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BY EMAIL ONLY

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Dear Mr Latham,

Wyeside Neighbourhood Development Plan Habitats Regulations Assessment (HRA) consultation

Thank you for your consultation on the above dated 25 July 2018 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We understand that the Habitat Regulations Assessment has been revisited in light of the recent judgement from the Court of Justice of the European Union, *People over Wind, Peter Sweetman v Coillte* ([Case C-323/17 People Over Wind v Coillte Teoranta](#)).

Natural England is currently considering the particular implications of the *People over Wind* judgment for its advice on neighbourhood planning and the basic condition that the making of the neighbourhood plan is not likely to have a significant effect on a European site (paragraph 1, Schedule 2 of the Neighbourhood Planning (General) Regulations 2012). We can offer more support and advice in the coming weeks as the implications of the judgement become clearer.

In the interim, we advise that local planning authorities, as competent authority for neighbourhood plans, should consider this judgment before relying on measures intended to avoid or reduce the harmful effects of the plan to screen out neighbourhood plans under the Conservation of Habitats and Species Regulations 2017. Local planning authorities may wish to take their own legal advice on the implications of the judgment.

The Wyeside Neighbourhood Development Plan sets out policies around the delivery of houses in the catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC currently suffers from water quality issues due to the effects of point and diffuse sources (which includes, but is not limited to waste water from mains and non-mains sewage, surface water run-off, road run-off, agricultural run-off and run-off from the urban environment), non-native invasive species, siltation and modifications to the river channel. In particular, levels of phosphate in parts of the River Wye SAC have exceeded the water quality objectives, whereas other parts are at risk of not meeting

them. Development within the catchments of the River Wye SAC have the potential to further contribute to the poor water quality and siltation levels of the River Wye as a result of surface and foul water entering the River Wye/Lugg and its tributaries.

There is a Nutrient Management Plan (NMP) for the River Wye SAC. The NMP tested a series of options and established that nutrient levels in the river could be reduced and targets could be met, while also accommodating the council's growth aspirations for the county. Mitigation was an integral part of plan-making for the Core Strategy, for example informing decisions on allocations and the phasing of development. The Core Strategy includes mitigation through policies on water quality and on safeguarding European sites. On this basis, the Core Strategy's Appropriate Assessment concluded that there were no Adverse Effects on Integrity, and we agreed that the plan was sound. However, there is further work to do in order to agree to and then implement set measures to reduce phosphate in the river. We consider that the work described above constitutes a 'strategic solution', elements of which are still to be decided.

The Core Strategy itself has been well-tested and complies with *People over Wind*. There is ongoing debate about whether lower tier plans (such as a neighbourhood plan) and projects require an appropriate assessment, as the strategic solution has already been tested thoroughly at the plan level. Given the risk of procedural challenge, it is our view that in these circumstances it would be prudent to carry out an appropriate assessment of the plan or project to assess the compliance with the higher tier plan. Due to the basic condition associated with neighbourhood plans this option is not currently available to them; therefore Neighbourhood Plans in this situation cannot proceed. Notwithstanding our advice the final decision on this rests with the competent authority and we therefore advise the council to seek its own legal advice on the extent to which you can rely on a higher-tier appropriate assessment.

The Wyeside NDP enables the delivery of houses and sets out policies governing their approximate location, form, delivery etc. We note that 39 new houses are required in the Wyeside Neighbourhood Area to meet the Core Strategy allocations, and that 32 of these are still to be built over the plan period. The small scale of the housing allocations does not mean that there are no likely significant effects. As the NMP informs the delivery of housing in the River Wye SAC catchment, there is a clear pathway for impacts.

Any development in the River Wye SAC relies upon the strategic solution for mitigation. The delivery of the NDP is therefore reliant upon mitigation and thus the conclusion of the HRA Screening can only be that there are likely significant effects. In addition, Policy *WE05: Public sewerage and Wastewater Treatment* and section 5.6 *Public sewerage network and waste water treatment works* set out requirements regarding drainage, ensuring that the River Wye SAC is safeguarded and therefore providing mitigation. The NDP therefore does not comply with the basic condition that the making of the Neighbourhood Development Plan is not likely to have a significant effect on a European site, and cannot proceed.

We understand that the Ministry of Housing, Communities & Local Government is currently considering this basic condition in light of the *People over Wind* judgement. We therefore suggest that this Neighbourhood Development Plan is put on hold and that Herefordshire Council as the competent authority seeks an update on this.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Hayley Fleming on 02080 260955. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

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