Development within the River Clun Catchment

Guidance Note 12 (Revision A)

February 2020

Summary

Following additional case law regarding interpretation of the EU Habitats Directive, this guidance note has been updated.

As a general guide, objective evidence must be submitted with a planning application showing that the proposed development will not increase loads of P, N and sediment in the River Clun SAC.

This means that, at present, development cannot connect to the public sewer and Wastewater Treatment Works (WwTW). Wherever possible, the council will seek a betterment or reduction in current P, N and sediment loads.

Introduction

1.1 This document is one of a suite of Guidance Notes which explain the approach and procedures to be followed in order to ensure sufficient survey, protection, mitigation and enhancement where biodiversity may be affected by proposed development. (See https://shropshire.gov.uk/environment/biodiversity-ecology-and-planning/)

1.2 This guidance note explains Shropshire Council's approach to making planning decisions for proposals in the River Clun catchment which has particular sensitivities in terms of water quality. A map of the Clun Catchment is provided in Appendix 2.

1.3 Part of the River Clun is a Special Area of Conservation (SAC). SACs are amongst the most important and sensitive sites across the European Union and are afforded the highest levels of protection under the Conservation of Species and Habitats Regulations 2017. Although the river is important for a wide range of more common wildlife such as otters, salmon and trout, the sole feature for which the River Clun SAC is notified is the presence of the extremely rare freshwater pearl mussel (*Margaritifera margaritifera*).

1.4 The SAC/SSSI is assessed as being in unfavourable condition for a number of reasons including high levels of silt and nutrients, which affect the health of the pearl mussel population. A review of the monitoring data from the Environment Agency for the River Clun (2000-2011), shows that although there has been an improvement the ortho-phosphate (P) concentration, it is higher than is required for a recruiting pearl mussel population and in most of the Clun, including within the SAC, it is higher than that required to maintain adult

mussels. Any additional phosphate (P), nitrate (N) and sediment entering the SAC is likely to make its condition worse.

1.5 Under the Conservation of Habitats and Species Regulations 2017 and the European Habitats Directive, the Local Planning Authority, when producing a policy plan or making a planning decision, must consider if there is likely to be a significant effect on a European Protected Site. When deciding this, any other plans or projects which may also be having an effect must be considered as well – the 'in-combination test'. If such an effect is likely, then a more detailed 'Appropriate Assessment' must be carried out and recorded, to determine if the integrity of the site will be adversely affected. If, after revisions and mitigation, the adverse effects of the development cannot be avoided or fully mitigated, then planning permission cannot normally be granted.

1.6 The following guidance is provided to help those submitting planning applications in the Clun catchment to decide if their development is likely to have a significant effect on the SAC and the type of information planners will need to determine the application. Submission of the application with all the required information should speed up the planning application process. Under the legislation, it is the responsibility of the applicant to provide the information to show that there will be no adverse effect on the integrity of the SAC.

1.7 Natural England are statutory consultees on any applications which might affect the SAC. If NE object to an application, and the application cannot be modified to lift their objection, the LPA would not normally grant planning permission.

The River Clun Catchment Nutrient Management Plan

2.1 NE and the EA jointly commissioned a Nutrient Management Plan (NMP, https://www.gov.uk/government/publications/nutrient-management-plan-river-clun) to document all sources of P in the catchment, identify what information still needs to be gathered and to outline phosphate, nitrate and sediment reduction measures that might be employed in future, by both land managers and developers.

2.2 According to the NMP, a third of phosphate entering the river comes from houses and businesses via mains and sewage treatment works or from cesspits, septic tanks or package treatment plants (PTPs). Two thirds of phosphate enters the river from diffuse sources with livestock accounting for over half the annual phosphate load. Over 90% of catchment nitrogen loads are from diffuse sources, with only c. 1% from sewage treatment works and c. 6% from deposition from airborne nitrogen. Sediment loads in the catchment are estimated to be 15% from bank erosion and 85% from erosion of catchment soils.

