Wiltshire Council Planning Consultation Response

ECOLOGY

Officer name:	Max Hemmings
Date:	19/03/2024
Application number:	PL/2023/11012
Proposal:	Excavation of former railway embankment, erection of 4 x new dwellings, hard and soft landscaping and associated works.
Site address:	Land Adjacent to Kiln Close, Whaddon, Wiltshire, SP5 3HE
Case officer:	Joe Richardson

Recommendations:

	No Comment
	Support
	No objection
	Condition (no objection subject to conditions)
X	Objection - further information required
	Objection in principle
X	HRA required

Further Information Required:

	Issue	**Policy/Legislative Compliance**	**Date information requested & Further information required**	**Satisfactorily addressed (Document & Date)**
1	Lack of mitigation/ compensation for habitat and protected species	CP50, CP52, NPPF, WCA, Hab Regs,	**19/03/2024** Sufficient and appropriate mitigation/compensation measures to ensure the continued functionality of the area and restoration of the green corridor must be submitted as part of the proposal and shown on development drawings such as a Biodiversity Mitigation and Enhancement Plan. Any integrated protected species features such as but not limited to bird and bat boxes must be included in the building elevation drawings.	**NO**
2	Test Catchment/ Hampshire Avon Catchment	Hab Regs	**19/03/2024** Clarification from Wessex Water that wastewater in this area will discharge to the Salisbury (Petersfinger) Water Recycling Centre. A suitable nutrient calculation tool and strategy to enable the favourable conclusion of an Appropriate Assessment.	**NO**

The outstanding document(s) listed above are needed to enable the council's ecology team to consider all the relevant impacts and benefits of the proposed scheme. The council's ecologists will provide a further response once <u>all</u> the above information has been submitted via the case officer.
Please Note: When resubmitting a revised document, ALL changes must be highlighted to enable review.

The ecology report (Preliminary Ecological Appraisal, Land off Kiln Close, Version: V2, Date: 20/12/2023 by Elite Ecology) submitted to this application is welcome. However, the survey visit was completed after the site's vegetation was cleared which significantly impacts the ecological baseline assessment.

Historic aerial imagery and available records have been used to inform this assessment.

Biological records confirm the following species were confirmed within 2km of the site:

- Amphibians: common frog, common toad, great crested newt
- Circa 40 avian species
- Reptiles: Adder, common lizard, grass snake, sand lizard, slow-worm
- 112 floral species
- 47 invertebrate species
- At least 12 species of bat: Brandt's bat, brown long-eared, greater horseshoe, lesser horseshoe, *Myotis* species, Natterer's bat, noctule, serotine, soprano pipistrelle, common pipistrelle, barbastelle, whiskered.
- Badger
- Hazel Dormouse
- Other mammals (that likely use woodland and scrub habitat) hedgehog, ferret, polecat, harvest mouse.

1. **Lack of mitigation/ compensation for habitat and protected species**

Prior to the site clearance, a suitably designed development could have protected the functionality of the area for biodiversity along with the retention and potential enhancement of the green corridor. The site clearance has resulted in the loss of a 120m x 20m section of mature woodland on a dismantled railway. The vegetation formed a substantial green corridor and a significant connection between Whaddon and the wider countryside.

When a site has been cleared prior to the ecological assessment the baseline is determined from any available information (previously submitted documents, aerial imagery etc) with the precautionary principle applied. Without suitable survey effort or evidence to confirm otherwise it is assumed any habitat / protected species that had the potential to be on the site (based on the available information) were present and the site held significant importance for these species and the habitats were of the higher possible distinctiveness and condition.

The ecological loss will need to be suitably compensated / mitigated based on the above approach for assessing the site's ecological baseline. Any forthcoming plans or other applications on this site must restore the functionality and green infrastructure to equal or above its previous value and quality to comply with CP50, CP52 and NPPF.

A Biodiversity Mitigation and Enhancement Plan is required to detail the appropriate habitat and protected species compensation / mitigation measures. The required habitat mitigation / compensation would need to be within public domain in order to maintain its function for wildlife. Mitigation cannot not rely on habitat within private residential ownership as its retention and management would not be enforceable under planning law. Any proposed habitat within private residential ownership can only be considered as vegetated garden.

Any integrated protected species features such as but not limited to bird and bat boxes must be included in the building elevation drawings. The proposed measures in Section 5.4 of the ecology report are not considered to be sufficient to compensate for the loss of habitat.

