

5. CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017: ESSENTIAL SAFETY WORKS TO RESERVOIR DAM INCLUDING REMOVING THE AUXILIARY SPILLWAY, REPLACEMENT OF THE PRIMARY SPILLWAY AND WORKS TO EXISTING WAVE WALL, LEGALLY REQUIRED AS MEASURES IN THE INTEREST OF SAFETY UNDER THE RESERVOIRS ACT. SWELLANDS RESERVOIR OFF THE A62 HUDDERSFIELD ROAD DIGGLE SADDLEWORTH (NP/K/0322/0346, JK)

APPLICANT: CANAL & RIVER TRUST

Summary

1. This report relates to a planning application which proposes works to Swellands reservoir dam, which is within an area designated for its habitat and biodiversity interest as a Special Protection Area (SPA) and Special Area of Conservation (SAC).
2. SPAs are areas which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds. SACs are also areas which have been given special protection. They provide increased protection to a variety of wild animals, plants and habitats. If a proposed plan or project is considered likely to have a significant effect on an SAC or SPA (known as a “European site”), either individually or in combination with other plans or projects, then an appropriate assessment of the implications for the site, in view of the site’s conservation objectives, must be undertaken.
3. The submitted Habitat Regulations Assessment (HRA) considers the effects of the Development on the South Pennine Moors SAC and South Pennine Moors SPA. Due to the location of the development within the South Pennines SAC and SPA, it concludes that there would be a Likely Significant Effect (LSE) on the qualifying features of these European Sites and an Appropriate Assessment is required. That assessment concludes that the works to the reservoir, taking account of embedded mitigation measures, will not adversely affect the integrity of the SPA and the SAC.

Site and Surroundings

4. Swellands and Black Moss Reservoirs are located on the Pennine watershed, approximately 400 metres above sea level in a remote location two miles north-east of Diggle and one-mile south-west of Marsden. The application site consists of the Swellands reservoir dam and includes part of its south-east corner and southern edge. The reservoir dam, runs along the eastern side of the reservoir and includes infrastructure to retain and control the flow of water. The main spillway is at the southern end of the dam, with an auxiliary spillway at the northern end, there is a 1.5m high wave wall on top of the dam. The dam is approximately 190 metres long, with a height of 9.6 metres and a crest width of approximately 4 metres. The upstream (reservoir face) is rough pitched stone, whilst the downstream face is grassed.
5. The moorland, including the area occupied by the reservoirs, is within the Dark Peak Landscape Character Area which is an area of high landscape and nature conservation value. It is designated as the Dark Peak Site of Special Scientific Interest (SSSI), and is within part of the South Pennine Moors Special Area for Conservation (SAC) and Peak District Moors Special Protection Area (SPA) . These designations are of National (SSSI) and International (SAC/SPA) nature conservation importance. The moorland is also classified in the Core Strategy as Natural Zone.

Proposal

6. The proposal is for the carrying out of essential safety works to Swellands reservoir dam, including removing the auxiliary spillway, replacement of the primary spillway and works to existing wave wall. The proposal is described in more detail in the following report on the planning application so it is not repeated here.

Background to the proposal

7. The Canal and River Trust owns and operates four reservoirs in the vicinity of Swellands Reservoir within the Dark Peak. The reservoirs are situated on exposed moorland over 200m above residential areas. The Trust believes that there are reasons in the interest of public safety to carry out these essential safety works to the Swellands reservoir dam.
8. The application is accompanied by an Environmental Impact Assessment (EIA) and Environmental Statement (ES). The scope of the EIA was agreed with Authority through a formal 'Scoping Opinion' which was issued by the Authority in February 2022. The Scoping Opinion confirmed the environmental topics that the Authority required to be addressed in the EIA. These are:
 - i. Landscape, Landscape Character and Visual Impact;
 - ii. Ecology and Biodiversity;
 - iii. Archaeological and Cultural Heritage; and
 - iv. Access and Recreation.
 - v. Cumulative impacts with other developments

In addition, the Scoping Opinion confirmed that the EIA should set out the public interest need for the development and should describe the main alternatives that were considered.

