lowering the levels around the islands to allow aquatic vegetation to establish and enhance habitat for nesting birds. The long term outcome of the project is to increase the biodiversity of the site and increase resilience of the species present. The re-profiling of the lake as outlined in the proposals is aimed at improving biodiversity at the lake and increasing and diversifying habitats.
- 6.5 Reed bed creation would provide a further habitat type in the lake, providing invertebrate habitat and therefore a food source for amphibians, bats and birds, as well as providing cover for nesting birds, otters and amphibians. In particular, it is expected that the re-profiled areas would enhance the habitat provision for wading birds, increasing the number of species that regularly visit the site and the length of the time that they stay on the lake. The proposed works would also contribute to a number of plans, projects and initiatives.
- 6.6 Overall, the various aspects of the proposed works are clearly in accordance with the Core Strategy in particular Policies LD2, LD3 and SD4 of the Core Strategy, Policy BNDP10 of the BNDP and the NPPF, therefore the principle of the development is supported.
- 6.7 Notwithstanding the principle of development being accepted, the two representations which have been received have correctly identified that some of the species using the lake may experience some short-term disturbance from the raised level of activity during the construction period in certain parts of the lake. As part of the application an Ecological Report and Environmental Risk Assessment has been carried out. The potential key impacts that have been identified during the construction period are limited to the following:
- Impact on disturbance to habitats and species both directly through physical intervention and indirectly through noise and light.
  - Disturbance of overwintering birds and roosting bats
  - Disturbance to nesting birds
  - Direct loss of or damage to habitats/species through indirect changes to stability of river to from and sustain habitats

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Further information on the subject of this report is available from Ms Rebecca Jenman on 01432 261961

- Spread of species in the catchment caused by non native species being disturbed and spread downstream by transported by machinery and equipment to another site
  - Damage or removal of mature and veteran trees
  - Increased risk of pollution caused by working near to surface water
  - Direct run-off, or in channel flow from works within bank
  - Changes in quantity and dynamics of water flow; connecting to groundwater bodies, river connectivity, river depth and width variation; and structure and substrate of river bed and structure of riparian zone.
- 6.8 The re-profiling work will also support the ground nesting of bird species as trees do not provide protection for ground nesting birds as they prevent good visibility to spot predators approaching nests. The islands are currently heavily vegetated and overgrown and value of the islands has diminished in recent years. 1 ha of wooded island habitat will remain unaltered to benefit the few species which currently breed on the islands, such as the grey lag geese and cormorants.
- 6.9 The conclusions of the Ecological Report and Environmental Risk Assessment is that through careful management and planning of operations, there will be no deterioration of the River Lugg SSSI or River Wye SAC as a result of the proposed works providing that the method of workings identified are followed. The relatively large area of the lake is such that it should allow resident species to avoid the main areas of construction and since the proposed works would only take place during daylight hours, there would be regular periods of respite. A series of measures have been identified in the submitted Ecological Report and Environmental Risk Assessment Report that would be implemented to avoid, mitigate and manage these potential impacts. These measures, together with a requirement to prepare and implement a Construction Environmental Management Plan for the proposed works would be secured by planning conditions.
- 6.10 Consideration has been given to flood risk. In accordance with advice from the Environment Agency, the applicant has confirmed that no material is to be imported to the site. The proposed work to the re-profiling is considered to be negligible in relation to flood risk. There is no conflict with policy SD3 of the CS or policy BNDP 10 of the NDP.
- 6.11 In conclusion Officers are content that on the basis of the information submitted in support of the proposal and from the available evidence, there are no matters of such material weight that would justify withholding planning permission. On this basis the proposal is compliant with the Herefordshire Local Plan – Core Strategy, relevant policies within the Bodenham Neighbourhood Development Plan and the National Planning Policy Framework the application is accordingly recommended for approval.

## **RECOMMENDATION**

**That planning permission be granted subject to the following conditions and any other conditions considered necessary by officers named in the scheme of delegation to officers:**

- 1. A01 Time limit for commencement (full permission)**
- 2. C06 Development in accordance with approved plans**
- 3. During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 7.00 am-6.00pm, Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.**

**Reason: To protect the amenity of local residents and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

4. **The Method of Work and Environmental Risk Management by Frog environmental dated September 2016 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.**

**Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework, NERC Act (2006), NPPF (2018), Wildlife & Countryside Act (1981 as amended) and Core Strategy (2015) policy LD2.**