2. **Habitat Regulations Assessment: Hampshire River Avon Special Area of Conservation (SAC) Catchment / River Test (Solent designated sites: Solent Maritime SAC, Solent and Southampton Water Special Protection Area (SPA)) Catchment**

While the application is located within the River Test Catchment area, and the wastewater is proposed to be discharged into the main sewer, the Council needs clarification as where the wastewater is being discharged as this may be Salisbury (Petersfinger) Water Recycling Centre and therefore will discharge into the Hampshire Avon river catchment and not the Test Catchment. Confirmation supported by evidence is required on where the wastewater will discharge.

Since it is currently unclear which catchment the wastewater will be discharged to the following responses detail the required information for both catchments.

Hampshire River Avon

This development falls within the catchment of the River Avon SAC and has potential to cause adverse effects alone or in combination with other developments through discharge of phosphorus in wastewater. Appropriate Assessment (AA) under Section 63 of the Habitats Regulations must be carried out by the relevant Competent Authority (the LPA) to determine the potential significant effects and the suitability of any measures proposed to avoid or mitigate those effects.

Insufficient information has so far been submitted to enable the AA to be undertaken, which must be completed by the relevant Competent Authority (the LPA) and the conclusion agreed with Natural England prior to the application being determined.

A phosphorous nutrient calculation and strategy are required which confirm how measures have been adopted to avoid and mitigate phosphorus burdens. Information on calculating the phosphorus budget can be found here: https://www.wiltshire.gov.uk/planning-bio-phosphorous-nitrogen-mitigation. The latest nutrient calculator should be submitted to the case officer for approval.

The government released an update to the National Planning Policy Framework on 19 December 2023 along with a range of other guidance and policy documents. This included a statement from the Minister of State, Lee Rowley MP, on 20 December relating to nutrient neutrality. The council is obliged to consider all this new information before making decisions on planning applications.

A report was approved by Cabinet on 6 February and discussions are on-going in this respect which will continue over the next couple of weeks with the exact details of the strategy to be published soon on our website. The council's mitigation strategy will be split into sub-catchments with any available nutrient credits initially being assigned to applications on a priority basis. At this time, it is not possible to confirm if the council's mitigation credits are available or will be available for any specific application. Therefore, we advise applicants to investigate site specific, on or off-site mitigation and discuss the mitigation strategy with Natural England at the earliest opportunity.

The Council led mitigation scheme will only be available for applications that comply with saved housing site allocation policies (Appendix D, Wiltshire Core Strategy) and / or Core Policy 2 (Delivery Strategy) of the Wiltshire Core Strategy (excluding Core Policy 37 (Military Establishments)), Core Policy 46, Core Policy 44 (rural Exception sites) and where no other significant planning matters are outstanding.

The Council, as competent authority needs to have certainty that the development proposals will not have an adverse effect on the integrity of the European site. Currently the application does not include detailed proposals to mitigate the impacts of these increases in phosphorus and consequently, without such detailed proposals, the Council as a competent authority cannot conclude that there would be no adverse effect on the integrity of this European site as a result of the development.

River Test Catchment

Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site.

WCS policy CP50 (Biodiversity and Geodiversity) and the NPPF requires the Local Planning Authority to ensure protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system. Whilst the application site is not adjacent to any rivers or in any respective flood zones, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations including the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site; as well as the nationally designated Sites of Special Scientific Interest (SSSIs) that underpin these international designations.

The Solent water environment is one of the most important for wildlife in the United Kingdom. It is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the European sites are designated. These nutrient inputs mostly come either from agricultural sources or from waste water from existing housing and other development.

Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area (NE776 Edition 5 Nutrient Neutrality and Nutrient Mitigation.pdf) from the increase in waste water and land use change. Accordingly, the Local Planning Authority considers this proposal is likely to lead to significant effects on the European Sites and an Appropriate Assessment (AA) is required.

In line with Natural England's Advice on Nutrient Neutrality, a calculation of the nitrogen burdens of the proposal is required. Natural England has issued guidance and a calculator tool to be used by applicants and this is available here: https://www.wiltshire.gov.uk/planning-bio-phosphorous-nitrogen-mitigation.

If mitigation is required, there are options available for applicants.

