

JNB

Date: 17 February 2017
Our ref: 207206
Your ref: NYM/2017/0045/FL



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Mrs J Bastow
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BY EMAIL ONLY

Dear Mrs J Bastow

Planning consultation: Application in respect of erection of bird hide at Brown Rigg Moor
Location: Brown Rigg Moor, Fylingdales Grid Reference 492240 500282

Thank you for your consultation on the above dated 27 January 2017 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.

CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED)

Internationally and nationally designated sites - objection/further information required

The application site is within or in close proximity to a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). The application site is in close proximity to the North York Moors Special Protection Area (SPA) and Special Area of Conservation (SAC) is a European site. The site is also notified at a national level as the North York Moors Site of Special Scientific Interest (SSSI). Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have¹. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered

¹ Requirements are set out within Regulations 61 and 62 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 61 and 62 are commonly referred to as the 'Habitats Regulations Assessment' process. The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/>

by your authority, i.e. the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. Natural England advises that there is currently not enough information to determine whether the likelihood of significant effects can be ruled out. We recommend you obtain the following information to help undertake a Habitats Regulations Assessment:

Confirmation that:

- The structure will be installed outside of the bird nesting season (i.e. not between 1st March and 31st July).
- There is no access to the application site through the North York Moors SPA and SAC.
- There will be no storage of construction or waste materials within the North York Moors SPA and SAC.
- No drainage into the North York Moors SPA and SAC.

The applicant should seek to make the argument (backed by appropriate levels of information) that it can be determined at this stage in the process.

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WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

Nationally designated sites - objection/further information required

This application is within Billar Howe Dale Site of Special Scientific Interest (SSSI) and in close proximity to the North York Moors SSSI. Natural England objects to this development on the grounds that the application, as submitted, is likely to damage or destroy the interest features for which Billar Howe Dale SSSI and the North York Moors SSSI have been notified. Our concerns are set out below:

- The use of creosote or other toxic wood treatments should not be permitted.
- The structure must be installed outside of the bird nesting season (i.e. not between 1st March and 31st July).
- The structure must not be located on dwarf-shrub heath vegetation/wetland habitats; rather it should be located on bracken beds.
- There should be no vehicle access to and from the hide.
- No stoning/gravel will be permitted on the floor of the structure or access route.
- Should the hide become redundant then it will be dismantled and associated materials removed from site. Any further restoration works required should be discussed in advance with NE and consent for operations sought.
- Construction and waste materials will not be stored within the SSSI and will be removed from site immediately following the completion of works.
- No drainage will be permitted.
- There is no access to the application site through the North York Moors SSSI
- There will be no storage of construction or waste materials within the North York Moors SSSI

Should the application change, or if the applicant submits further information relating to the impact of this proposal on the SSSI aimed at reducing the damage likely to be caused, Natural England will be happy to consider it, and amend our position as appropriate.

If your Authority is minded to grant consent for this application contrary to the advice relating to Billar Howe Dale SSSI and North York Moors SSSI contained in this letter, we refer you to Section 28I (6) of the *Wildlife and Countryside Act 1981* (as amended), specifically the duty placed upon your authority, requiring that your Authority;

- Provide notice to Natural England of the permission, and of its terms, the notice to include a statement of how (if at all) your authority has taken account of Natural England's advice, and
- Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.

These conditions are required to ensure that the development, as submitted, will not impact upon the features of special interest for which both Billar Howe Dale SSSI and North York Moors SSSI are notified.

If your Authority is minded to grant consent for this application without the conditions recommended above, we refer you to Section 28I (6) of the *Wildlife and Countryside Act 1981* (as amended), specifically the duty placed upon your authority, requiring that your Authority;

- Provide notice to Natural England of the permission, and of its terms, the notice to include a statement of how (if at all) your authority has taken account of Natural England's advice; and
- Shall not grant a permission which would allow the operations to start before the end of a period of 21 days beginning with the date of that notice.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949 THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

Protected Landscapes

The proposed development is for a site within a nationally designated landscape namely North York Moors National Park. Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal. The policy and statutory framework to guide your decision and the role of local advice are explained below.

Natural England has not visited the site and note that there are no photographs or any other visual aids provided to facilitate assessment of landscape impacts. Based on the information provided considering the nature and scale of the proposal we consider impacts are likely to be relatively small. We have the following observations which we hope you find helpful.

We note that the Landscape Character Assessment for the Eastern Moors points out that detractors in this area include the defence site at Fylingdales, the overhead electricity line to Whitby, Wheeldale Plantation, car parks, the A169 and A171 and its associated traffic and the scars created by the footpaths, shooting tracks and quarries of the moorland edges. Furthermore that the impact of Fylingdales on the night sky is significant.

In addition the National Character Area profile for this area observes that maintaining open, undeveloped areas of moorland which retain panoramic views, visual connection with surrounding areas and a sense of wildness can be encouraging by the maintenance of hefted flocks and discouraging new fencing and other man-made infrastructure.

There may be a risk of setting a precedent for future bird hides and we advise that future proposals would be improved if there was more visual information to help assess the impact. For example photographs across the site from publicly accessible locations as we would expect with an LVIA, preferably with the hide superimposed. This structure is relatively small so I do not consider it is necessary for a full LVIA

We also consider that there is a need to ensure that 'clutter' does not develop around the hide, this could include bird feeders, signage etc.

There may also be an opportunity here for the hide to be open to all, it is on open access land and near a footpath. However access to the hide needs management there is potential for a track to become eroded across the open land from the caravan park.



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Your decision should be guided by paragraph 115 of the National Planning Policy Framework which gives the highest status of protection for the 'landscape and scenic beauty' of AONBs and National Parks. For major development proposals paragraph 116 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies.

The landscape advisor/planner for the National Park will be best placed to provide you with detailed advice about this development proposal. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the park's management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape's sensitivity to this type of development and its capacity to accommodate the proposed development.

The statutory purposes of the National Park are to conserve and enhance the natural beauty, wildlife and cultural heritage of the park; and to promote opportunities for the understanding and enjoyment of the special qualities of the park by the public. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm those statutory purposes. Relevant to this is the duty on public bodies to 'have regard' for those statutory purposes in carrying out their functions (section 11 A(2) of the National Parks and Access to the Countryside Act 1949 (as amended)). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

Protected Species

We have not assessed this application and associated documents for impacts on protected species.

Natural England has published [Standing Advice](#) on protected species.

You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation.

The Standing Advice should not be treated as giving any indication or providing any assurance in respect of European Protected Species (EPS) that the proposed development is unlikely to affect the EPS present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence is needed (which is the developer's responsibility) or may be granted.

If you have any specific questions on aspects that are not covered by our Standing Advice for European Protected Species or have difficulty in applying it to this application please contact us with details at

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 please contact Merlin Ash at
or on For any new consultations, or to provide
further information on this consultation please send your correspondences to

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Merlin Ash
Yorkshire and Northern Lincolnshire Team
Natural England

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