

## The Conservation of Habitats and Species Regulations (2017) Part 6, section 63

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

### Habitats Regulation Assessment

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

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

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

### **The Project / Plan**

#### 1.1 Planning Application Reference Number, Description and Address

Application reference number: 181494  
Address: Land adjacent to Spring Cottage Headbrook Kington HR5 3DY  
Description: Proposed land for residential development and associated work together with public open space and local green space.  
Applicant: Mr & Mrs M & J Turner  
Case officer: Ollie Jones

Location OSGR: 330174 – 256478  
Link to Planning Application on Herefordshire Council Website: [Planning Search – Herefordshire Council](#)

#### 1.2 Description of the plan or project (details)

Outline application for the erection of 35 dwellings.

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

Herefordshire Local Plan Core Strategy 2011 – 2031.  
River Wye SAC Nutrient Management Plan.

#### 1.4 Planning *Policy context*:

None

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

2.47ha of agricultural land primarily used for meadow grazing.

#### 1.6 Surrounding land use and context in relation to designated sites

Site is 8.8km south of River Lugg SSSI and 9.5km north of the River Wye SAC. The site is closely adjacent to the River Arrow which feeds into the River Lugg SSSI and on then into the River Wye SAC. The site itself is within the settlement of Kington. The River Arrow flows out of the settlement into the rural environment through agricultural land with woodlands present until it meets the River Wye.

## **Relevant Habitats (Natura 2000) site(s)**

Please select all that apply from:

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

### **Details of the Site:**

#### **1. River Wye SAC**

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

#### **Designated features**

##### Qualifying habitats

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

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

##### Qualifying species

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

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

#### **Conservation Objectives of the Designated features:**

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

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

### Site Condition

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

## River Wye SSSI

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

## River Lugg SSSI

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

### Other Relevant Documents

There is a Site Improvement Plan for the River Wye which can be found at [SIP141201FINALv1.0River Wye.pdf](#)

## Stage1: Preliminary Screening including Likely Significant Effects (LSE)

Completed by:

Fran Lancaster

Date: 6<sup>th</sup> January 2023

### Table 1: Initial Screening

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

Is the project or plan directly connected with or necessary for the conservation management of the habitat site (provide details)?	No
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If so the project may be considered exempt from the HRA process.	
If the proposal is considered exempt from the HRA process? Has this been consulted upon and agreed with Natural England?	N/A – Not exempt

**Table 2: Screening for Likely Significant Effects (LSE)**

**Key issues considered:**

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

Details of key issues & identification of potential effect pathways

The proposed development includes a mains foul sewerage connection for 35 new dwellings which will be treated at the Kington Waste Water Treatment Works which sits within the River Lugg SSSI/River Wye SAC catchment in which Natural England's Nutrient Neutrality applies.

The additional phosphate load generated by the proposed development has the potential to result in a likely significant effect on the River Wye SAC. A potential effect pathway has been identified and an Appropriate Assessment is therefore required.

No other potential effect pathways have been identified.

***NB: Where avoidance and mitigation measures do not form an integral part of the project/ plan and are to be put in place to reduce the impacts, these must not be considered in order to avoid impacts at the Screening stage and will require consideration at the Appropriate Assessment stage (in line with the People Over Wind judgement).***

Are there any potential effects of the project or plan when considered alone?	Yes An Appropriate Assessment is required.
Are there any potential effects of the project or plan <u>in combination</u> with other projects or plans?	Potentially yes. A range of other developments resulting in additional foul flows within the catchment could potentially act in-combination with this proposal.  <i>If 'yes' then proposal must be carried forward to the Appropriate Assessment Stage.</i>

Natural England consultation reference and summary (if available):

Natural England responded to the proposed development in August 2018 stating 'no objection' however since that time Nutrient Neutrality has been introduced in the catchment. This HRA and the comments on Natural England subsequent to today's date shall replace those made in 2018.

