
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 03-Aug-2023

Subject: Planning Application 2023/91093 Construction of permanent vehicular access track and the erection of fencing (within a site of special scientific interest) Land adj, March Haigh Reservoir, Off Blake Lea Lane, Marsden, Huddersfield, HD7 6NJ

APPLICANT

Nick Wild, Canal & River
Trust

DATE VALID

11-Apr-2023

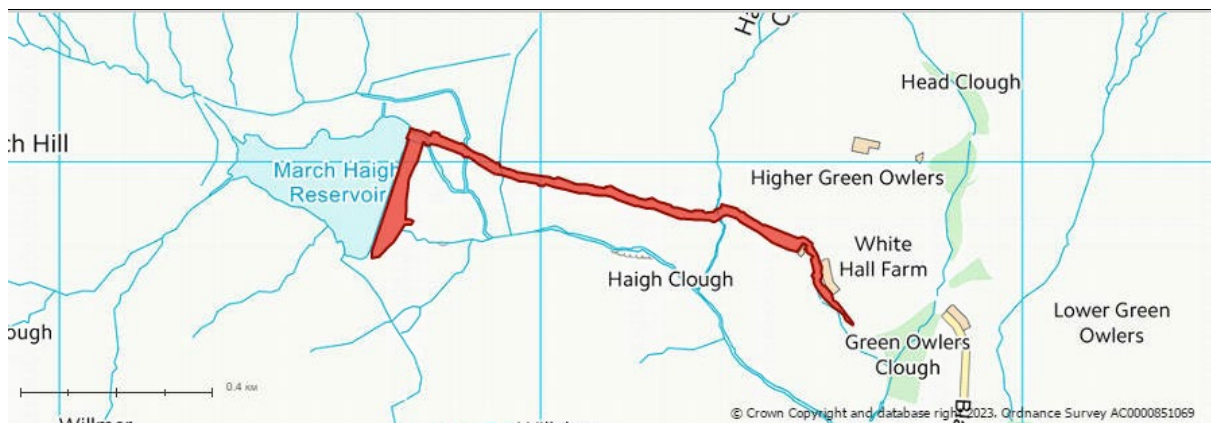
TARGET DATE

01-Aug-2023

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Colne Valley

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application, subject to the response of the Secretary of State, under Regulation 64(5) of The Conservation of Habitats and Species Regulations 2017.

If no objection is received, delegation of the approval of the application will proceed to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

1. Ecological compensatory measures – To provide a financial contribution to compensate for the ecological impacts of the development (likely to be relayed to the National Trust in order to diversify at least 3.5 ha of purple moor grass dominated vegetation at the plateau areas around Round Hill – east of Ellen Clough and north of Deer Hill Conduit, within Holme Moor).

In the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1 This is an application for full planning permission for the construction of a permanent vehicular access track and the erection of fencing. The track is legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act for essential safety works, ongoing inspection and emergency access. The site is within a Site of Special Scientific Interest).
- 1.2 The application is presented to the Strategic Planning Committee as the proposal is a non-residential development on a site larger than 0.5 hectares. This is in accordance with the Council's Scheme of Delegation.
- 1.3 A Habitat Regulation Appraisal has been attached as an appendix to this application. This document details the 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 proposed development. The document details the mitigation and compensatory measures required to ensure that the impacts on the designated sites are accounted for, allowing the proposed development to proceed in line with Kirklees statutory duties.

Procedural matter

- 1.4 Given the nature of this development, the Secretary of State has been notified under Regulation 64(5) of the Conservation of Habitats and Species Regulations 2017.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises an area of approximately 2.8 hectares between March Haigh Reservoir and Blake Lea Lane, Marsden. The site incorporates a linear route of a proposed access track from Blake Lea Lane through White Hall Farm towards the spillway of March Haigh and includes land across the face of the reservoir embankment.
- 2.2 The site is situated within the Green Belt on the Kirklees Local Plan and also falls within European-level protected sites, namely the South Pennines Moors Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) and the South Pennine Moors Phase 2 Special Protection Area (SPA).
- 2.3 A number of Public Rights of Way (PROW) surround the site, with COL/195/40 intercepting the proposed vehicular route. To the south-east of the site are two Grade II listed buildings, White Hall Barn and Farm.

3.0 PROPOSAL:

- 3.1 The application seeks full planning permission for the Construction of permanent vehicular access track legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act 1975 for essential safety works, ongoing inspection and emergency access and the erection of fencing.
- 3.2 The proposed vehicular access track would facilitate ongoing inspection and maintenance, as well as providing a direct route for emergency responses. The track would be used by an inspection vehicle (a 4x4 or medium sized van) three times per week, with weekly maintenance visits using vehicles such as welfare vans and tippers. The track would also facilitate infrequent major construction works.
- 3.3 The proposed track would follow the route of the previous vehicular access track, which was constructed in 1999 and later re-instated as moorland habitat. The track would be constructed from local stone and there would be several gates restricting unauthorised access along it.
- 3.4 New stock fencing is proposed to the bottom of the embankment to the reservoir, and to fix the existing fencing around the trees. This would be approximately 4 to 5m from the toe of the embankment. The fencing would be a maximum of 2.1m in height.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 At the application site:

1999/91144 Variation of Condition 3 relating to period of works to be carried out on previous permission 98/62/91631 for formation of access track (within Site of Special Scientific Interest) – Granted.

1998/91631 Formation of access track (within Site of Special Scientific Interest) – Granted.

4.2 Pre application:

2022/21648 Pre application for reservoir works – Comments made.

2022/21665 EIA Scoping Opinion – EIA required.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

5.1 Amended/additional information has been required during the course of this application. These are as follows:

- An update to the HRA.
- Additional information to demonstrate the tracks relationship with the PROW, including cross sections.
- A written Scheme of Archaeological Investigation.
- A full Construction Environmental Management Plan.
- A full Construction Traffic Management Plan.
- An update to the Biodiversity Net Gain Assessment.
- Confirmation regarding the amount of peatland to be lost.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 The site is situated within the Green Belt on the Kirklees Local Plan and also falls within the European protected sites, such as the South Pennines Moors Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) and South Pennine Moors Phase 2 Special Protection Area (SPA).

6.3 Kirklees Local Plan (2019):

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP7 – Efficient and effective use of land and buildings
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking

- LP23 – Core walking and cycling network
- LP24 – Design
- LP27 – Flood risk
- LP28 – Drainage
- LP29 – Management of water bodies
- LP30 – Biodiversity & Geodiversity
- LP31 – Strategic Green Infrastructure Network
- LP32 – Landscape
- LP34 – Conserving and enhancing the water environment
- LP35 – Historic environment
- LP36 – Proposals for mineral extraction
- LP37 – Site restoration and aftercare
- LP38 – Minerals safeguarding
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvements of environmental quality
- LP53 – Contaminated and unstable land

6.4 Supplementary Planning Guidance / Documents:

- Biodiversity Net Gain Technical Advice Note (June 2021)
- Planning Applications Climate Change Guidance (June 2021)
- Highway Design Guide SPD (November 2021)

6.5 National Planning Guidance:

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment
- Chapter 17 – Facilitating the sustainable use of minerals

Climate change

- 6.6 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

6.7 On the 12th of November 2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the council would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised as major development, affecting the setting of public rights of way and listed buildings and as an Environmental Impact Assessment development (EIA). The site has been advertised via site notices, neighbour notification letters and the press. Final publicity expired on the 27th May 2023. In response to the above publicity, no representations have been received.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways DM: In support of the application, subject to conditions regarding a Construction Access Management Plan, a Defects Survey and details of any Remedial works being attached to the decision, in the case of an approval.

KC Lead Local Flood Authority: Officers accept the conclusion of the Flood Risk Assessment and that the proposed works will not increase off-site flood risk.

Natural England: Objects to the proposal, as the development is considered to have an adverse impact on the integrity of South Pennine Moors Phase 2 Special Protection Area (SPA) and South Pennine Moors Special Area of Conservation (SAC) and damage or destroy the interest features for which South Pennine Moors Site of Special Scientific Interest (SSSI) has been notified.

The Environment Agency: The site is within Flood Zone 1 and is not within 20m of a main river, therefore we have no comments to make in relation to flood risk. However, informative advice in relation to reservoirs has been provided.

Peak District National Park: Given the distance of the development from the National Park, the lack of reasonable alternatives, the delivery of compensatory habitat enhancement and the overall public interest of the delivery of the scheme; the Peak District National Park Authority are broadly supportive of the proposals.

Yorkshire Water: We have no observation comments to make as there is no public infrastructure recorded in the area.

8.2 **Non-statutory:**

KC Trees: No objection to the proposal, as no trees would be affected.

KC Public Rights of Way (PROW): Additional information would be required via condition in the case of an approval. This should include additional details to where the access road would cross the existing public footpath (COL/195/40) and the protection and safety measures for the footpath during construction.

KC Landscape: The submitted proposals are acceptable and Officers have noted that work has been done to ensure that the visual impact of the track is kept to a minimum. Provided the development is undertaken in accordance with the submitted information, Officers have no objection to the scheme.

KC Highways Structures: There does not appear to be any proposed retaining structures next to the existing PROWs.

KC Environmental Health: Officers do not consider there to be any significant environmental health impacts with this development. However, there is a potential for loss of amenity to the occupiers of the nearby properties from noise from the construction phase of the development. Therefore, a note recommending the appropriate hours for noisy construction work will be attached to the decision notice in the case of an approval.

KC Conservation and Design: No objection to the proposal.

KC Crime Prevention: No comments on the proposal.

KC Ecology: Having reviewed the submitted documents and the Habitats Regulation Assessment, it is anticipated that the proposed mitigation and compensatory measures will ensure that the development proposed will result in a long-term biodiversity net gain. However, to ensure this, a number of conditions are proposed.

KC Emergency Planning: No response received.

West Yorkshire Archaeology (WYAAS): The Written Scheme of Investigation has been considered acceptable.

KC Minerals: Given the justification provided as to why some peat needs removing from the site "due to it being highly unconsolidated, have contamination from underlying stone from the previous temporary track and/or have significant amounts of Molinia and Juncus vegetation/roots", no further comments are made.

RSPB: No response received.

West Yorkshire Fire and Rescue: No response received.