Wiltshire Council has a strategic mitigation scheme to counterbalance the nitrogen burdens from planned development. We can confirm that this option would be applicable for this proposal, provided the nitrogen budget has been approved.
The price of nitrogen credits is set at £2650 per 1 kg/N. For applicants wishing to use the Council scheme, a standard payment will be required by unilateral undertaking.

Should the developer wish to use the strategic scheme, please contact nutrientscheme@wiltshire.gov.uk) for further information.

Bespoke Mitigation or Alternative Strategic Scheme
Alternatively, a bespoke scheme of mitigation can be submitted provided this has been agreed with Natural England.
Alterative strategic mitigation sites are available in the Solent. The latest information on mitigation options is available on the Partnership for South Hampshire website.

Potential mitigation schemes available to developers - Partnership for South Hampshire (push.gov.uk)

Until a mitigation scheme has been agreed, it is unlikely that an Appropriate Assessment for this development could conclude with sufficient certainty that there will be no adverse effects on the Solent SACs and SPAs, alone and in-combination with other plans and projects.

New Forest protected sites

The development lies within the zone of influence for the New Forest protected sites which includes the New Forest SPA, New Forest SAC and New Forest Ramsar site. It is screened into appropriate assessment under the Habitats Regulations 2017 (as amended) on account of its potential to cause adverse effects through increased recreational pressure, which may occur alone and in-combination with other plans and projects.

Many of the special features afforded protection are vulnerable to increased recreation as demonstrated in Natural England's supplementary advice issued for the SPA on 19 March 2019 and for the SAC on 18 March 2019. The Council has prepared an "Interim recreation mitigation strategy for the New Forest internationally protected sites" (Version 1.1, 21 March 2023) which identifies the zones of influence within which residential and tourism development have the potential to generate additional recreation pressure. The strategy details mitigation required to avoid and reduce impacts. Provision of Suitable Areas of Natural Greenspace (SANGs) will be provided to reduce visitor numbers at protected sites and where visits are unavoidable, strategic access management and monitoring (SAMM) methods will be used to control people's behaviour.

The strategy explains that residential developments of 50 or more homes will be required to directly provide high quality open space while other development will contribute indirectly though allocation of funds from the Community Infrastructure Levy. Together this package of measures has been endorsed by Natural England on 17 April 2023 who consider the strategy to be sufficient to mitigate for development coming forward through the Wiltshire Core Strategy.

The Council therefore concludes that, provided the necessary mitigation is secured by condition or S106 as appropriate, the current application alone and in-combination with other plans and projects will not lead to adverse effects on the New Forest protected sites.

The necessary mitigation for this development is contributions through CIL towards SAMM.

Conclusion

Any forthcoming plans or other applications on this site must restore the functionality and green infrastructure to equal or above its previous value and quality (prior to the recent vegetation clearance) to comply with CP50, CP52 and NPPF.

The required habitat mitigation / compensation would need to be within public domain in order to maintain its function for wildlife. Mitigation cannot not rely on habitat within private residential ownership as its retention and management would not be enforceable under planning law. Given the extent of vegetation removal and the spatial importance of the vegetation that was cleared, any mitigation / compensation would need to be extensive and encompass a significant proportion of the site. It is therefore not possible to accommodate the number and size of proposed dwellings as shown on the Proposed Site Plan (0817/PL/101, Rev: P1, Date 13.11.23) and the required habitat mitigation / compensation within the application's red line boundary.

In addition, a suitable nutrient mitigation strategy has not been submitted which can favourably conclude an Appropriate Assessment to comply with the Habitats Regulations.

The Ecology RfR is therefore due to lack of information that demonstrates that the proposal would be compliant with Hab Regs, CP50, CP52 and NPPF.

This objection could be overcome by submission of:

- A Biodiversity Mitigation and Enhancement Plan which demonstrates that the loss of habitat is suitably mitigated/compensated to restore the functionality of the area and the green corridor. This plan should also include the proposed protected species features.

- A suitable nutrient neutrality calculation tool and mitigation strategy which will ensure no net increase in wastewater nutrient load to enable the favourable conclusion of an Appropriate Assessment.

In carrying out its statutory function, the LPA must be reasonably sure that the proposal will not result in significant adverse effects on protected habitats or species. The information outlined above must therefore be submitted and reviewed by the LPAs ecology team prior to determination of the application.

CONDITIONS: these will be added once the issues above have been addressed

Final sign off – all matters addressed:

Ecologist	Date