RECOMMENDATION:

1. 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 2017 (as amended) in relation to the proposal for the carrying out of essential safety works to Swellands reservoir dam, including removing the auxiliary spillway, replacement of the primary spillway and works to existing wave wall.

2. It is determined that the proposed works to the dam are unlikely to have a significant effect on the South Pennine Moors SAC. Consequently, the development is not considered to be contrary to the provisions of Regulation 61 and 62 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Key Issues

9. Under Section 63 of the Conservation of Habitats and Species Regulations 2017 (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). Where it is confirmed that there will be a likely significant effect, the competent authority must carry out an Appropriate Assessment of those impacts.
10. All planning applications which are not directly connected with, or necessary for, the conservation management of a European site, require consideration of whether the proposed development is likely to have significant effects on that site. This consideration,

typically referred to as the ‘Habitats Regulations Assessment screening’, should take into account the potential effects both of the development itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, a competent authority, in this planning case the National Park Authority, must make an appropriate assessment of the implications of the development for that site, in view 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 European site. 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.

11. Natural England has advised the Authority that, as a competent authority under the provisions of the Habitats Regulations, it should have regard for any potential impacts that a plan or project may have on a European site.
12. In this case, the designated site is the South Pennine Moors Special Area for Conservation (SAC) and Peak District Moors Special Protection Area (SPA).

Assessment

The Habitat Regulation Assessment Process involves several stages which can be summarised as follows:

- Stage 1 – Likely Significant Effect Test (Habitats Regulations Assessment screening)
- Stage 2 – Appropriate Assessment
- Stages 3 & 4 – Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test.

13. Stage 1: This is essentially a risk assessment 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 in or screen out 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.
14. Stage 2: This is the “appropriate assessment” and this involves consideration of the impacts on the integrity of the European Site with regard to the conservation site’s structure and function and its conservation 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.
15. Stages 3 and 4: 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 on the grounds that there are Imperative Reasons of Overriding Public Interest as to why the project must proceed. Compensatory measures needed to maintain the overall coherence of the site or integrity of the national site network must be taken.

16. **Stage 1: Likely Significant Effect Test**

17. A “Report to inform a habitat regulations assessment” has been submitted with the

application. This was prepared by Penny Anderson Associates on behalf of the applicants, the Canal and River Trust and is hereafter referred to as the PAA report. At the time of writing this Planning Committee report the views of Natural England have not been received. The PAA report was commissioned by the applicants to inform a Habitat Regulation Assessment in relation to the proposed essential dam works application. The purpose of this report is to set out the information needed to enable to Peak District National Park Authority, as competent authority, to undertake a Habitat Regulations Assessment (HRA) with regard to the features of international importance for which the European sites (SAC and SPA) were designated. As noted above, the effects of the development on the Dark Peak SSSI and other, non-designated, ecological features are addressed in the Environmental Statement (ES) which accompanied the planning application for the proposed works to the dam.

18. The report produced by Penny Anderson Associates Ltd (PAA) contains the following information:

- Details of the relevant European Sites and their qualifying features (Chapter 2);
- Consideration of alternatives (Chapter 3);
- A summary of baseline surveys (Chapter 4);
- A description of the possible direct and indirect effects on the qualifying features of the European Sites (Chapter 5);
- Proposed mitigation measures and monitoring to avoid effects on the integrity of the European Sites (Chapter 6);
- Consideration of 'in-combination' effects (Chapter 7); and
- Concluding statement on the assessment of LSE and effects on integrity of the European Sites (Chapter 8).

19. The report sets out this information as far as it is needed to understand the potential effects on the qualifying features of the European Sites. The key features of, and potential effects upon, the European Sites assessed in this report are blanket bog habitat associated with the South Pennine Moors Special Area of Conservation (SAC) and qualifying bird species of the South Pennine Moors Special Protection Area (SPA), namely merlin (*Falco columbarius*), short-eared owl (*Asio flammeus*) and golden plover (*Pluvialis apricaria*).