Yorkshire Wildlife Trust: No response received.

West Yorkshire Ecology: No response received.

Oldham Council: No response received.

National Trust: No response received.

9.0 MAIN ISSUES

- Background
- Environmental Impact Assessment
- Land use and principle of development (including Green Belt Assessment)
- Visual amenity and landscape
- Ecological considerations
- Heritage and Archaeology
- Residential amenity
- Highway issues
- Drainage issues
- Minerals
- Other matters
- Representations
- Planning obligations
- Conclusion
- Appendices – Habitats Regulation Assessment (HRA)

10.0 APPRAISAL

Background and justification and need for the need of the track

10.1 The Canal & River Trust ('the Trust') seeks planning permission to construct an essential permanent access track from Blake Lee Lane to the spillway of March Haigh Reservoir. The track will be used for surveillance, operation, maintenance and emergency response.

10.2 A summary of the Trusts position and requirement for the proposal is as follows:

"The Trust owns and operates 72 large raised reservoirs in England which fall under the ambit of the Reservoirs Act 1975 ('The Act'). 68 of these reservoirs are classed as high-risk structures, with likely loss of life in the event of a breach.

The Trust owns several reservoirs located high on the moorland above and around the Standedge Tunnel, built to supply water to the Huddersfield Narrow Canal. The reservoirs were built in the late eighteenth and early nineteenth centuries, and now require constant monitoring and repair works to maintain their safe operation. This presents difficulty in terms of harsh weather, remote location and difficult terrain. Until recently, several of the reservoirs were not served by permanent access tracks, making routine monitoring difficult. Following the construction of access tracks to Swellands and Black Moss reservoirs in 2022, March Haigh is now the only reservoir owned by the Trust which does not have a permanent access track.

In 2019, an emergency event occurred at Toddbrook Reservoir, where the face of the spillway began to break up during high flows. The weather was clear enough to allow Chinook helicopters to be deployed, and they were able to drop sand/cement bags to improve the stability the spillway face. However, the pumps and pipes to enable critical fast dewatering had to be brought in by road as they were too large and heavy for the helicopters. Without road access the

situation at Toddbrook could have escalated, and this incident demonstrates the importance of rapid implementation of emergency procedures. The government has since issued advice tightening requirements for safe reservoir management, and more onerous legislation is under preparation. Any emergency response at March Haigh Reservoir would require vehicular access for delivery of pumps, bulk materials, temporary structures and personnel. The installation of a permanent access track is essential to the safe operation of the reservoir.

March Haigh Reservoir was inspected under Section 10 of The Act in February 2021. The purpose of the statutory inspection is to assess the safety of the dam and maintain the safety of the downstream population. The Inspecting Engineer, a member of the All Reservoirs Panel of Engineers, has the authority to raise issues as Matters in the Interest of Safety (MIOS), which then become statutory obligations for the Undertaker to rectify within a set timescale. Eight measures were required to maintain the safe operation of the dam, including the provision of a permanent access track to the dam:

6. (a)_ Provide a permanent access track to assure vehicular access to the dam at all times to facilitate surveillance, maintenance and emergency activities. - To be completed within 3 years from the date of this report, subject to (b) temporary arrangements to facilitate safety measures being reinstated without undue delay and no later than 9 months from the date of this report

The Trust is therefore under a strict legal obligation to undertake the necessary works to implement this measure, and to do so by the time stipulated by the independent engineer”.

- 10.3 Within paragraph 5.1 of the ‘Justification for a Permanent Access Track’ document, consideration of alternatives to a permanent access track has been undertaken. This includes:

Alternative routes:

- 10.4 In this case, it has been concluded that there are no alternative routes which would provide appropriate access required for the vehicles and equipment needed during an emergency or for maintenance. Using the same alignment as the temporary track reduces the need to construct on undisturbed land.

Reservoir Discontinuance:

- 10.5 Discontinuing the reservoir has been considered; however, it would potentially put the water supply to the Huddersfield Narrow Canal at risk. Therefore, the justification document sets out why the discontinuation of the reservoir would not be in the public interest summarised as follows:

*“- Failure to act upon the legally binding Recommendations as to Measures in the Interest of Safety by the statutory deadline;
- Loss of public water supply via both reservoir storage and catchment area under the Scammonden Agreement;
- Potential for loss of reservoir water attenuation and the increased risk of flooding, due to flows from the 3.1km² catchment area;
- A significant reduction in the security of supply of water to the Huddersfield Narrow Canal, with navigational and environmental impacts;*

- *Direct impact on the South Pennines SSSI, SPA and SAC, where the reservoirs are located. In particular, mitigation would be required for reduction in water table and the potential for peat drying out, with consequences for climate change and possible increased wildfire hazard in the susceptible area (two large wildfires happened in 2020, one being on Black Moss).*
- *The requirement to construct a substantial temporary access track given the significant scale of the discontinuance works;*
- *Future access required to allow the Trust to fulfil any ongoing inspection, and maintenance obligations;*
- *Impact on the landscape and visual receptors”.*

Alternatives methods if the access track were not a measure in the interest of safety (MIOS):

Low Ground Pressure All-terrain Vehicles

- 10.6 The Trust have considered the regular use of alternative vehicles such as a Hagglund/Softrack, which would form informal irregular tracks and impact on the moorland habitats, with informal tracks likely to evolve and widen over time in an unmanaged way as vehicles sought to avoid ruts and damaged areas, thereby likely causing greater damage over the long term than a well-designed access track. All-terrain vehicles do not satisfy all access requirements, nor can they carry the pumps and plant required to provide maintenance or emergency access.

Helicopter Access

- 10.7 The Trust have considered the use of helicopters for the major civil engineering works, emergency access and ongoing operation and maintenance. It has been concluded that it would not be *“possible to use helicopters in bad weather, when access would be more likely to be required in an emergency. Helicopters have insufficient load capacity for the equipment required. Also, the altitude and location of the reservoir can mean that helicopter access is prevented by wind or cloud and cannot be relied upon as the primary means of emergency response. The method is also not feasible for the regular small scale maintenance that is necessary and does not resolve safety concerns with the surveillance visits require two times per week as a minimum”.*
- 10.8 It has also been noted that the landing area required would need to be large and be sited within the SAC/SPA which in itself may require a planning application, and/or a Habitat Regulations Assessment.

Temporary Access Track

- 10.9 The proposed route would be the same as the temporary access track used previously at March Haigh in order to complete major maintenance at the reservoir in 1999. If a similar approach was to be adopted it would not address the access requirements for regular inspection and maintenance. Therefore, failure to complete regular routine maintenance can lead to defects developing with an increased risk of dam failure. A temporary track would also not be a practicable means of access in case of an emergency.

10.10 Therefore, having taken into account the above, Officers consider the current proposal to be the most appropriate solution for providing the regular inspection and maintenance and in the case of an emergency, subject to the impact on the green belt, landscape, ecology, visual amenity and all other material planning considerations below.

Environmental Impact Assessment

10.11 An Environmental Impact Assessment (EIA) Screening Opinion was sought by the applicant in relation to the proposed development. It was concluded that the proposed development of the application site constitutes EIA development for which an EIA Environmental Statement (ES) would need to be submitted. As such, an ES has been submitted with this application, in order to ensure the assessment of the proposed development is thorough and robust.

10.12 The ES has been submitted in the form of:

- Volume 1: Main Text
- Volume 2: Technical Appendices to include:
 - 1.1 EIA Scoping Report
 - 1.2 Kirklees Council Scoping Opinion
 - 3.1 General Arrangement Plan
 - 3.1a General Arrangement Sheet 1
 - 3.1b General Arrangement Sheet 2
 - 3.1c General Arrangement Sheet 3
 - 6.1 Representative Viewpoint Photos and Photomontages
 - 6.2 Accurate Visual Representation Methodology
 - 7.1 Phase 1 Habitats and National Vegetation Classification Survey
 - 7.2 Breeding Bird Survey Report
 - 7.3 Water Vole and Notable Species;
 - 7.4 Fungi Survey
 - 7.5 Desk Review
 - 8.1 Hydrology Assessment and Peat Depth Mapping
 - 9.1 Location of Public Rights of Way
- Volume 3: Non-Technical Summary

10.13 The matters considered in the ES are:

- Chapter 6 – Landscape and visual impact
- Chapter 7 – Ecology and Biodiversity assessment
- Chapter 8 – Peat soils and Hydrology
- Chapter 9 – Access and Recreation

10.14 Table 1.1 of the applicants ES (Volume 1) states that air quality, climate change, highways and transport, noise and vibration, socio-economic, soils, geology and agricultural land quality and water, resources, surface water and ground water hydrology are not included (i.e were “scoped out” of) the ES.

10.15 The ES is cross-referenced to other application documents, where necessary.

10.16 The Planning Casework Unit of the Department for Levelling Up, Housing and Communities (DLUHC) were notified on the 18/04/2023 that an application accompanied by an ES had been received by the council. No comments on the proposals were received from the DLUHC in response.

- 10.17 Officers' assessment of the submitted ES is set out throughout this committee report.

Land use and principle of development

Spatial strategy

- 10.18 Policy LP1 addresses the Council's presumption in favour of sustainable development, in line with Paragraph 11 (c) of the NPPF (Chapter 2). The site lies in the Huddersfield Rural area under Policy LP2. This identifies the strengths/opportunities for growth and challenges to growth facing the defined area. This notes the difficulties of providing new development within European protected sites, such as the South Pennines Moors SAC and SSSI and South Pennine Moors Phase 2 SPA. Policy LP3 states that proposals should reflect the specific considerations of the Council's Spatial Strategy under Policies LP1 and LP2.
- 10.19 The proposal would form works under the legislative requirements of the Reservoirs Act 1975, as a Measure in the Interest of Safety (MIOS), to allow vehicular access to March Haigh Reservoir to facilitate necessary safety works to be undertaken.