2.3 On the basis of the findings of the NMP, and following actions taken by Severn Trent Water to achieve a 75% reduction in phosphate reaching the SAC from their WwTW, applications for dwellings connecting to the public sewer were able to be permitted. However, following case law (*Cooperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland C-293/17 C394/17 – 'Dutch Nitrogen Case')* and recent legal interpretation, this is no-longer possible. The NMP is not deemed certain enough to ensure that favourable conservation status will be achieved at the SAC. Until an updated NMP, with predictable and definite outcomes, is drawn up in partnership with stake holders, and can be enforced, only limited development can pass an Appropriate Assessment and hence be granted planning permission.

2.4 The legal ruling affects all types of planning application such as livestock buildings, poultry and pig units, biomass boilers, employment sites as well as dwellings, hotels, campsites etc. **As a general guide, objective evidence must be submitted with a planning application showing that the proposed development will not increase loads of P, N and sediment in the River Clun. Wherever possible, the council will seek a betterment or reduction in current P, N and sediment loads.**

2.5 The planning authority will seek a betterment from development due to the urgent need to improve water quality, both for biodiversity and future growth in housing, businesses and employment in the Clun Catchment. A revised nutrient management plan, providing the required certainty that mitigation measures will be implemented, must be produced to unlock future development. Shropshire Council seeks to work with statutory agencies and other stakeholders to facilitate its production.

What information to submit with planning applications in the Clun Catchment

Development (dwellings, employment and land management) which may have a damaging effect on the River Clun SAC

3.1 If a development could cause direct or indirect damage to the SAC, either during construction or occupation/operation, then a Habitats regulations Assessment must be carried out by the Local Planning Authority. The applicant is responsible for providing sufficient objective, scientific evidence to demonstrate with certainty that there will be no damage to the SAC's integrity. If uncertainty remains, the LPA must apply the precautionary principle and refuse planning permission. Damage could be caused by:

1. releasing sediment to a watercourse (ditch, drain or stream) either during construction or after (operation/occupation),
2. releasing reactive nitrogen (Nitrogen oxides, nitrates NO_x, ammonia NH_3) to water or air (e.g. developments involving combustion such as biomass boilers, livestock buildings/units, slurry lagoons, changes in fertilizer/manure spreading),
3. releasing phosphates to a water course (e.g. by connecting to the public Wastewater Treatment Works (WwTWs), connecting to a private WwTW, discharging to ground with insufficient capacity to protect the water course, changes in fertilizer/manure spreading as a result of development),
4. any developments which may discharge other pollutants to the river catchment (e.g. through disturbance of contaminated land or spillage of chemicals without secure containment measures).

3.2 For developments triggering the above, or any other possible adverse impacts, details of the mitigation and avoidance measures must be submitted with the application.

3.3 For applications triggering point 2 above, detailed emissions modelling carried out by a professional air quality expert must be submitted. Further guidance for livestock buildings or units can be found at https://shropshire.gov.uk/environment/biodiversity-ecology-and-planning/new-interim-guidance-for-livestock-unit-lsu-applications/ . SC Ecology can provide further advice on emissions modelling – contact ecology@shropshire.gov.uk .

Development considered not likely to damage the SAC

3.4 Planning permission may be granted if full evidence is provided that a development:

1. does not trigger 1 to 4 above, or,
2. does not increase the volume or concentration of waste water,
3. provides a betterment in terms of current waste water impacts by either improving existing water quality discharges through reduced load, or decreasing volume produced (eg , separation of surface water from dirty water or up-grading of facilities)
4. is a domestic extension without significant increase in occupancy or drainage,
5. connects to a septic tank/PTP discharging to ground and meeting the criteria in 3.6 below, so that discharge does not reach the watercourse.
6. connects to an innovative means of treating waste water, which is at least neutral in terms of phosphate, nitrogen and sediment entering the watercourse.