**Summary of LSE test conclusions**

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

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

*And, where relevant:*

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

Further information required to inform the Appropriate Assessment	None
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**Stage 2: Appropriate Assessment**

Completed by:

Fran Lancaster
Date: 6 <sup>th</sup> February 2023

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

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

**Table 3: Impacts of the plan/ project alone**

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

<p><b>Foul Water Mains Connection – Phosphate Credit Purchase</b></p> <p>The proposal is for 35 new dwellings under this outline application. The proposal has been assessed using the standard Natural England methodology and budget calculator.</p> <p>Assumed occupancy is 2.3 person per dwelling (agreed as locally acceptable).  Water usage is 110L per person per day (agreed as locally acceptable).  The site is 2.47ha.</p> <p>Waste Water will be discharged from the site via a connection to mains sewer and will be treated at the Kington WwTW. Kington WwTW has a phosphate limit of 1mg/l which has been used in the calculations in line with the NE methodology.</p>
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The **Waste Water P load** of the development is calculated to be:

Development	35 dwellings
Occupancy	2.3 per dwelling
Additional population	80.5 people
Water usage	110l per person per day
Waste water volume	8855l per day
Receiving WwTW environmental permit	1mg/l (next step uses permit level * 0.9)
Total phosphate after treatment	7,969.5mg/TP/day
Convert mg/TP/day to kg/TP/day	0.0079695kg/TP/day
Per year	2.91kg/TP/year

**Waste Water Total Phosphate Load** is 2.91kg/TP/year.

The **Current Land Use** is agriculture – dairy.

The **Current P Leaching Load** is 0.48kg TP.

The **Post Development Land Use** is 0.76 residential urban land and 1.71ha greenspace which equates to an **Annual Phosphorus Nutrient Export** of 1.29kg TP.

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

TP Waste Water post treatment	2.91kg/TP/year
Historic landuse P export	0.48kg TP
Post development P export	1.29kg TP
Landuse net change	0.81kg TP
Phosphate budget	3.72kg TP/year
Phosphate budget including 20% buffer	4.47kg TP/year

The Natural England Nutrient Neutrality Budget Calculator – River Lugg Catchment has been used correctly for this proposed development and the outcome of the nutrient budget is that there is an annual phosphorous load to mitigate = 4.47 kg TP/year.

Mitigation is proposed in this case as an alternative to purchasing Phosphate credits and is set out in table 4 below.

**Table 4: Mitigation Requirements and Outcomes**

**For cases purchasing Phosphate Credits**

The development has applied for, and received, an allocation of phosphate credits from Herefordshire Council at a cost of £14,000 per kg as follows:

Annual phosphorous load to mitigate 4.47kg TP/year \* £14,000 (plus VAT) per kg

= 4.47 \* £14,000

= £62,580 (Plus VAT)

This proposal is a valid Planning Application awaiting a positive determination subject to receipt of Phosphate Credits and the developer is prepared to enter into legal agreement with the Council through either a S106 agreement or a S106 agreement including a S111 agreement for phased development to secure the financial payment for phosphate credits.

## **Herefordshire Council's Phosphate Credit Allocation Process (taken from the Council's Phosphate Credit Pricing and Allocation Policy April 2022):**

'The Phosphate Credit Allocation Process is a staged process setting out how Phosphate credits that are generated by Herefordshire Council Integrated Wetlands can be secured by developers to offset the phosphate load of their development. The process necessitates a number of steps which can be run in tandem simultaneously. This process is monitored throughout and will span several services as well as requiring engagement with, statutory consultees, and developers themselves. Credits will only be released as they become available.

The process starts with developers working out the number of credits needed using the Council's Phosphate Calculator Budget Tool supplied by Natural England. The developers are then kept on a list according to 'first come first served' policy as stated above. As credits become available and when applications are ready for determination, case officers will contact developers and provide them with an invitation to apply for credits. The developer submits this alongside their phosphate calculations, a S106 legal document and an online payment for their allocated credits. Their application is reviewed internally by Legal and Ecology and in consultation with Natural England.

Permission can then be granted or refused. If refused, developers have a set amount of time to go through the appeals procedure, credits will be held as stated above. Where permission is granted, HRA conditions are applied and they have a set amount of time and requirements they must fulfil otherwise the credits are returned to Herefordshire Council and payment is reimbursed to developers as stated above.'

Phosphate Credits in Herefordshire are being generated through the delivery, by Herefordshire Council, of a program of integrated wetlands associated with existing Waste Water Treatment Works (Wwtw). The first integrated wetland was delivered in 2022 on land adjacent to the Luston Wwtw. As set out in the feasibility study for the wetland<sup>1</sup> 'The purpose of the wetland would be to provide enhanced treatment for removal of phosphorus from the final effluent of the Luston Waste Water Treatment Works (WWTW), to contribute to the resolution of the current embargo on housing development and to deliver nutrient neutrality for future housing.'