Green Belt

- 10.20 The application site is situated within the Green Belt on the Kirklees Local Plan. As such, the proposal has been assessed against Chapter 13 of the NPPF.
- 10.21 Paragraph 147 of the NPPF states inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, paragraph 148 advises that planning authorities should ensure that "substantial weight" is given to any harm to the Green Belt. It also states that "very special circumstances will not exist unless the substantial harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".
- 10.22 The application is seeking planning permission for the erection of a permanent access track legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act for essential safety works for March Haigh Reservoir.
- 10.23 Paragraph 150 of the NPPF states that Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:
- (a) mineral extraction;
 - (b) engineering operations;
 - (c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
 - (d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
 - (e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
 - (f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

10.24 In this case, the development is considered to fall under sub paragraphs (b) engineering operations and (c) local transport infrastructure, which can demonstrate a requirement for a green belt location, subject to the works preserving the openness of the Green Belt and not conflict with the purposes of including land within it.

10.25 Paragraph 001 of the PPG on Green Belt development states that:

“When assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation”.*

10.26 The applicants have proposed a number of measures in order to mitigate the impact to which the access track and stock fencing would have on the openness of the Green Belt. The proposed track would largely follow the route of the previous track (approved under application 1998/91631), however, Officers note that the track now proposed would need to be widened to 4m to allow for standard vehicle use and for cranes and dumpers when the transportation of equipment and material is required. The 4m ‘running’ width would allow for vehicles to utilise the track without detriment to the edges. It would allow natural edges to be formed with no kerb line or retained edge softening the edges over time. The peat excavated from the temporary track would be utilised to obscure the edges of the track.

10.27 Three passing places have been proposed on the plans submitted, due to the number of construction vehicles using the track during planned maintenance or in an emergency. These have been positioned in strategic locations to aim to give optimal sight distance between them. The passing places have been designed so that they are of an adequate size for vehicles to pull over, however, have been kept to a minimum in order to mitigate any visual harm to the landscape.

10.28 With regards to materials, these have been carefully selected to minimise the impact upon the landscape. This would include local stone as this is a characteristic of the local area. As set out within the justification document, the depth of the stone would vary across the track dependent on the condition of the existing stone, the strength of the sub-strata and horizontal alignment. Minor earthwork improvements have been shown throughout the northern edge of the track to re-profile the proposed pavement to be a grade with the existing ground level to promote a natural drainage slope for surface water run off and reduce degradation of the track. The stone usage would however, be reduced as far as possible, by the use of geogrid and geotextile layers.

- 10.29 Along the track, four gates are proposed to restrict unauthorised access, two of which are already in situ at White Hall Barn. The two new gates (along with the two gates to be replaced) would be located relatively close to the beginning of the track and therefore, unlikely to impede in the longer distance views of reservoir and moorland and its openness. The gates would be of an agricultural design (a tubular street gate with hanging post) and are considered acceptable for their location. The existing fence line to the north of the track would be retained.
- 10.30 New stock fencing is proposed 5m to the base of the embankment of the reservoir. This is proposed in order to prevent cattle access and to prevent damage to the dam, whilst still allowing the continued maintenance activities. The fencing would be a maximum of 2.1m in overall height. Existing damaged fencing would be replaced. Therefore, having taken into account the style and overall height of the fencing, this is not considered to give rise to any detrimental impacts to visual amenity, the landscape and the openness of the Green Belt.
- 10.31 In light of the above, Officers are satisfied that the development would meet exemptions (b) and (c) of Paragraph 150 of the NPPF and would not have a detrimental impact on openness. This is to accord with Chapter 13 of the NPPF.

Landscape

- 10.32 The site lies within several European and national habitat sites and lies within areas designated for their scenic properties, including the Southern Pennines National Character Area. Therefore, Policy LP32 of the Kirklees Local Plan is important as it sets out that proposals should be designed to take into account and seek and enhance the landscape character of the area. This is also reiterated within Chapter 15 of the NPPF, which states that “planning policy decisions should contribute to and enhance the natural and local environment by:

“a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the Development plan);

b) Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) Maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) Preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.

10.33 Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by – inter alia – protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

10.34 To assess the impacts of the proposal on the character of the surrounding landscape, an assessment has been undertaken within Chapter 6 of the ES to include a Landscape and Visual Impact Assessment (LIVA) with support from the technical appendix 6.1 which consists of maps, representative viewpoint photographs and accurate visual representation, photomontages of the proposed development taken from a number of selected and agreed viewpoints. It has been agreed with Officers that a selection of 14 representative viewpoints are acceptable to assess the effects of the proposed works and operation on views and the surrounding landscape. These have been selected to cover a number of different elevations and angles of view, and are located on the most commonly used footpaths, as set out within table 6.8 of the ES.

Table 6.8 Representative Viewpoints

No.	Viewpoint Location	Receptor Category	View Type	Distance from Proposed Development (m)
1	Buckstones Public Car Park	Visitors in vehicles, walkers or people engaged in recreation	Panoramic	530
2	Start of footpath on A640	Road users, walkers or people engaged in recreation, residents of Buckstones House	Panoramic	910
3	A640	Road users	Panoramic	1130
4	A640	Road users	Panoramic	1340
5	Public footpath	Walkers. people engaged in recreation and residents in White Hall Farm	Panoramic	0
6	Public footpath	Walkers. people engaged in recreation	Panoramic	100
7	Reservoir	Walkers or people engaged in recreation	Panoramic	300
8	Reservoir	Walkers or people engaged in recreation	Panoramic	50
9	Footpath	Walkers or people engaged in recreation	Panoramic	520
10	Road user	Road users	Panoramic	1000
11	Public footpath	Walkers or people engaged in recreation	Panoramic	450
12	Public footpath	Walkers or people engaged in recreation	Panoramic	310
13	Public footpath	Walkers or people engaged in recreation	Panoramic	305
14	Public footpath	Walkers or people engaged in recreation	Panoramic	275

10.35 Photographs to show the aforementioned viewpoints have been submitted within appendix 6.1.

- 10.36 A summary of the visual effects from all 14 selected representative view points in relation to the sections of the track concerned can be found within Table 6.9 in the ES. In most cases the effects are judged to be minor to negligible adverse but in two cases, effects are judged to be moderate adverse. These are viewpoints 5 and 6 which were taken from public footpaths. However, it is noted within the ES that *“the very nature of the Proposed Development infers that there is little scope for mitigation measures to reduce the level of impact in terms of route. Any significant tree planting, for instance, apart from being an uncharacteristic feature of this landscape, would only serve to draw attention to it. Similarly, earth mounding would only make the Proposed Development more prominent and disturb more land. However, as the design has progressed, various features have been employed to reduce the effects of the Proposed Development as far as possible. These include restricting the width to 4.0m (using excavated peat on the embankments to the track, using 1.0m high snow poles painted invisible green, using fencing painted invisible green and ensuring the track matches the local topography and follows the route of the former track as closely as possible”*.
- 10.37 It has also been outlined that *“in terms of the cumulative effect, the most significant scheme one which affects Haigh Clough. This will involve the planting of c.50ha of native broadleaved woodland and successional scrub by combined parties such as the National Trust, the Woodland Trust, Yorkshire Water etc. This, over time, will have a dramatic effect on the landscape as the Clough becomes woodland. It will also have an equally dramatic cumulative effect on the effects of the Proposed Development, which will become much less prominent as the trees mature and (from some viewpoints) views of the proposed access track are likely to be obscured entirely. The effect is assessed as being of a moderate beneficial level which will be significant in EIA Regulations terms”*.
- 10.38 In summary, Officers have considered that there would be some impact on the landscape character of the area, through the introduction of a permanent track within an open moorland setting, however, agree with the findings of the ES that the effects would be ‘minor adverse’ (i.e the proposal would result in a small change in the key characteristics of landscape character; would introduce elements that are not uncharacteristic to the attributes of the receiving landscape; and/or would result in a minor loss, alteration or addition of elements/features/characteristics). Nonetheless, a number of measures have been set out and proposed to include the restriction of the tracks with to 4m, using 1.0m high snow poles painted invisible green, using fencing painted invisible green, ensuring the track matches the local topography and follows the route of the former track as closely as possible.

Setting of the Peak District National Park

- 10.39 The site is situated approximately 2.5km at its closest part to the Peak District National Park and therefore the proposal has been assessed as to whether it would have an impact upon its setting. The Peak District National Park (PDNP) have been formally consulted, as a Statutory Consultee.

- 10.40 In this case, given aforementioned distance to the park, it has been considered that the track is unlikely to have any visual impact on the National Park or its setting. Whilst the PDNP are keen to ensure the maintenance of the health of the moorlands and their designations (site of Special Scientific Interest, Special Protection Area and Special Area of Conservation); which extend beyond the boundary of the Peak District National Park to include the proposed development site. However, the PDNP recognise the value of the proposed compensatory measures and agree that these will offset the loss of environmentally designated land to the development.
- 10.41 Therefore, given the distance from the National Park, the lack of reasonable alternative, the delivery of compensatory habitat enhancement and the overall public interest of the delivery of the scheme, the PDNP are broadly supportive of the proposal.

South Pennine Moors SPA/South Pennine Moors SAC Strategic Green Infrastructure Network

- 10.42 As identified above, the site is situated within the South Pennine Moors SPA/South Pennine Moors SAC Strategic Green Infrastructure Network. Therefore, Policy LP31 of the Kirklees Local Plan is relevant, which states the following:

Within the Strategic Green Infrastructure Network identified on the Policies Map, priority will be given to safeguarding and enhancing green infrastructure networks, green infrastructure assets and the range of functions they provide.

Development proposals within and adjacent to the Strategic Green Infrastructure Network should ensure:-

- (i) the function and connectivity of green infrastructure networks and assets are retained or replaced;
- (ii) new or enhanced green infrastructure is designed and integrated into the development scheme where appropriate, including natural greenspace, woodland and street trees;
- (iii) the scheme integrates into existing and proposed cycling, bridleway and walking routes, particularly the Core Walking and Cycling Network, by providing new connecting links where opportunities exist;
- (iv) the protection and enhancement of biodiversity and ecological links, particularly within and connecting to the Kirklees Wildlife Habitat Network.

The council will support proposals for the creation of new or enhanced green infrastructure provided these do not conflict with other Local Plan policies.

- 10.43 In this instance, it is considered that the development would protect and enhance biodiversity and ecological links, as the application has been submitted with a Habitats Regulation Assessment, whereby appropriate mitigation/compensation measures have been provided. This would accord with Policy LP31 (iv) and more information on this can be found below.
- 10.44 KC Landscape have been formally consulted as part of this application, raising no objection, as the proposals are acceptable and it is recognised that reasonable effort has been made to keep the visual impact to a minimum.