Developments proposing non mains sewer disposal methods (PTPs, septic tanks, integrated constructed wetlands (ICW) etc)

3.5 The impact of PTPs/septic tanks is very difficult to calculate, being dependant on treatment type, discharge point, soil chemistry and distance to the nearest water body. Most of the PTPs on the market are

not designed to treat P but concentrate on the solid part of the waste. Discharges for these can be as high as 14mg/l of phosphate, some however, have been designed to treat phosphate and have significantly lower phosphate discharges. The latter are preferred when applying for planning permission.

3.6 The following evidence will need to be collated and submitted with the planning application, together with a completed FDA1 form (see below). The development must demonstrate that:

- The PTP or ICW is sufficient to cope with the maximum occupancy or use of the development. See https://www.britishwater.co.uk/code-of-practise-flows-and-loads-4-on-sizing-criteria-treatm.aspx .
- The drainage field is at least 50m from a watercourse (drain [surface or underground], ditch or stream/brook/river).
- The land is not sloped more than 15% and is not considered to be at risk of fertilizer run-off.
- The soil has a low P (phosphate) index.
- The land has sufficient permeability that will ensure the drainage field is effective (see guidance note 4 of the FDA1 form , see https://www.gov.uk/government/publications/foul-drainage-assessment-form-fda1 for the latest version).
- The standing groundwater table is at least 2m below ground level throughout the year.
- Any ICW is demonstrably designed according to the most recent best practice, objective evidence is available that it will prevent contamination of the water course and a full long-term management plan is practical and secured financially.
- No other hydrological pathways have been identified to the river system.

(For PTPs/Septic tanks see checklist of required information to be submitted with planning applications, Appendix 1)

Appendix 1

Checklist of information to be supplied with a planning application generating waste water in the Clun Catchment.

Information required with planning application	Provided?
Will the development produce waste water? (If the answer is **No** then give reasons and no further action is required.)	
New housing or other accommodation	
How many people will be living in the property?	
How many bedrooms will be in the property?	
How will waste water be treated? (See below).	
If an employment site/business, how many people will be working in the property?	
Modification (e.g. extensions) or demolition and replacement of existing buildings	
How many people live in the existing property?	
How many bedrooms does the existing property have?	
If an employment site/business, how many people work in the property?	
How many people will live/work in the modified/new building(s)?	
How many bedrooms will the modified/new building(s) have in total?	
Is the existing building(s) connected to the mains sewer?	
If Yes, will this change for the new development and if so, how?	
If No, how is waste water treated? Please provide details of the current provision for waste water treatment and the proposed method of treatment.	
Package Treatment Plant or septic tank	
The following information should be provided:	
Make, design specification, volume and details of discharge with respect to phosphate for the PTP/Septic Tank. Equipment with phosphate stripping preferred.	
What is the P discharge in milligrammes per litre (mg/l)?	
The name/location and distance away from the discharge point of any watercourses (within 500m of the development).	
A statement on how the equipment will be maintained.	
The distance and location of the nearest land drains (if within 100m).	
The workings and results of percolation tests as outlined in 'FDA1 Form guidance note 4' and in line with 'Approved document H, Drainage and Waste Disposal, The Building Regulations 2010, H2.'	
The current land use of the area surrounding the drainage field or soakaway – is it: • Permanent pasture (for more than 20 years), • Domestic garden for more than 20 years, • Arable, ley or pasture (the latter for less than 20 years, • Other land use – please describe.	
If the land use is arable, ley or other recent grassland, provide the P index of the soil. If you have described a different land use to the above we will let you know if the P index needs to be submitted.	
The Nutrient/Manure Management Plan for the land to contain the drainage field, if one has been produced.	
A completed FAD1form, providing full calculations, together with an accurate, annotated drawing and location plan for the soakaway/drainage field, with the planning application. The drawing should state the make, model and capacity of the proposed PTP/septic tank.	

Appendix 2 – Map of Clun Catchment