

Farzana Tabasum
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2024/147529/01-L01
Your ref: 2024/92236

Date: 18 October 2024

By email: dc.admin@kirklees.gov.uk

Dear Farzana

DEMOLITION OF EXISTING INDUSTRIAL BUILDING AND ERECTION OF STORAGE AND DISTRIBUTION BUILDING WITH CAR PARK AND ASSOCIATED ENGINEERING WORKS – WOOD STREET MILLS, WAKEFIELD ROAD, SCISSETT, HUDDERSFIELD, HD8 9JS

Thank you for consulting us on this application which we received on 10 September 2024. We **object** to this proposal for the reasons detailed below.

Objection – Development over/too close to existing culvert – unlikely to be able to grant Flood Risk Activity Permit (FRAP)

The proposed demolition and construction is taking place on top of an existing main river culvert carrying the River Dearne, therefore the proposed development will require a Flood Risk Activity Permit, as explained below, in addition to planning permission.

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Environment Agency position

We object to the proposed development, due to its impacts on Water Framework Directive (WFD) requirements. We recommend that planning permission is refused.

Reasons

In determining the FRAP for this development, we will consider how the development affects water biodiversity and the wetland environment, in line with the relevant legislation. We'll also assess its compliance with the Humber River Basin Management Plan (RBMP). The RBMP states that the water environment should be protected and enhanced to prevent deterioration and promote the recovery of water bodies. We therefore seek the removal of existing culverts wherever possible.

The proposed development may prevent the reversal of a substantial loss of watercourse habitat due to building over, and within 8 metres of, the existing culvert. There is a significant risk that the development may prevent achievement of good ecological potential and therefore cannot proceed except under the provisions of Article 4.7 of the Water Framework Directive.

The river is entirely culverted within the red line boundary (about 30 metres in length) but, immediately downstream, the Dearne is open channel. Upstream of the development, the river is intermittently in culvert over approximately a 200 metre length through the mills, but then runs in an open channel above that. As the site is being redeveloped, this provides a rare opportunity to incorporate WFD mitigation measures into the development by de-culverting this section of the River Dearne, in accordance with the Humber RBMP and local planning policy. The *Dearne from Source to Bentley Brook GB104027063220* water body is currently failing to achieve its objective of Good Ecological Potential (the current status is Moderate). The water body is failing for its mitigation measures assessment, as identified measures and associated actions have not been put in place, including the mitigation measure 're-opening culverts'.

This objection is supported by paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Opportunities to incorporate biodiversity in and around developments should be encouraged.

This proposal is also contrary to Kirklees Local Plan policies LP27 Flood Risk and LP34 Conserving and enhancing the water environment.

Policy LP27 states:

Proposals involving **building over existing culverts** or the culverting or canalisation of water courses **will not be permitted** unless it can be demonstrated to be in the interests of public safety or to provide essential infrastructure and that there will be no detrimental effect on flood risk and biodiversity. Where feasible, development proposals should incorporate **re-opening of culverts**, modification of canalised water courses and consideration of mitigation measures to achieve a more natural and maintainable state.

Policy LP34 states that:

Proposals must ensure no deterioration of water courses or water bodies (including groundwater) by conserving and, where practicable, enhancing the natural geomorphology of watercourses, including **reinstating watercourses to their natural state through removal of modifications resulting from past industrial uses**, and

Are encouraged to **make positive progress towards achieving ‘good status or potential’** under the Water Framework Directive in surface and groundwater bodies.

Overcoming our objection

It may be possible to overcome our objection by demonstrating, to the satisfaction of the LPA, that the applicant has considered and assessed all practical options for complete or partial de-culverting of the River Dearne in the design of their development, and for maintaining an 8 metre buffer zone from the watercourse wholly, or substantially, free of built development.

Modified proposals incorporating such de-culverting and buffer zone should be submitted.

If the applicant has considered and rejected options for de-culverting and/or an undeveloped buffer zone, they must provide justification.

Planning Advice Service

Please advise the applicant that if they would like to get further specific advice on how to overcome our objection, they can take advantage of our planning advice service. We can offer services including meetings, telecons and reviews of revised information prior to formal submission. We encourage the applicant to contact us directly to discuss this further.