Ecology

10.45 LP30 of the Kirklees Local Plan, states that:

“The council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, Habitats and Species of Principal Importance and the Kirklees Wildlife Habitat Network”.

10.46 This explicitly includes the South Pennine Moors, Statutory Designated sites including South Pennine Moors Special Protection Area (SPA) and Special Area for Conservation (SAC) and Sites of Special Scientific Interest.

10.47 The policy further goes on to state:

“Development proposed within or outside a designated Site of Special Scientific Interest, likely to have an adverse effect on the site’s special nature conservation features, will not normally be permitted. Exceptionally development will be allowed where the benefits of the development clearly outweigh the impacts on the site’s special conservation features and measures are provided to mitigate harmful impacts”. This is further supported by Chapter 15 of the NPPF.

10.48 Due to the highly sensitive location of the site, a separate document detailing the likely significant effects on the internationally important protected habitats and species under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) in relation to the construction of a permanent access track to facilitate essential safety works, ongoing inspection, maintenance, and emergency access to March Haigh Reservoir has been prepared, and provides detail on the competent authorities statutory requirements regarding the internationally designated sites, as required by the above legislation. This can be found within appendix A, below the committee report. The document details the mitigation and compensatory measures required to ensure that the impacts on these designated sites is accounted for, allowing the proposed development to proceed in line with Kirklees statutory duties. The document has been prepared by KC Ecology.

10.49 The following documents have been submitted with the application, pertinent to biodiversity:

- Environmental Statement (ES)
- Shadow Habitat Regulations Assessment (sHRA)
- Construction Environmental Management Plan (CEMP)
- Biodiversity Net Gain Assessment (BNGA)
- Baseline Breeding Bird Survey Report

10.50 The ES deals with the assessment of the effects of the development on ecology and biodiversity, including the peat resource. This involved consideration of the effects on the South Pennine Moors Site of Special Scientific Interest (SSSI), as well as forming part of the South Pennine Moors Special Area for Conservation (SAC) and South Pennine Moors Phase 2 Special Protection Area (SPA), and on habitats and protected species.

- 10.51 The ES concludes that the development would result in the permanent loss of 0.42ha of habitat overlying peat, an internationally important habitat associated with areas of peatland and often supporting vegetation such as heather and cotton grasses. In addition, the development will result in the modification of 0.076ha of peatland habitat due to peat re-use, and indirect effects on peat hydrology at the construction stage which cannot be fully mitigated, it will be necessary to provide habitat compensation.
- 10.52 All relevant peat management and hydrological measures detailed in the March Haigh Reservoir Access Track Construction Environment Management Plan (CEMP) (dated June 2023), including (but not limited to) peat handling measures; reinstatement and restoration measures; presence of a suitably experienced Ecological Clerk of Works (ECoW); and pollution protection measures, in addition to other measures specified in the HRA, will mitigate some adverse impacts. In addition to the above, measures to avoid long term disturbance to SPA qualifying species from increased recreational use have been embedded in the scheme design and will comprise use of locked gates to deter access. The Applicant is also committed to on-going monitoring of recreational use and the implementation of additional mitigation measures including extra signage and contribution of funding to the National Trust to assist with increased visitor management, footpath repairs and fire breaks, if required.
- 10.53 The Biodiversity Net Gain Assessment details there will be a 18.72% increase in habitat biodiversity units (area-based), which is largely achieved by an off-site habitat compensation scheme, which is calculated to provide a 5.9 net gain in area biodiversity units. In addition, creating new areas of upland acid grassland on site provides 1.81 biodiversity units. The streams and ditches are retained under the scheme with only minor encroachment to the riparian zone where replacement culverts are to be installed. Therefore, there is no overall change for watercourses under the Metric. The compensation scheme would have a suitable Habitat Management Plan to establish and maintain habitats over the required 30-year period, which is to be detailed within a suitably worded S106 agreement.
- 10.54 Notwithstanding the above measures, the ES concludes that there would be a significant effect due to the unavoidable loss of 0.42ha of habitat overlying peat, which cannot be mitigated. Off-site habitat compensation is proposed to off-set this loss and details are presented in a 'Report to Inform a Habitat Regulations Assessment', which accompanies the planning application. The Canal and River Trust have been in discussion with the National Trust, who own the adjacent Marsden Estate to agree conservation works to off-set and compensate for this loss of habitat on Holme Moor. The area of Holme Moor close to Round Hill and east of Ellen Clough, is not designated as SSSI nor is it included within any SAC/SPA designations. It is within the same locality as March Haigh, being on the edge of the town of Marsden. It, therefore, offers a suitable site for compensatory measures in relation to the unavoidable impacts of the proposed access track at March Haigh Reservoir on the South Pennines Moors SAC and SPA designated features. The compensation proposals focus on diversification of at least 3.5 ha of purple moor-grass dominated vegetation of the plateau areas around Round Hill – east of Ellen Clough and north of Deer Hill Conduit, part of Holme Moor. A financial contribution from the application via a S106 agreement would enable these habitat enhancements to proceed, which would otherwise be unlikely to happen without the Proposed

Development going ahead. In order to secure these conservation works the section 106 agreement would have to be signed before the decision notice can be issued.

- 10.55 The use of compensatory works elsewhere is acknowledged to be a last resort when harm cannot be avoided, but the principle of biodiversity net gain, carrying out works to achieve benefit over and above that loss, is now an accepted principle in the planning system, having been introduced in the Environment Act 2021. Appendix 5 of the submitted sHRA details the compensation scheme to be undertaken at the off-site location.
- 10.56 Through consultation with Natural England, they accept that the mitigation and monitoring measures detailed within the submitted sHRA are suitable and in the event that planning permission is granted, the mitigation measures outlined above be secured through appropriately worded conditions.
- 10.57 KC Ecology's advice is that the measures proposed provide sufficient habitat enhancement to offset the loss of the habitats overlying peat, provided they are secured through planning conditions/S106 agreement. In this instance, the overall environmental benefit of the proposed compensation work at Holme Moor, is considered to be acceptable in the circumstances where the track is considered to be essential and in the public interest.
- 10.58 Upon completion, there is a risk of long-term changes to the flow of water through the blanket bog habitat and underlying peat as a result of the track. These effects will be mitigated by regular monitoring and track maintenance to address any impacts as they arise. This will avoid any significant environmental effect in the long-term. Once construction has finished, the ES says that the risk of disturbance to moorland birds and their nests is considered to be negligible, as it is expected that birds will become accustomed to the infrequent vehicle movements along the track. A locked gate and low barrier will be provided on the track to prevent unauthorised vehicle use and to discourage pedestrian access, to ensure that disturbance to moorland birds is minimised. The report concludes that overall, there would be no significant effect on ecology in the long-term. Officers agree with this conclusion.
- 10.59 In summary, it is anticipated that the proposed mitigation and compensatory measures will ensure that the proposed development will result in a long-term biodiversity net gain. In order to ensure this, conditions requiring the development to be completed in accordance with the CEMP and the Operation and Maintenance Plan are necessary, along with the submission of a Biodiversity Mitigation and Management Plan. This is to accord with the aforementioned policy and guidance.

Heritage

- 10.60 Section 66 of the Planning (Listed Buildings & Conservation Areas) Act (1990) states that for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 10.61 Section 66 of the Planning (Listed Building & Conservation Areas) Act (1990) are mirrored in Policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.

- 10.62 Furthermore, Policy LP35 of the KLP states that: “development proposals affecting a designated heritage asset...should preserve or enhance the significance of the asset. In cases likely to result in substantial harm or loss, development will only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm”.
- 10.63 Paragraph 199 of the NPPF states: “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation...”.
- 10.64 The proposed track leads from Blake Lea Lane and passes along an existing track which runs close to the curtilage of the Grade II listed White Hall Farmhouse and White Hall Barn, then towards the reservoir where there are no designated heritage assets. As such, KC Conservation and Design have been formally consulted as part of the application process.
- 10.65 In this case, given the nature of the development and the track being laid in local gritstone, it would have a very low impact on the setting of the Listed Buildings. More so, the public benefits of providing the improved access to the reservoir for essential safety works would clearly outweigh the slight harm caused by the re-introduction of a track in this location, along with associated works and landscaping.
- 10.66 Officers have considered that the scheme would have a neutral impact on heritage and would accord with the aforementioned local and national policy and legislation.

Archaeology

- 10.67 Further to the above, where an application site includes or has the potential to include heritage assets with archaeological interest, an appropriate desk-based assessment, and where necessary, a field evaluation, should be provided to inform the planning authority's decision making. In this instance, the application has been supported by a Heritage Impact Assessment and by an Archaeological Desk-based Assessment. West Yorkshire Archaeology Advisory Service (WYAAS) have been submitted.
- 10.68 The findings of the report outline that evidence of activity from the Mesolithic to the post-medieval period. The Mesolithic remains includes the well-studied area around March Hill, a nationally important site. There is one recorded lithic working area that overlaps with the western end of the proposed development site while other possible lithic scatters may also be present. A Roman road also crosses the study area, possibly near the west end but the exact route of the road is unknown. There is however the potential for Roman remains to survive. Post-medieval remains, in particular drystone walls, are likely to be impacted by the proposed access track.
- 10.69 The lack of development within the moorland landscape and the absence of intensive agriculture may have led to the survival of prehistoric and Roman remains. Based on the known archaeology there is the potential for the survival of archaeological remains from many periods within the proposed trackway route.

10.70 A Written Scheme of Investigation has been submitted as part of the application process to set out the programme and methodology for site investigation and recording and a programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This has been reviewed by WYAAS and is considered to be acceptable. As such, an appropriate condition would be attached to the decision to ensure the works are carried out with the approved Scheme of Investigation.

Residential Amenity

10.71 Sub paragraph b of Policy LP24 of the KLP states that development should “provide a high standard of amenity for future and neighbouring occupiers”. This is also reiterated within paragraph 130 of the NPPF.

