

Reg. 77 – River Axe Special Area of Conservation

Nutrient Neutrality is an issue for South Somerset in relation to two catchments. The Somerset Levels and Moors Ramsar site and the River Axe Special Area of Conservation. (SAC)

In relation to Special Area of Conservation catchments applications determined under the Town & Country Planning (General Permitted Development) Order 2015 (As amended) (the GPDO) any development is required to address the issue of Nutrien Neutrality by way of Regulation 77 of the Conservation of Habitats and Species Regulations

Where the planning authority has issued approval for developments presented under a “Prior Approval” route available under the GPDO the planning authority is required to consider whether the development is likely to have an adverse effect upon the integrity of the SAC site. If it concludes that an adverse effect may occur then Article 3(1) of the GPDO imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat.

The permitted development cannot be lawfully commenced until an application under Regulation 77 of the Conservation of Habitats and Species Regulations has been made and approved by the Local Planning Authority. The purpose of this application will be for the Local Planning Authority, in conjunction with the appropriate nature conservation body to make an appropriate assessment of the implications for the protected site.

The Local Planning Authority can only approve the application if it is ascertained that it will not adversely affect the integrity of the site. A prior notification application can therefore be approved without the above assessment taking place, although the commencement cannot lawfully take place until the separate application under Regulation 77 is approved. Regulation 77 does not provide a power to impose conditions on the grant of approval. Accordingly, if the assessment of the impact on the protected site requires mitigation to be secured, such mitigation would need to be secured through a Section 106 planning obligation.

Where applicants are able to acquire credits forming a part of an approved mitigation scheme delivered by a third party the Regulation 77 application will need to be accompanied by a Section 106 Undertaking confirming the level of credit required to mitigate the particular proposal as well as confirmation that a credit forming part of an approved mitigation scheme has been acquired.

Where applicants propose to provide their own mitigation the Section 106 Undertaking will need to present a detailed mitigation plan including measures to provide for ongoing management for the life of the project as well as confirmation of the method of delivery including whether or not planning permission is required for the mitigation project.

Regulation 77 applications must be accompanied by a £30 application fee.

The Regulation 77 application will allow the planning authority, in conjunction with Natural England to undertake the Habitat Regulations Assessment necessary to enable the development to commence.