We currently charge £100 plus VAT per officer per hour. We will provide you with an estimated cost for any further discussions or review of documents. The standard terms for our charged for service are available [here](#).

Note to LPA and applicant

If our objection is resolved, we ask to be re-consulted and we will provide further comments and/or conditions regarding biodiversity and ecology.

We have not made any comments at this stage relating to other matters such as flood risk on the site and will consider the need to include conditions to secure any flood risk mitigation we feel appropriate after resolving the objection.

As stated above, the proposed development will require a FRAP. As part of the permit application, it will need to be demonstrated how both temporary and permanent works will not compromise the structural integrity of the culvert. The applicant will need to determine if any works to the culvert are needed to achieve this and complete those works, as necessary.

We also provide the following informative comments which we will include on any future response.

INFORMATIVES

Advice to LPA/applicant – Risk of offence under Act/Regulations

The applicant could be liable to criminal prosecution under the

- Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000)
- Conservation of Habitats and Species Regulations 2017 for European Protected Species

All species of bat in Britain are protected under the above legislation. It is illegal to kill, injure or disturb bats, obstruct access to bat roosts or damage or disturb bat roosts. Under the law, a roost is any structure or place used by bats for shelter or protection. Because bats tend to re-use the same roosts year after year, the roost is protected whether bats are present at the time.

For the existing buildings, only a preliminary assessment has taken place, and some buildings were found to have moderate bat roosting potential. The Bat Conservation Trust's good practice guidelines for surveys says:

“Where further surveys and mitigation are required, the preliminary ecological appraisal report in isolation will not be adequate for submission to an LPA in support of a planning application. The report will only be adequate for this purpose if there is no need for further surveys and mitigation.”

The Preliminary Ecological Appraisal Report (PEAR) recommends further surveys on buildings B3, B6, B7, B8, B9, and B10, to confirm the status of roosting bats. These must be carried out prior to development, to assess possible impacts and to determine requirements for mitigation and species licensing.

The PEAR also does not appear to have assessed the suitability of the river culvert for roosting bats, or considered whether this may be impacted by development.

We strongly recommend that the bat survey report be submitted to the LPA prior to granting planning consent, to mitigate the risk of harm to a protected species and the risk of a wildlife offence. Failure to take relevant habitats and species into account may leave the determination of the application open to challenge.

Advice to LPA/applicant – Non-Environment Agency lead priority species and habitats/species of conservation concern.

Evidence shows that the proposed development poses a risk to a priority habitat or species that is listed in section 41 of the NERC Act 2006, ie

Lowland Mixed Deciduous Woodland

The impact of the development on trees, particularly on the south bank, has not been assessed. As stated in the applicant's PEAR, most of the woodland within the southern part of the site is mapped as part of the Kirklees Wildlife Habitat Network (KWHN) and is of local strategic importance as part of a riparian wildlife corridor. The impacts on these trees must be quantified, assessed and, if necessary, mitigated.

Bats (all species)

As recommended in the PEAR, a sensitive lighting strategy should be submitted, to ensure development does not introduce any additional light spill onto the woodland or watercourse that may affect bats and other species associated with the watercourse.

We strongly recommend that this is considered when the application is determined. Failure to take relevant habitats and species into account may leave the determination of the application open to challenge.

Advice to LPA – Biodiversity Net Gain

The BNG assessment indicates that the 10% gain will not be achieved in either Habitat or Watercourse units, and it is proposed to compensate for those obligations off-site rather than considering opportunities to achieve on-site gains, such as by enhancing areas of retained woodland (as suggested in the PEAR). The Biodiversity Gain Hierarchy, which is set out in Articles 37A and 37D of the Town and Country Planning (Development Management Procedure) (England) Order 2015, emphasises that on-site biodiversity gains should be considered first, followed by registered off site biodiversity gains and - as a last resort - biodiversity credits. Planning authorities must consider how the Biodiversity Gain Hierarchy has been applied and if it has not been applied the reason for that or absence of a reason when determining whether to approve the Biodiversity Gain Plan.

If you need any clarification or further information, please contact me.

Yours sincerely

Bev Lambert
Sustainable Places - Planning Advisor

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