10.72 In this case, given the remote location of the site, type of development proposed and the sporadic nature of nearby residential dwellings/farmsteads, it is considered unlikely that the proposal would have adverse impacts on the residential amenities of neighbouring occupiers in terms of overbearing, overlooking, overshadowing, and loss of outlook.

10.73 Once operational, Officers consider the proposal to not have a significant adverse effect on local air quality, noise levels, odour, external lighting, and vibration due to the proposed frequency of use. A Construction Environmental Management Plan has been submitted as part of this application, to demonstrate how the development would be managed to mitigate the effects of construction working practise on neighbouring occupiers. Environmental Health Officers have been formally consulted as part of this application process and have reviewed the supporting documents and do not consider there to be any significant environmental health impacts, however, an advisory note would be attached on the decision notice in the case of an approval, to set out the appropriate hours for construction in order to protect residential amenity.

10.74 Given the above, Officers are satisfied that the proposed development would not cause significant material harm to the amenity of neighbouring residents, in accordance with the aims and objectives of LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

Highway issues

10.75 Turning to highway safety, Local Plan Policies LP21 and LP22 are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety. Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

10.76 KC Highways DM have been formally consulted as part of the application process. It has been noted that, the site lies in a relatively remote area with access being taken from the existing local highway, which is a single-track road to the junction of Blake Lea Lane and Waters Road.

- 10.77 The proposal would likely introduce approximately 3 inspection trips per week plus weekly trips for maintenance vehicles. In this instance, the proposed number of trips are considered to be low and would not impact upon highway safety in the area. Passing places on the track have been proposed and are acceptable, along with parking and turning areas to enable a vehicle to turn and leave the site in a forward gear.
- 10.78 Highways Officers have however noted that a comprehensive Construction Traffic Management plan will be required prior to the start of the works to minimise any highway safety impact during the construction phase of the track. The Construction Management Plan (CMP) submitted read along with the Construction Environmental Plan (CEMP), fails to provide adequate detail for the site compound which will be provided to store materials and provide off-site parking and space for staff parking at the bottom of Blake Lane. As such, a condition requiring a Construction access Management Plan will be attached to the decision notice in the case of an approval.
- 10.79 The CMP outlines further issues that will need to be resolved before works can commence. This would require a defects survey and a remedial works condition to assess any remedial works required to the Highway on Blake Lea Lane (including any highway retaining walls) and the public footpath known as COL/195/10. Any remedial work carried out on the adopted highway to accommodate the construction traffic being able to access the site will require an agreement between the applicant and the highway authority under Section 278 of the Highways Act 1980.

Drainage issues

Flood risk assessment

- 10.80 Local Plan Policies LP24, LP27 and LP28 are relevant to flood risk and drainage, as is Chapter 14 of the NPPF.
- 10.81 NPPF paragraph 159 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.
- 10.82 The site is within Flood Zone 1 but is over 1ha in size and therefore a Flood Risk Assessment (FRA) has been submitted in support of the application. The FRA outlines that site has been categorised as being 'low risk' of flooding. The flood risk from the ordinary watercourse that cross the access track is not represented on this EA flood map, however, following a review of all available information, these watercourses are considered to pose a low risk of flooding.

- 10.83 The FRA further outlines that the majority of the site is at very low risk of surface water flooding, except local to two watercourse crossings, where the risk is categorized as low to medium. These two watercourses will be culverted under the access track using appropriately sized structures to ensure there is no increased flood risk to the access track and that third-party flood risk is not increased as a result of the proposals. The predicted impacts of climate change over the lifetime of the development are not expected increase the fluvial flood risk. Any potential increase in surface water flood risk will be accommodated in the design by using appropriately sized culverts for the predicted future flows over the design lifetime.
- 10.84 This FRA demonstrates that the proposed access track would be safe from flooding and would not increase off-site flood risk from any source. The development proposals, therefore, comply with the requirements of the NPPF.
- 10.85 The Environment Agency have been formally consulted as part of this application, raising no objection given the sites location within flood zone 1. However, informative advice has been provided in relation to reservoir flooding.

Existing culverts

- 10.86 Alongside the above, the track passes over two existing culverted watercourses which have an established headwall construction to the southern elevations. It is proposed that the two existing culverts would either be retained in situ or replaced on a like for like basis. At this stage, the applicants Planning Statement outlines that the existing culverts are expected to be replaced, including new concrete culverts and headwalls, but it is possible upon further detailed inspections at the construction phase that the existing may be satisfactory and do not need replacing.
- 10.87 As such, indicative details for a potential design solution for the new culvers have been submitted as part of this application. However, full details have not been provided until the further works to ensure the replacement is necessary has been undertaken and therefore, in the case of an approval an appropriate condition would be attached to the decision notice.
- 10.88 In light of the above, KC Lead Local Flood Authority (LLFA) have confirmed their support for the application, as the FRA concludes that the proposed works would no increase off-site flood risk and the proposal set out in the Drainage Strategy to drain the track "over the edge" onto the surrounding ground or through the permeable surfacing (except for the first 10m which will be positively drained). It is advised that any new culverts should be as short as possible, of sufficient capacity and of pre-cast concrete construction. This is to accord with Local Plan Policies LP24, LP27 and LP28 and Chapter 14 of the NPPF.
- 10.89 Yorkshire Water have confirmed that they have no observations to make on the proposal, as there is no public infrastructure (i.e sewers or water mains) recorded in the area.

Minerals

- 10.90 The application site is situated within a Mineral Safeguarding Area for Sandstone and Surface Coal Resource (SCR). Peat soils are known to be present in the vicinity of the site. The proposal is to construct a permanent track to March Haigh Reservoir, which would mostly follow the route of a previously installed temporary track. Where the proposed track diverts south along the reservoir embankment, there is no buried stone surface as the previous temporary track finished at the spillway. As such, this track will be constructed across an area requiring new excavation, and while largely expected to be on the managed grassland present on the toe of the embankment there is likely to be some infringement onto an area of marshy grassland/moorland over shallow peat.
- 10.91 Planning permission was granted for the installation of temporary track to aid necessary maintenance and repair works at the reservoir in 1999. A restoration method statement was prepared at the time, to cover over and revegetate the route after use.
- 10.92 From the submitted information it is acknowledged, that peat was removed along the route of the temporary track, to expose the underlying basal material, onto which stone material was laid to form a suitable surface for vehicle movements. The removed peat and turf material was stockpiled nearby and upon completion of works, it is stated that the stone track was buried using the original excavated peat and the turf re-laid, leaving the stone foundations in situ.
- 10.93 In this case, Policy LP38 if relevant, whereby the policy states that:
- 1. Surface development will only be permitted within a Mineral Safeguarded Area where it has been demonstrated that:
 - a. the mineral concerned is proven to be of no economic value as a result of the undertaking of a Mineral Resource Assessment; or*
 - b. the development will not inhibit mineral extraction if required in the future; or*
 - c. there is an overriding need for the development; or*
 - d. the mineral can be extracted prior to the development taking place**

 - 2. This policy will not apply to the following classes of surface development as they are unlikely to lead to the long term sterilisation of viable mineral resources:
 - a. extension to existing buildings and the erection of ancillary buildings within their curtilages;*
 - b. developments on sites of less than 1000 sq. meters except for proposals within 250 metres of an existing planning permission for mineral extraction;*
 - c. minor development (such as walls, gates and access);*
 - d. temporary uses of sites for periods of less than 5 years;*
 - e. amendments to previously approved developments;*
 - f. applications for Listed Building Consent;*
 - g. reserved matters;*
 - h. applications for advertisement consent**

10.94 Due to the proposed methods of works (involving no deep foundations/works) the development is unlikely to inhibit mineral extraction, as the proposed track could be easily removed, if required in the future. Therefore, the development can be justified by the need for the proposed track and would accord with sub paragraphs b and c of Policy LP38.

10.95 The accompanied 'Planning statement with Design and Access Details' makes reference to Chapter 17, paragraph 211 of the NPPF. This applies specifically to proposals for mineral extraction, stating:

"In considering proposals for mineral extraction, minerals planning authorities should:

d) not grant planning permission for peat extraction from new and extended sites".

10.96 Chapter 8 of the ES also considers the effect of the development on peat resources and hydrology along with detailed breakdown of the overall quantities of peat that would be disturbed and reused on site. It is acknowledged, that a significant proportion of this peat has previously been removed and then replaced in the formation of the former temporary track, and only a small proportion will be from undisturbed peatland areas. To be specific, the ES states that the proposal would result in the loss of 0.42 ha of peatland habitat.

10.97 Further justification regarding the loss of peatland has been requested as part of the application process and therefore this has been summarised as follows:

The initial intention was to retain all peat material on site. Please see information provided in the Scoping report statement submitted with the planning application.

"A potential location for peat re-use was identified along the southern edge of the new track where it crosses the moorland. This involved extending the existing 'batter' design to accommodate mote peat material. There was a need to balance the re-use of the peat at this location with the additional impact the creation of this extended 'batter' would have on the habitats at this location. The project engineers assessed three separate draft options for retaining peat material on site:

- Extend batter to a continuous 1:3 slope – minor reprofiling and minor loss of existing habitat.*
- Extend batter to a 1in4 slope – moderate reprofiling and increased loss of existing habitat.*
- Extend batter to a 1in5 slope – constructability issues and likely to require change to application site boundary, significant loss of additional habitat.*

The first option was therefore selected as preferential, with 1:4 and 1:5 slopes assessed as likely to lead to additional undesirable impacts on the protected site and its features.

The remaining peat was assessed for potential re-use in positive habitat creation works on the adjacent March Haigh moorland, however the structure of the peat was deemed unsuitable for works such as grip blocking or re-profiling. This is because the peat structure was already significantly compromised/weakened by the previous work to remove and re-lay the peat during the temporary track construction. It is unlikely that this peat, once re-excavated, will be able to form stable 'bunds' of peat in gullies/grips and would be a risk of wash out in an uncontrolled manner. This would lead to significant impacts on watercourses and potential initiate greater erosion risk.

The compound area is to be re-instated after construction is complete, and re-use of a proportion of peat soil on this area during restoration was considered viable. A depth of no more than 0.5m of peat material was recommended by the project engineers, to limit the perceived change in landform and to avoid risk of erosion/instability.

The two approaches above will target the 'better quality' peat deposits that are of a firmer structure".

