

5. CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2019 - CREATION OF STEPS AND IMPROVEMENT OF SURFACING TO A VERY HEAVILY USED RIGHT OF WAY. INSTALLATION OF NEW ACCESS FURNITURE AT THORS CAVE, WETTON, (NP/SM/1121/1255, ALN)

APPLICANT: CHARLOTTE LEECH - TRUSTEES OF THE DEVONSHIRE MAINTENANCE FUND

Summary

1. The application is for a scheme of works to repair and improve paths that give public access to Thor's Cave.
2. Part of the land within the application site falls within the Peak District Dales Special Area of Conservation and the Hamps and Manifold Valleys SSSI.
3. It is considered that the development is necessary for the conservation management of the Special Area of Conservation and would not result in significant impacts to the SAC so **an appropriate assessment is not required**.

Site and Surroundings

4. Thors Cave is located in open countryside approximately 900m to the west of the village of Wetton. It is a natural cavern positioned within a limestone crag on the steeply sloping eastern valley side, approximately 80m above the river Manifold.
5. The cave is a very popular tourist destination. Public access is gained either from a public footpath that rises steeply from the Manifold trail in the valley bottom to the north, or along a concessionary path from Wetton (along Thor's Lane) to the east.
6. The application site edged red relates to the network of paths around the cave including the concessionary path from the western end of Thor's Lane that leads across fields towards the cave, and a further concessionary path proposed leading to the area above the cave from the east.
7. Part of the application site falls within the Natural Zone.
8. Part of the application site falls within the Hamps and Manifold Valleys SSSI and the Peak District Dales Special Area of Conservation.

Proposal

9. Planning permission is sought for repairs and improvements to the paths that give access to the cave entrance from the east and to the path that leads to an area above the cave (a popular vantage point). The works can be viewed in detail on the submitted plans but they include:
 - New surfacing on the concessionary path between points A and C.
 - New surfacing on a route from point C to the head of the cave (points C to G) including new steps and vegetation removal.
 - New surfacing and steps from points C to K.
 - Step improvements between points M to N and a new step at point P at the cave entrance.
 - New hazel planting and post and rail fencing on 'desire line' on steep hillside to west of route C to F to discourage access.

RECOMMENDATION:

- I. That this report be adopted as the Authority's assessment of likely significant effects on internationally important protected habitats and species under Regulation 63 of the Conservation of Habitats and Species Regulations 2019 (as amended) in relation to the current planning application at Thor's Cave.
- II. It is determined that the development is necessary for the conservation management of the Special Area of Conservation and would not result in significant impacts to the SAC, so an appropriate assessment is not required. Therefore, the development is not contrary to the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) and the EU Habitats Directive.

Key Issues

10. Under Section 63 of the Conservation of Habitats and Species Regulations 2019 (as amended) (the Habitats Regulations) any development that has the potential to result in a likely significant effect (LSE) on a European site and is not directly connected with the management of the site for nature conservation reasons, must be subject to a Habitat Regulations Assessment (HRA).
11. Where the potential for likely significant effects cannot be excluded, a competent authority (in this case the National Park Authority) must make an appropriate assessment of the implications of the development for that site, in view of the site's conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitats site.
12. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.
13. The Habitat Regulation Assessment (HRA) process involves several stages, which can be summarised as follows:
14. Stage 1 – Likely Significant Effect Test (HRA screening). This stage requires a risk assessment to be undertaken utilising existing data, records and specialist knowledge. This stage identifies the likely impacts of a project upon a European Site and considers whether the impacts are likely to be significant. The purpose of the test is to screen whether a full appropriate assessment is required. Where likely significant effects cannot be excluded, assessing them in more detail through an appropriate assessment is required to reach a conclusion as to whether an adverse effect on the integrity of the site can be ruled out.
15. Stage 2 - Appropriate Assessment. This stage involves consideration of the impacts on the integrity of the European Site with regard to the structure and function of the conservation site and its objectives. Where there are adverse effects an assessment of mitigation options is carried out. If the mitigation cannot avoid any adverse effect or cannot mitigate it to the extent that it is no longer significant, then development consent can only be given if an assessment of alternative solutions is successfully carried out or the Imperative Reasons of Overriding Public Interest (IROPI) test is satisfied.

16. Stage 3&4 - Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test (IROPI). If a project will have a significant adverse effect and this cannot be either avoided or mitigated, the project cannot go ahead unless it passes the IROPI test. In order to pass the test, it must be objectively concluded that no alternative solutions exist. The project must be referred to the Secretary of State because there are imperative reasons of overriding public interest as to why the project must proceed. Potential compensatory measures needed to maintain the overall coherence of the site or integrity of the European Site network must also be considered.

Assessment

Stage 1 – Likely Significant Effect Test (Habitat Regulations Assessment Screening).

17. The carboniferous limestone that is found within the SAC is cut by valleys, the ‘dales’, which contain a wide range of wildlife habitats, particularly woodland, scrub and grassland. This mosaic of habitats and the transitions between them are of exceptional interest for a wide range of characteristic, rare and uncommon flora and fauna. The habitats that are the primary reason for designation of the Peak District Dales SAC are semi-natural dry grasslands and scrubland facies on calcareous substrates and Tilio-Acerion forests of slopes, scree and ravines; mixed woodland on base-rich soils association with rocky slopes.
18. The conservation objectives of the SAC are to 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 the habitats of qualifying species rely.
 - The populations of qualifying species, and,
 - The distribution of qualifying species within the site.
19. The westernmost 70m of the concessionary footpath from Wetton to the mouth of Thor’s cave is within the SAC. This relates to point J to P inclusive on the submitted Reference Plan
20. If the whole proposal is for the conservation management of the habitats or species for which the European site has been designated, then an ‘appropriate assessment’ does not need to be carried out.
21. The area affected by the proposed footpath repairs, within the SAC, is already a concessionary footpath. Severe and extensive erosion has taken place both on and around the footpath, which is inevitably causing harm to the habitats for which the SAC has been designated.
22. The proposed footpath improvements are required in order to contain visitor footfall onto the designated route and in turn to prevent further damage to the surrounding area and to facilitate the conservation objectives of the SAC. We are satisfied that the development is necessary for the conservation management of the SAC and so it is not necessary to further screen the development for the likely significant impacts upon the designated site. Consequently an appropriate assessment is not required.

23. Even if that was not the case, harm to the landscape and ecological interest of the area is currently occurring by virtue of the extent of the erosion that has taken place as a result of poaching of the land by visitors using the increasingly eroded and (in places) impassable footpaths. The proposed works are in areas that are already used extensively by walkers and so are unlikely in themselves to cause any significant ecological impacts over and above those that are already taking place, and improving the path surfacing will result in a longer term landscape improvement as the poached land becomes less trodden and is able to recover. Consequently we are of the view that overall the proposals are not only essential for the management of the SSSI but would also result in a net benefit to the ecological and landscape value of the area, and as such the works would not result in significant impacts to the SAC and would not require appropriate assessment.

Conclusion

24. At stage 1 of the HRA, in view of the fact that the development is necessary for the conservation management of the Special Area of Conservation and would not have significant impacts upon its reasons for designation, **an appropriate assessment is not required** and the development is not considered to be contrary to the provisions of the Conservation of Habitats and Species Regulations 2019.

Human Rights

25. Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

26. Nil

Report Author and Job Title

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