20. Conclusion on Stage 1: Due to the location of the Development within the SAC and SPA the PAA report concluded that there would be a Likely Significant Effect (LSE) on the qualifying features of these European Sites and an Appropriate Assessment is required. Given these findings and conclusions, officers have considered that significant impacts of the project on the designated sites cannot be excluded, so it is necessary to assess them in more detail through an appropriate assessment in order to reach a conclusion as to whether an adverse effect on the integrity of the site can be ruled out.

21. **Stage 2 – Appropriate Assessment**

22. The PAA report sets out their analysis of the likely impact of the proposed development on the interest of the designated sites and assesses the significance of these, their likely impact on the features of interest and possible mitigation.

23. Effects of Proposed Development on the South Pennine Moors SAC

The HRA report sets out that the proposed development will not have an adverse effect on the integrity of the SAC or the SPA for the following reasons, which are taken from the HRA report summary and conclusions. Field surveys comprising a breeding bird survey and habitat survey were undertaken to provide a baseline against which the effects of the development can be assessed.

24. Habitats within the footprint of the development predominantly comprise species poor

acid grassland on the dam and face of Swellands Reservoir which is not a qualifying feature of the SAC. Blanket bog habitat is present on the steep, eroding gully sides below the proposed new spillway and whilst a very small area of blanket bog and flush habitat would be lost within the base of the gully, a larger area of eroding peat on the gully edges would be sensitively reprofiled and restored with moorland vegetation to stabilise the peat and prevent further drying and erosion. Best practice construction methods would be adopted to avoid any indirect harm to the adjacent blanket bog habitat and monitoring during and after construction would identify evidence of, or potential for, peat erosion and this would be remediated as part of the ongoing reservoir operation and maintenance regime.

25. Effects of Proposed Development on the South Pennine Moors SPA: Disturbance to Qualifying Bird Species During Construction:

The key effect of the Development is the potential for disturbance to SPA qualifying species, namely golden plover, short-eared owl and merlin during construction which will take place during the breeding season in 2023. As described in the baseline section of the HRA, golden plover, short-eared owl and merlin were all recorded during breeding bird surveys of a wider survey area that encompassed the route of the proposed permanent access track to Swellands Reservoir (subject to the separate planning application) as well as the area around the reservoirs in 2021. However, none of the three SPA qualifying species were found to be breeding in proximity to the dam site. Golden plover (a single pair) was recorded as a probably breeding species on moorland approximately 1.5km to the west and too distance to be impacted by construction of the reservoir works. Short-eared owl and merlin were both recorded foraging over the wider survey area and were thought likely to be breeding in the locality but there was no evidence of breeding at the Site. The HRA report concludes that the SPA qualifying species would therefore not be impacted during construction or at the operational stage of the development.

26. Mitigation measures and compensation strategy:

The HRA report concludes that with the proposed embedded mitigation measures in place, the development would have no adverse effect on the integrity of the SAC and the SPA. It adds that in the long term the development would have a minor beneficial effect on the blanket bog resources adjacent to the replacement spillway due to the stabilisation and revegetation of the peat surface that will prevent any further drying and erosion.

27. The development is considered in-combination with other nearby plans and projects, specifically the proposed permanent access track that is required in order for the dam works to take place. The proposed access track was accompanied by a separate HRA report that concluded that there would be an adverse effect on the integrity of the South Pennine Moors SAC as a result of the permanent loss of blanket bog habitat that cannot be mitigated. The need for compensation measures is associated with the permanent access track only. Off-site compensatory habitat is proposed as part of the track scheme and this is being secured through a section 106 agreement. However, as the access track and the development at Swellands Reservoir dam are inherently linked, it follows that the dam development must also demonstrate IROPI, when considered in combination with the proposed permanent access track. The IROPI case is set out in a Planning, Design and Access Statement that supports the planning application and makes the same case as that which was accepted for the permanent track development (see following section).