10.98 Given the justification provided above it has been concluded that the remaining peat would be those excavated peat deposits that are highly unconsolidated, have contamination from underlying stone from the previous temporary track and/or have significant amounts of Molinia and Juncus vegetation/roots. These peat deposits are considered less desirable/suitable for successful re-use in habitat restoration around the site. This material is targeted for removal off site.

10.99 Having taken into account the above, the proposals would result in an unavoidable impact and disturbance to peatland and it has been considered that on balance, the decision can be supported in relation to Minerals safeguarding (LP 38) given the overarching need for the access track. As such, the development would accord with sub paragraph c of Policy LP38 of the KLP.

Other matters

Public Right of Way

10.100 Paragraph 10.103 of the Local Plan (Strategies and Policies document) states that, where a new development affects an existing public right of way (PROW), for example by changing the alignment, levels, surface, drainage arrangements, provision of new structures, or obstruction, full details will be required within the planning application with appropriate mitigation measures to ensure the protection of the PROW for users.

10.101 Paragraph 100 of the NPPF further states that "Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails".

10.102 The site lies in close proximity to a number of Public Rights of Way (ProWs) and is located close to the Pennine Way National Trail. The site is also located in an area of designated Registered Common Land and Open Access/Section 15 Land under the Countryside and Rights of Way Act 2000 and is within the defined South Pennine Moors SPA / SAC Strategic Green Infrastructure Network area.

- 10.103 Of particular note, public footpath COL/195/40 would intercept with the proposed access track which is located to the north east and would cross at Point C, passing place 1. The site also falls within the South Pennine Moors SPA/SAC Strategic Green Infrastructure Network. As such, the Council's Public Rights of Way Team have been consulted.
- 10.104 In this case, the ES sets out that the current levels of recreation use are low and limited to mainly walking and dog-walking with some running and mountain biking.
- 10.105 A number of documents have been submitted to demonstrate how the PROW would be protected during construction and afterwards. This includes some cross sections and details within the ES, Planning Statement and CEMP. Notwithstanding the submitted information, additional details regarding a cross section and the gradients of the track with the PROW and the detail of the signage and their location to be used to manage public access during construction. Therefore, in the absence of the additional information conditions have been requested in the case of an approval, to include the above information.

Climate change and sustainability

- 10.106 As set out at paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF goes on to provide commentary on the environmental, social and economic aspects of sustainable development, all of which are relevant to planning decisions.
- 10.107 This application has been supported by a Climate Change Statement which sets out the use of the land, whereby the reservoir provides drinking water for Yorkshire Water. The track is therefore designed to improve the management of March Haigh Reservoir, which is important for public water supply.
- 10.108 The use of energy associated with the proposed safety works would only be required during construction. Once construction is complete the track would not have any ongoing energy requirements.
- 10.109 The statement also sets out the importance of the development given the pressure from climate change on ageing critical infrastructure. As increasing extremes in weather patterns are bringing consideration challenges for the management of such infrastructure which need to be overcome to maintain resilience and protect public safety.
- 10.1010 Overall, given the nature of the development proposed and its overarching needs for public safety, officers consider the development to provide sufficient mitigation measures in order to combat climate change.

Representations

10.1011 As a result of the above publicity, no representations have been received.

Planning obligations

Ecology

10.1012 The Environmental Statement submitted with the application concludes that there would be a significant effect due to the unavoidable loss of 0.42ha of habitat overlying peat, which cannot be mitigated. Off-site habitat compensation is proposed to off-set this loss and details are presented in a 'Report to Inform a Habitat Regulations Assessment', which accompanies the planning application.

10.1013 Therefore, the applicants (The Canal and River Trust) are in discussion with the National Trust, who own the adjacent Marsden Estate to agree conservation works to off-set and compensate for this loss of habitat on Holme Moor. The area of Holme Moor close to Round Hill and east of Ellen Clough, is not designated as SSSI nor is it included within any SAC/SPA designations. It is within the same locality as March Haigh, being on the edge of the town of Marsden.

10.1014 For these reasons, Officers feel that this would be a suitable site, to provide the compensatory measures and a 10% biodiversity net gain in relation to the unavoidable impacts of the proposed access track at March Haigh Reservoir on the South Pennines Moors SAC and SPA designated features. The compensation proposals focus on diversification of at least 3.5 ha of purple moor-grass dominated vegetation of the plateau areas around Round Hill – east of Ellen Clough and north of Deer Hill Conduit, part of Holme Moor. A financial contribution from the applicant via a S106 agreement would enable these habitat enhancements to proceed, which would otherwise be unlikely to happen without the proposed development going ahead.

11.0 CONCLUSION

11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.2 This application has been assessed against relevant policies in the development plan and other material considerations. The proposal seeks permission for the Construction of permanent vehicular access track legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act for essential safety works, ongoing inspection and emergency access and the erection of fencing, within a highly sensitive location/landscape.

- 11.3 Officers have considered the cumulative impacts and acknowledge that the development would impact upon the Protected Area designations of the South Pennines, which carries both Special Area of Conservation (SAC) and Special Protection Area (SPA) designations, as well as Site of Special Scientific Interest (SSSI), however, compensatory measures have been proposed and accepted within the Habitats Regulation Assessment (HRA). These include a financial contribution to the National Trust in order to diversify at least 3.5 ha of purple moor-grass dominated vegetation of the plateau areas around Round Hill – east of Ellen Clough and north of Deer Hill Conduit, within Holme Moor. Such measures would be secured via a S106.
- 11.4 The track design will be developed to reduce long term operational safety risk, reduce the risk to public safety, to comply with Section 10 of the Reservoirs Act.
- 11.5 Taking the above into account, it is considered that the proposed development would constitute sustainable development and is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Time limit to commence development (3 years)
2. Development to be carried out in accordance with the approved plans and specifications.
3. Prior to their use, details of the stone to be used for the access track shall be submitted to and approved in writing by the LPA.
4. Prior to construction commencing, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the LPA. The schedule shall include the point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers parking facilities and the provision, use and retention of adequate wheel washing facilities within the site.
5. Prior to the commencement of the development (including ground works), a survey (including photographic evidence) of the existing condition of the highway on Blake Lea Lane (the extent of highway to be surveyed to be agreed in writing by the Local Planning Authority in advance) and the Public Footpath COL/195/10 (from Blake Lea Lane to the proposed access track) shall be carried out jointly with the Local Highway Authority and submitted to and approved in writing by the Local Planning Authority. The survey shall include carriageway and footway surfacing, verges, kerbs, edgings, street lighting, signing and white lining. The submission made pursuant to this condition shall also include a timetable of works and a commitment (with responsibilities assigned to named parties) to undertake remedial works (the details of which shall be submitted to and approved in writing by the Local Planning Authority) to maintain the highway during the entirety of the construction phase to the condition documented in the pre-commencement highway condition survey. The final highway remediation works so approved shall be completed within one month of completion of construction phase.

6. Prior to the installation of the track at point C, details of the existing definitive public footpath Col/195/40 to be retained on site where crossed by the proposed access track, as detailed on the approved site layout plan, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - a) A large scale plan showing the location, design and landscape of this section of the definitive public footpath;
 - b) Existing and proposed full cross and long sections, including gradients;
 - c) Construction specifications, signing and surfacing materials;
 - d) An independent Safety Audit covering all aspects of the work;
 - e) Pedestrian safety measures in respect of where the public footpath crosses the proposed track; and
 - f) A timescale for its implementation.The definitive public footpath shall then be provided in accordance with the approved timescale and thereafter retained.
7. Prior to the installation of the track at point C, a detailed scheme shall be submitted to and approved in writing by the Local Planning Authority for the protection of the public safety of Col/195/40 (Colne Valley public footpath 195) in relation to all aspects of construction works within and including areas to or from the site. Unless otherwise agreed in writing, the approved scheme shall be implemented throughout the construction period of the development.
8. The development shall be carried out in complete accordance with the Written Scheme of Investigation dated June 2023, unless otherwise agreed in writing with the Local Planning Authority.
9. The gates to restrict unauthorised access shall be installed before the track is first brought into use and kept locked at all times, other than when the track is in use. The gates shall thereafter be retained for the lifetime of the development.
10. The development shall not be carried out other than in strict accordance with the Construction Environmental Management Plan (CEMP). All relevant measures detailed in the CEMP (dated June 2023), including (but not limited to) monitoring of breeding bird location and activity by a suitably qualified ECoW; ECoW toolbox talk; maintenance of a stripped vegetation corridor along the construction route; and temporary visual screening should be strictly adhered to at the site.
11. The development shall not be carried out other than in strict accordance with the Operation and Maintenance (O&M) Manual.
12. Prior to the commencement of development, a Biodiversity Mitigation and Management Plan shall be submitted and approved by the LPA. The plan shall detail all mitigation measures required to avoid adverse effects on site integrity, as fully detailed within the HRA. Additional mitigation measures for construction/operational impacts on the SSSI should be included within the BMMP, including:
 - Creation of acid grassland along track edges (within the designated site); and
 - Inclusion of suitable seed mix for twite in acid grassland creation areas.
13. A restoration scheme to be submitted and agreed in writing with the LPA in the event that any part of the track is removed/no longer required.

14. Before the development commences, a full structural dilapidation survey of the existing highway retaining walls along Blake Lea Lane shall be undertaken by a suitably qualified and experienced structural engineer and a copy of the report submitted to the Highway Structures team for record purposes. A further structural dilapidation survey of the retaining walls shall also be required following the completion of the works and any defects arising in the highway retaining walls due to heavy traffic associated with the proposed development shall be made good to the satisfaction of the Council's' structures team, within one month of completion of the construction phase.

Background Papers:

Application and history files

[Planning application details | Kirklees Council](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023/91093>.

Certificate of Ownership – Certificate B signed,

Appendix 1 – Habitat Regulation Appraisal

Summary

This report relates to the application which proposes the construction of a track in open moorland, with most of the route being within an area designated for its habitat and biodiversity interest as a Special Protection Area (SPA) and Special Area of Conservation (SAC).

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, and 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. For the reasons set out in this report, an Appropriate Assessment is considered necessary.