**INFORMATIVES:**

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, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **Bodenham Lake and adjacent River Lugg (SAC) are recognised for their importance for biodiversity, protected species and ecological habitat and we would like to formally remind the applicant that they have a legal duty to ensure compliance with all relevant legislation and best working practices such as CDM, Health & Safety, Wildlife & Countryside Act, Habitat Regulations et all, at all times during the project and construction.**
3. **In addition to planning permission, the works may require a Flood Risk Activities permit under the Environmental Permitting Regulations (EPR) where works may act to affect a Main River or its floodplain. The applicant is advised to contact the Environment agency direct for clarification**

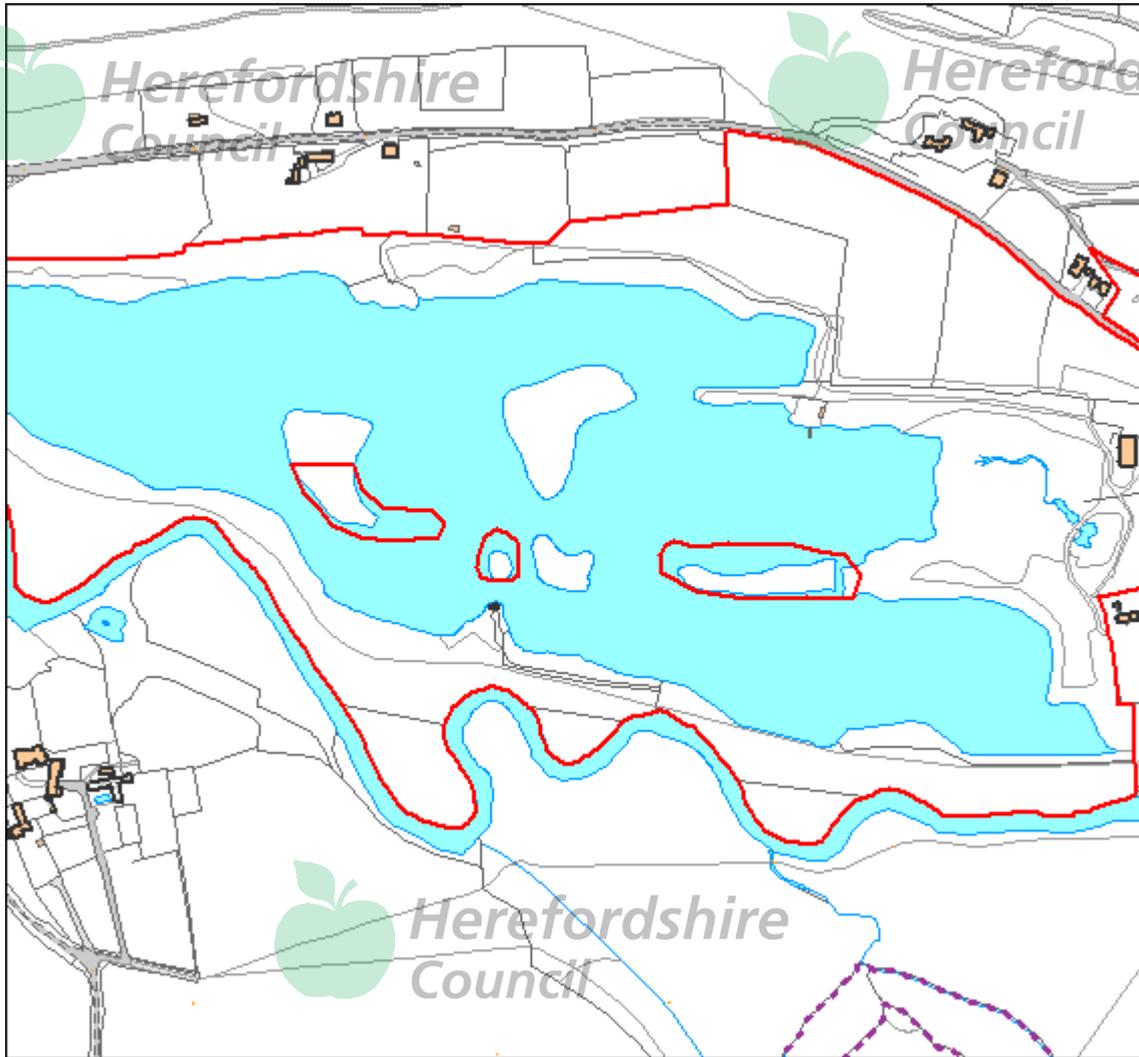
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 182236

**SITE ADDRESS :** BODENHAM LAKE NATURE RESERVE, BODENHAM, HEREFORDSHIRE

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