The aim, in creation of the Luston Integrated Wetland is reducing the Total Phosphorus (TP) in the effluent leaving the Luston WWTW from 4.24mg/L TP to less than 1mg/L TP.

The Council, working with partners, has assessed potential for integrated wetlands at 8 sites of which Luston is the first to be granted planning permission (under application 213571) and constructed. Natural England have been engaged with the development of the integrated wetland program and did not object to the planning application to create the Luston wetland for the purpose of selling Phosphate Credits.

The precautionary principal has been applied to the construction of the Luston wetland, and will be applied to any further integrated wetlands created under the project:

'To provide a robust wetland design and provide certainty, WUF applied a number of steps to ensure that the design can be considered to provide certainty under the Habitats Directive. These are outlined below and presented in the following sections:

- The primary objective of the wetland is to provide an effluent quality that leaves the wetland at less than 1mgTP/l. To achieve this, and provide certainty around the design, WUF have designed the wetland on the basis of

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<sup>1</sup> Wetland Feasibility, Design and Offsetting. Wetland Development on the River Wye – Luston. Wye and Usk Foundation. (May 2022).

a reduction to 0.8mg/l. This has effectively introduced a 20% buffer and oversized the wetland to provide greater certainty in its overall future performance, thus adopting a precautionary approach.

- A water balance has been developed and the design has been tested against UK Climate Projections (UKCP) estimates for rainfall and evapo-transpiration in 2070. Understanding the water balance is essential to ensure that the wetland design is robust under current and future climate change conditions and that the hydrology of the system will not be compromised.
- Due to uncertainties with wetland design models, WUF has adopted an approach outlined in the Treatment Wetlands publication (Dotro et al., V7 2017) which recommends application of multiple models to provide sensitivity in terms of calculation of overall design.
- Continued monitoring of phosphorus and flow data at the site to provide increasing and greater understanding of the current operation of the treatment works.'

Text taken from the WUF feasibility study.

The full technical design and modelling work for the Luston wetland can be found at in the Wetland Feasibility, Design & Offsetting Report for the Luston Wetland by Wye & Usk Foundation (May 2022).

Additionally, the precautionary principle is applied to the allocation of Phosphate Credits with 80% of the capacity generated by the creation of each integrated wetland being allocated to development and 20% of the capacity generated being allocated to providing river betterment. [HC Global Template \(herefordshire.gov.uk\)](https://www.herefordshire.gov.uk)

The sale of phosphate credits to developers will allow the Council to recoup its expenditure in delivering the Strategic Wetlands (and credit costs will be regularly reviewed as new wetlands are brought forward) and will also provide ongoing income for the long term management and maintenance of the wetland features.

**On the basis of the program of integrated wetland delivery and the phosphate credit system developed by Herefordshire Council in partnership with a number of organisations including Natural England and given that the development can secure a mains drainage connection and has committed to purchasing the phosphate credits required to address the phosphate load generated by the development this proposal it is not considered to have a likely impact on the integrity of the SAC and planning permission can therefore be granted.**

**Table 5: Remaining Impacts**

None

**Table 6: Consequences for Conservation Objectives of the Designated Site**

Impacts on maintaining the favourable condition of the site	No – not with proposed mitigation taken into account
Disruptions or delays in progress towards achieving the conservation objectives of the site	No – not with proposed mitigation taken into account
Alterations to natural progression or other	No – not with proposed mitigation taken into account <a href="#">Details</a>



natural changes within the site	
Loss of key habitat/species features. Fragmentation or isolation of key species and habitats. Impacts to diversity, distribution, density, balance, area or population(s) of key species or habitats that are indicators of the favourable condition of the site, including from disturbance	No – not with proposed mitigation taken into account
Alterations to the ecological relationships and balance between species and habitats that are key to the structure/ function of the site	No – not with proposed mitigation taken into account
Alterations to nutrient balance or other processes vital to the functioning of the ecosystem	No – not with proposed mitigation taken into account

**Table 7: Integrity Test**

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

There will be no adverse impact upon the integrity of the River Wye SAC once the proposed mitigation taken into account and legally secured.

**Table 8: Are there Alternative Solutions to the proposal?**

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

N/A

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

**Table 9: Recommended planning conditions to secure mitigation which is required in order to achieve no effect on integrity of the Designated Site.**

No conditions relevant to HRA required in this case.

**Conclusion of the Appropriate Assessment:**

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

Or

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

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