Site and Surroundings

The application proposes to construct a permanent access track and fencing to facilitate ongoing inspection, maintenance and emergency access at March Haigh Reservoir, located approximately 1.6km north-west of the town of Marsden, in the Metropolitan Borough of Kirklees, West Yorkshire and centred on grid reference SE 016 093. The Site falls within the South Pennine Moors Site of Special Scientific Interest, as well as forming part of the South Pennine Moors Special Area for Conservation and South Pennine Moors Phase 2 Special Protection Area.

The proposed access track begins on an existing track just off Blake Lea Lane (grid reference SE 0259 1272) and runs towards the reservoir spillway (grid reference SE 0172 1305) and in part crosses the open moorland area that forms part of the South Pennines.

After this point, the Site then diverts south over the spillway and along the base of the existing reservoir embankment for approximately 180m (grid reference SE 0171 1287 401717, 412878). The associated permanent stock fencing only is proposed along this section, to provide protection of the dam embankment from grazing cattle on the wider moorland.

Proposals

Construction of a permanent access track legally required as a measure in the interests of safety under the reservoirs act for essential safety works and ongoing inspection, maintenance, and emergency access to March Haigh reservoir.

The access track will be installed ahead of a proposed project to address a number of other measures in the interests of safety at March Haigh Reservoir, legally required to be completed by the applicant before the end of February 2024, which would have been otherwise inaccessible without an access track.

To avoid repeated information, additional information regarding the proposals can be found in additional detail within the planning application report.

RECOMMENDATION: 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 construction of a permanent access track to facilitate essential safety works, ongoing inspection, maintenance, and emergency access to March Haigh Reservoir.

Key Issues

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.

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 Kirklees Council, 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 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.

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.

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.

Stage 1 (Screening): 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.

Stage 2 (Appropriate Assessment): 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.

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.

Stage 1: Likely Significant Effect Test

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. The PAA report was commissioned by the applicants to inform a Habitat Regulation Assessment in relation to the proposed permanent access track application. The purpose of this report is to set out the information needed to enable Kirklees Council, 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. The effects of the development on the South Pennine Moors SSSI and other, non-designated, ecological features are addressed in the Environmental Statement (ES) which accompanied the planning application for the proposed access track installation.

The report produced by Penny Anderson Associates Ltd contains the following information:

- Details of the European Sites and their qualifying features (Chapter 2);
- Consideration of alternatives to the proposed track including 'do-nothing', decommissioning of the reservoir(s), alternative routes, construction methodology and programme (Chapter 3);
- A description of the selected route including habitat descriptions for each section of the route (Chapter 4);
- A summary of the results of a breeding bird survey undertaken in spring 2021 with particular reference to the SPA qualifying species (Chapter 5);
- A description of the possible direct and indirect effects on the qualifying features of the European Sites (Chapter 6);
- Proposed mitigation measures, compensation strategy and monitoring to address effects on the integrity of the European Sites (Chapter 7); and
- Concluding statement on the assessment of LSE, effects on integrity of European Sites and consideration of Imperative Reasons of Over-riding Public Interest¹⁰ (Chapter 8).

In relation to the site and its characteristics, and in consultation with the Authority and Natural England, the key features that are addressed in the PAA report are the vegetation/habitats and botany, the breeding bird assemblage and the hydrology of the peat resource (as fundamental to its quality). 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. It is a lengthy and detailed document so only the key conclusions are included in this report; a full copy can be seen on the Authority’s website under planning application 2023/62/91093/W.

Conclusion on Stage 1: Given the findings and conclusions set out in the PAA report, 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.

Stage 2 – Appropriate Assessment

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

Effects of Proposed Development on the South Pennine Moors SAC

Loss of Peat Resource and Hydrological Function: The only affected habitat feature for which the SAC was designated, and which therefore requires assessment under the Habitats Regulations, is blanket bog. The PAA report concludes that the construction of the permanent stone track and associated passing places would result in the loss of 0.42ha of habitat overlying peat, modification of a small amount of 0.076ha peatland habitat where the peat would be re-used on site, to minimise removal off Site and indirect effects on peat hydrology during construction which cannot be avoided. There will be an impact on blanket bog at the operational stage of development due to embedded mitigation that will allow for water to flow through the track, with no adverse effect on peat hydrology.

Without embedded mitigation being built into track design and construction approach, the Proposed Development would likely to lead to further disruption of peat hydrology and function along the route resulting from impeded drainage on the upstream (north) side of the permanent track leading to the retention of water within the peat mass and possible formation of ponded water along the trackside and/or potential washout of the track structure due to altered flowlines/regimes.

The extent of indirect effects on the peat resource below (on the south side) of the track is difficult to quantify precisely but impeded drainage following the Proposed Development could potentially result in drying of the peat in this area, with risk of peat loss through increased erosion and oxidation. To avoid these potential effects are far as possible, embedded mitigation has been designed in from the outset.

Nevertheless, there will be a permanent loss of approximately 0.42ha of habitat(s) with underlying peat within the Proposed Development footprint and a risk of changes to peat hydrology which cannot be fully mitigated. The loss of peat has been calculated by overlaying the footprint of the road (see the General Arrangement drawings – Technical Appendices of the Environmental Statement, 3.1 to 3.1c) comprising the final stone track, any edges of the track (that will be made up of stone and covered with peat and resown with an acid grassland/heather mix) and any area of minor earthworks to enable the track design to be achieved (these areas will also be sown with acid grassland/heather mix).

Impacts on Water Quality: The proposed track construction also introduces the risk of changes to water quality resulting from accidental spillage/pollution of the water environment during construction, surface-run off during construction, and the introduction of a permanent stone track of a higher pH than the surrounding peat mass resulting in localised changes in vegetation. Best practice pollution control measures will be incorporated as an integral part of scheme implementation to avoid any impact on water quality through accidental pollution and surface run-off during construction.

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

At the construction stage, the Proposed Development would be highly unlikely to impact on the SPA qualifying feature, merlin, which are not likely to be breeding in the vicinity. Golden plover and curlew are possible/probable breeding species within 100m to the north of the track, but construction is anticipated to take place outside of the bird breeding season. Similarly, snipe are a probable breeding species within 100m of the proposed compound area, but again would not be affected by disturbance in this area unless works went beyond the scheduled end of February 2024 completion date. Dunlin and common sandpiper are restricted to the reservoir edges away from any construction impacts. Wheatear are associated with Hard Head Clough and the open moorland as a possible breeding species and would similarly be potentially impacted only if the construction schedule did not meet its target completion date of end February 2024.

Increased Disturbance to SPA Qualifying Bird Species During Operational Phase

At the operational phase of Proposed Development the introduction of a permanent access track into the moorland environment could result in the following activities, which may result in disturbance to or displacement of SPA qualifying species:

- Recreational use of the track by e.g. walkers and dog walkers to link up with existing Public Right(s) of Way and informal paths;
- Unauthorised off-road vehicles use; and
- Authorised vehicle use for operational purposes with at least two visits per week.

To address the risk of increased disturbance, a number of mitigation measures will be adopted from the outset. Unauthorised vehicle use of the track is highly un-desirable for the Applicant as this could lead to erosion, fire damage, pollution and vandalism.

These built-in measures comprise the existing gate at White Hall Farm on Blake Lea Lane to be replaced with a new padlocked gate, and a second padlocked gate to replace the existing gate at Hard Head Clough. The Applicants O&M Manual for the completed development sets out the requirement for twice weekly inspection of these gates by the Applicant's operatives, who will carry suitable equipment for on-the-spot repairs and maintenance of these gates as required - this is relatively low level and is likely to cause less disturbance to birds than pedestrian access, but contributes to cumulative disturbance.

It is understood that there is already an issue with unauthorised off-road vehicles leaving the A640 and entering the moorland from the north. The Proposed Development could potentially encourage greater access from the north, and it is proposed to closely monitor this situation, with a number of mitigation measures in place to avoid this.

Consequently, it is reasonable to conclude that there is unlikely to be a significant impact on SPA bird species during the operational phase.

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

The report assesses several alternative options to the proposed permanent track. These are set out in detail below given the importance of this issue (taken directly from the PAA report).

Do-nothing Option: A permanent access track is considered by the Defra-appointed Inspecting Engineer to be an essential requirement to ensure the safety of the reservoir, and to enable the further 24 safety-critical works to be undertaken, under Section 10 of the Reservoirs Act. To 'do-nothing' would result in a failure to meet the legal requirement for the Applicant to have carried out these changes in the interest of safety, by February 2024.

Alternative Routes: A thorough assessment of alternative routes was completed for the temporary track constructed in 1999 and the proposed permanent track will largely follow the same alignment. The appropriateness of this route was considered in the assessment of the planning application for that temporary track. It was acknowledged in the planning assessment for the temporary track that the alternative routes would require longer tracks and the crossing of blanket bog areas adjacent to steep ravines. There are, therefore, no alternative routes which would provide appropriate access for the required vehicles and equipment needed during an emergency or for maintenance. Using the same alignment as the temporary track reduces the need to construct on undisturbed land.

Reservoir Discontinuation: If the reservoir was discontinued and drained, with the dam removed so that no substantive residual risk remained, this would preclude the practical need for a permanent access track. It should be noted that a substantial temporary access track would be required to facilitate the significant physical works associated with discontinuance. The Applicant has reviewed the need for March Haigh Reservoir and the high-level issues around discontinuance. The conclusion of this work is that discontinuance of the reservoir is not considered to be a viable or desirable alternative, for reasons explained in detail in Section 5.1.2. of the separate justification document (Canal & River Trust 2023) that accompanies the planning application.

Alternative Methods if the Track Were not a Legal Requirement: Prior to the access track becoming a legal requirement, the Applicant investigated alternative options for access for maintenance works at the reservoir, all of which had been discounted as not feasible. None of these previously explored options are now available to the Canal & River Trust as an alternative way of overcoming the safety issues that have been identified.

Pursuant to the Section 10 report, the Trust is under a strict legal obligation to provide a permanent access track. The options considered, but no longer available, were:

- Use of low ground pressure all-terrain vehicles;
- Helicopter access; and
- Temporary access track for the planned major civil engineering works.