28. Stages 3 & 4 – Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test

29. The HRA report concludes that the proposed development would meet the requirements of the Habitat Regulations. It is therefore concluded that the works to the reservoir, taking

account of embedded mitigation measures, will not adversely affect the integrity of the SPA and the SAC. Therefore, the proposed development in isolation does not require the application of the sections 64 and 68 in respect of alternative solutions, IROPI and compensation measures. The relevance of the test is in respect of the access track, and this was addressed in the separate planning application for the track, NP/O/1221/1393.

However, notwithstanding that position, HRA and the accompanying Planning Statement make the case that the proposed development is part of a wider set of MIOS required for the reservoir also encompassing a proposed permanent vehicular access track and the track will facilitate the development. Consequently, the HRA applies the “derogation” tests so that the same process has been followed to consider the effects of the proposed reservoir works both alone and in combination with the associated access track works. This includes the consideration of alternatives and habitat compensation measures.

30. Consequently, the application did include an assessment of alternative options to the proposed works to the dam:
31. Do-nothing Option: Works to the main spillway, auxiliary spillway, dam embankment, wavewall and dam crest of Swellands Reservoir have been identified in the latest Inspecting Engineer’s Report under Section 10 of the Reservoirs Act. To ‘do-nothing’ would result in a failure to meet the legal requirement under the Section 10 report for the Applicant to have carried out these measures in the interests of safety at by October 2023.
32. Reservoir Discontinuance: Discontinuing the reservoirs would impact on the public interest. Discontinuance would have a direct effect on water supply to the Colne Valley area as the water from the reservoirs is used to provide water supply under agreement between the Applicant and Yorkshire Water (the ‘Scammonden Agreement’).
33. Alternative Reservoir Works: The MIOS are very specific and provide little scope for any alternative solutions, which could only consist of options to either rebuild the main spillway and infill the auxiliary spillway or repair both existing spillway structures. Through an engineering and environmental review, it was concluded upgrading of the main spillway would be most suitable solution with the least impact to its surroundings and the current flow regimes within the downstream environment.
34. Alternative Design: A number of design iterations were considered before reaching the preferred spillway solution that would replace both the main and existing auxiliary spillways. The key design consideration, aside from providing sufficient flow capacity, was to minimise the construction footprint and associated environmental impact and this is achieved by the labyrinth design which sits largely within the existing spillway channel with minimal encroachment into adjacent habitats and no requirement to increase the channel width. The other key design consideration is the external appearance of the development, in particular the materials used to face the extended wavewall and replacement spillway, and footbridge
35. Construction Programme: The key aspect of programme in respect of the HRA is the proposed commencement date, anticipated to be from April 2023 onwards. This would coincide with the bird breeding season and would, therefore, potentially result in an unavoidable impact on the qualifying features of the South Pennine Moors SPA. This start date is driven by the legal requirement to have completed the statutory measures identified in the Reservoirs Act Section 10 report by October 2023.
36. The application also repeated the MIOS justification set out in the application for the permanent track, emphasising that the proposed reservoir dam works and the other MIOS measures are necessary for Imperative Reasons of Overriding Public Interest

(IROPI), as defined in regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Conclusion

37. The HRA considers the effects of the proposed development on the South Pennine Moors SAC and South Pennine Moors Phase 1 SPA and concludes that there will be no adverse effect on the integrity of the qualifying features and an Appropriate Assessment is not considered necessary.
38. Desk-based assessments and field surveys have been completed to provide a baseline to assess the impact of the proposed development.
39. The works to the dam have been designed to provide the least environmentally damaging solution that fulfils the need to undertake the legally required Safety Measures identified in the most recent Reservoirs Act, Section 10 Inspector's report, by the required completion date of 31 October 2023 for the completion of the dam safety works, as well as facilitating on-going reservoir maintenance.
40. The PAA report concludes that the proposed development would meet the requirements of the Habitat Regulations. Having considered the report, officers agree that the report makes a thorough assessment of the likely environmental effects on the designated area and that it provides a justification for the proposed scheme, setting out suitable mitigation and compensation.

41. **Human Rights**

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

42. **List of Background Papers** (not previously published)

Nil

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