Required for Use of Low Ground Pressure All-Terrain Vehicles: Regular use of alternative vehicles such as a Hagglund/Softack, would form informal, irregular tracks and impact on the moorland habitats, with informal tracks likely to evolve and widen over time in an unmanaged way as vehicles sought to avoid ruts and damaged areas, thereby likely causing greater damage over the long term than a well-designed access track. All-terrain vehicles do not satisfy all access requirements, nor can they carry the pumps and plant required to provide maintenance or emergency access.

Helicopter Access: It would not be possible to utilise helicopters in poor weather when access would be more likely to be required in an emergency. Helicopters have insufficient load capacity for the equipment required. In addition, the altitude and location of the reservoir can mean that helicopter access is prevented by wind or cloud and cannot be relied upon as the primary means of emergency response. The method is also not feasible for the regular small-scale maintenance that is necessary and does not resolve safety concerns with the surveillance visits require two times per week, as a minimum. It is also worth noting that the landing area required would need to be large and be sited within the SAC/SPA, which in itself may require work requiring a planning application, and/or an HRA. In addition, equipment required for use in an emergency would still need to be bought in by road, with helicopters being used to transport sandbags only, so this would not be acceptable from a reservoir safety emergency planning point of view.

Temporary access track for the planned major civil engineering works: A temporary access track has been used previously at March Haigh in order to complete major maintenance at the reservoir in 1999. Using a similar approach going forward would not address access requirements for regular inspection and maintenance and the failure to complete regular routine maintenance can lead to defects developing with an increased risk of dam failure. A temporary track would also not be a practicable means of access in case of an emergency.

Mitigation measures and compensation strategy

Mitigation Measures: In order to avoid any adverse effects on the integrity of the South Pennine Moors SAC/SPA the PAA report acknowledges that it will be necessary to incorporate mitigation measures. The adoption of mitigation has been undertaken in accordance with the mitigation hierarchy to avoid impacts in the first instance and then, where impacts are unavoidable, to minimise or restore the potential impacts.

In the case of the permanent track construction across blanket bog it will not be possible to avoid, minimise or restore impacts on the blanket bog habitat, so there will be an unavoidable effect on the integrity of the SAC which must be off-set through compensation measures. In addition, where there are unavoidable effects on the integrity of a European site, it is a requirement of the Habitat Regulations that the HRA must demonstrate that there are IROPI regarding any impact to the SAC. The need for the development is covered in the report on the planning application and the consideration of alternatives is set out above.

Habitat Mitigation During Construction: The proposed track has been designed to minimise effects on the habitats of the South Pennine Moors SAC. The Supporting documents make the case that a temporary track solution will not address the current need for permanent access for vital reservoir inspection and maintenance. The track will be the minimum width possible to accommodate the type of vehicles required for construction and operational purposes, with a running width of 4m plus additional width to allow for earthworks, where needed. Passing passes and compounds have been located within the footprint of the earlier temporary track to avoid impacting on new areas. The stone to be used for track construction has been selected for as low a pH as possible whilst maintaining structural stability. The track has been designed to be free-draining as far as possible to avoid the need for additional drainage features to be installed.

Construction within and close to the protected area will be closely supervised by an experienced ECoW with expertise in the peat environment. Best practice measures will be implemented throughout the Proposed Development to safeguard the peat resource from accidental spillage and pollution.

Habitat Mitigation during Operation: The stone track design across the protected area comprises free draining stone to minimise the long-term disruption of peat hydrology. Nevertheless, there is the potential for localised pooling of water on the upslope (north) side of the track, potentially increasing erosion over time, which would need to be addressed through a programme of monitoring and maintenance. On the downslope (southern) side of the track localised scour may occur at culvert and pipe outfalls, again requiring monitoring and maintenance to prevent erosion from occurring.

A programme of regular monitoring and maintenance would be implemented by the Applicant to be set out within the O&M Plan to identify and address localised issues to prevent any long-term disruption to the peat mass, in particular accelerated scour and erosion. Monitoring and maintenance activities to be included in the O&M plan will comprise frequent visual inspection of the track at least one a year, and more frequently as needed e.g. following storm events. Remedial measures will range from small scale filling of pot-holes and replacement of erosion protected (coir rolls, heather bales etc), to more significant works such as replacement of drainage pipes or topping up of the track surface. As a result of embedded mitigation, it is anticipated that there would be no long-term effect on the peat resource and peat hydrology during the operational phase of the development.

In respect of the South Pennine Moors Phase 2 SPA it is anticipated that any adverse effects on the integrity of the SPA can be overcome with the proposed mitigation measures.

Construction Phase: Whilst the PAA report says that the construction of the track is highly unlikely to impact directly or indirectly on nest site of SPA qualifying species, and propose some mitigation measures, officers consider that it should not be necessary to carry out the work during the bird breeding season if the works are required to be completed by the end of February 2024. Consequently, the timing of the construction works could be conditioned and further mitigation work will not be required.

Operational Phase: To avoid unauthorised vehicular and pedestrian access, the existing gate at White Hall Farm on Blake Lea Lane is to be replaced with a new padlocked gate, and a second padlocked gate to replace the existing gate at Hard Head Clough. The Applicants O&M Manual for the completed development sets out the requirement for twice weekly inspection of these gates by the Applicant's operatives, who will carry suitable equipment for on-the-spot repairs and maintenance of these gates as required.

Compensation Strategy: Due to the impacts on the degraded blanket bog habitat, which cannot be mitigated and will comprise the permanent loss of 0.42ha of peatland habitat, modification of 0.076ha of peatland habitat due to peat re-use, and indirect effects on peat hydrology at the construction stage which cannot be fully mitigated, it will be necessary to provide habitat compensation.

In addition, there will be a permanent loss of habitat of approximately 0.5ha for SPA qualifying bird species namely golden plover, curlew, snipe and wheatear which cannot be mitigated in situ. The majority of this habitat loss is within the SPA, but there are also very small areas of acid grassland loss immediately adjacent to the track edges on functional land outside of the SPA. The permanent habitat loss would result in the loss in extent and distribution of habitat that could be used for nesting as well as foraging/feeding by these species. It is, therefore, proposed that the habitat compensation area is also managed to provide compensatory habitat for golden plover, curlew, snipe and wheatear.

Habitat compensation proposals have been designed to provide a significant area of enhanced moorland habitat within close proximity to the Site, while also being situated on land outside of any designated areas (SSSI/SAC/SPA) where habitat enhancement and long-term management is unlikely to have otherwise been brought forward. The compensation scheme will deliver habitat enhancement to compensate for the permanent loss of blanket bog habitat as well as increasing the structural diversity of a currently *Molinia*-dominated moorland to provide habitat for SPA qualifying bird species.

The Applicant has agreed, in principle with the National Trust, that the habitat compensation works will be implemented across at least 3.5ha of purple moor-grass-dominated moorland owned by the National Trust at Holme Moor (Round Hill), located approximately 4km south-east of the site. Given the location of Holme Moor, outside any SSSI/SAC/SPA designation, it is not a priority for the National Trust to undertake habitat restoration works on this area. Therefore, a financial contribution from the application via a S106 agreement would enable these habitat enhancements to proceed, which would otherwise be unlikely to happen without the Proposed Development going ahead. The close proximity of Holme Moor to the SSSI would add to the value of the habitat enhancement.

The selected area conforms to tests of appropriateness due to

- Restoration will be off the protected site and will affect habitat that might not otherwise be restored.
- The area for restoration is close to the protected site (it is contiguous with the site).
- The selected area is currently in unfavourable condition.
- Restoration proposed using the methods described is technically feasible in part, the survey suggests bunding may be inappropriate due to peat depth.

Habitat and Bird Monitoring: A programme of habitat and bird monitoring at both the Proposed Development Site and the compensation area is proposed with reports provided to Kirklees Council and NE to provide evidence of the success of the proposed mitigation and habitat re-instatement measures at the Proposed Development site, and habitat compensation measures at Holme Moor (Round Hill). The reports will include recommendations for any remedial measures required.

Conclusions

The HRA considers the effects of the proposed development on the South Pennine Moors SAC and South Pennine Moors Phase 2 SPA and concludes that due to the location of the development partially within the SAC and SPA there will be a Likely Significant Effect (LSE) on the qualifying features and an Appropriate Assessment is required.

Desk-based assessments and field surveys have been completed to provide a baseline for the proposed development.

The track route has been selected as the least environmentally damaging 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 February 2024 for the completion of the dam safety works, as well as facilitating on-going reservoir maintenance.

Nevertheless, there would be a permanent loss of a small amount of habitat overlying peat within the footprint (0.42ha), modification of a small amount of (0.076ha) peatland habitat where the peat would be re-used on site to minimise removal off Site and indirect effects on peat hydrology during construction which cannot be avoided. To meet the requirements of the Habitat Regulations it is necessary to demonstrate that there are imperative reasons of overriding public interest (IROPI) for the Proposed Development to proceed and that compensatory measures will be provided. The case for IROPI is set out in the separate document entitled March Haigh Reservoir. Justification for a Permanent Access Track (Canal & River Trust 2023). Habitat compensation will be delivered on land owned by the National Trust at Holme Moor (Round Hill), under a legally binding S106 agreement. The habitat compensation will be provided in perpetuity.

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.

Direct effects on SPA qualifying bird species are considered unlikely as there is no evidence of nest sites along the route. However, there may be some habituation or temporary avoidance of functional habitat along the route due to construction activities and use of bird disturbance measures targeted primarily at non-SPA qualifying species. Embedded mitigation measures are incorporated into scheme design to avoid any adverse effect on site integrity as far as possible.

The permanent sections of track would result in the unavoidable loss of blanket bog habitat within the SAC which cannot be mitigated. This will result in an adverse effect on site integrity. To meet the requirements of the Habitat Regulations it has been necessary to demonstrate that there are Imperative Reasons of Over-riding Public Interest (IROPI) for the development to proceed and that compensatory measures will be provided. Habitat compensation will be delivered under a legally binding S106 agreement. A programme of habitat and bird monitoring is proposed, with reports provided to the Authority and Natural England to provide evidence of the effectiveness of the proposed mitigation measures. The reports will include recommendations for any remedial measures required.

Natural England Consultation

Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Natural England accept that the mitigation and monitoring measures detailed within the PPA report are suitable and in the event that planning permission is granted, the mitigation measures outlined above be secured through appropriately worded conditions.