

ID5: Written Ministerial Statement (WMS) on Nutrient Levels in River Basin Catchments – 16 March 2022

We would be grateful to know whether the WMS has any further implications for proposals in the submitted Plan, particularly in respect of the delivery of housing and employment land, and, if any further mitigation is required, which may necessitate further work to be carried out and/or changes to the Plan.

Background

1. The Written Ministerial Statement (WMS) of 16th March 2022 states that:

England's protected sites are a vitally important part of this government's ambitious commitments on the environment, including delivering the target to halt species decline by 2030. Nutrient pollution is a particular problem for our freshwater habitats and estuaries. Increased levels of nutrients (especially nitrogen and phosphorus) can ultimately damage protected sites and the wildlife that live there.

Many of our most internationally important water bodies are designated as protected sites under the Conservation of Habitats and Species Regulations 2017. Under the Habitats Regulations, competent authorities, such as local planning authorities and the Environment Agency, must assess the environmental impact of planning applications or local plans. As a result of these regulations and European case law, Natural England has advised that in areas where protected sites are in 'unfavourable condition' due to nutrient pollution, Local Planning Authorities can only approve a project if they are certain it will have no negative effect on the protected site.

Following further work to understand the sources of site deterioration, Natural England has today issued updated advice and support to the 32 Local Planning Authorities currently affected by nutrient pollution, as well as 42 new LPAs. So far, this approach has too often been complex, time-consuming and costly to apply, and government is clear that action is needed to make sure that we both deliver the homes communities need and address pollution at source.'

2. Shropshire Council is one of the 42 new LPAs referred to in the WMS as being affected by nutrient pollution and so received advice from Natural England (NE) on 16th March 2022. The advice comprises a series of documents as follows:

- a) A letter stating that NE have identified that the River Clun Special Area of Conservation (SAC) in Shropshire and Herefordshire is in an unfavourable condition due to poor water quality caused by nutrient enrichment from elevated nitrogen and phosphorous levels. NE thus advise Shropshire Council;

'...as the Competent Authority under the Habitats Regulations, to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.

Mitigation through nutrient neutrality offers a potential solution. Nutrient neutrality is an approach which enables decision makers to assess and quantify mitigation requirements of new developments. It allows new developments to be approved with no net increase in nutrient loading within the catchments of the affected habitats site.....

Where properly applied, Natural England considers that nutrient neutrality is an acceptable means of counterbalancing nutrient impacts from development to demonstrate no adverse effect on the integrity of habitats sites.'

Under the heading '4.0 Plans and Projects Affected', the letter advises that employment development is excluded from a consideration of the impacts of nutrients as follows:

'Other types of business or commercial development, not involving overnight accommodation, will generally not need to be included in the assessment unless they have other (non-sewerage) water quality implications. For the purposes of the Methodology, it is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.'

The letter has 5 annexes. Annex A summarises the key tools and guidance provided by NE as part of the advice. Annexes B, D and E provide a map of the river Clun catchment, a list of sites in unfavourable condition (this includes the river Clun SAC), a nutrient assessment methodology decision tree and a flow diagram of the HRA process for consultations with NE where development is likely to add nutrients to a Habitats site. Annex C contains two tables, the second of which confirms that the River Clun SAC in Herefordshire and Shropshire is at risk from phosphorous and nitrogen and that nutrient neutrality is a potential solution to enable development to proceed.

b) A nutrient calculator for the River Clun SAC (produced by NE) and guidance on how to use it. The calculator is a practical tool for use by developers and/or the planning authority. It allows the user to work out a nutrient budget for a given development through the input of data on;

- the increase in nutrient loading that comes from a development's wastewater.
- the pre-existing nutrient load from the development site's current land use.
- the future nutrient loading once the development is complete.

The calculator then adds a 20% buffer to the outcome of the calculation in line with the precautionary principle underpinning the Habitats Regulations.

c) A map of the River Clun SAC.

d) River Clun Evidence Guide. This gives up to date water quality data and shows that nitrogen and phosphorus are threats to the River Clun SAC.

e) A Nutrient Neutrality Methodology. This gives guidance on calculating a nutrient budget using the nutrient calculator. NE advise that

'A nutrient budget, calculated according to this methodology and demonstrating nutrient neutrality is, in our view, able to provide sufficient and reasonable certainty that the development does not adversely affect the integrity, by means of impacts from nutrients, on the relevant Habitats sites.'

f) Nutrient Neutrality Principles. This sets out 7 principles that mitigation measures relied on in an Appropriate Assessment (under the Habitats Regulations) should meet. The principles can be summarised as:

- i). There should be scientific certainty that the measures relied on will deliver the reduction in nutrient levels required to make a development neutral
- ii). There should be certainty that the measures will be implemented and secured (through legally binding agreements for example) for the lifetime of the development's effects (defined as 80-125 years).
- iii). Be preventative to avoid effects happening in the first place. Phasing can be used to ensure the mitigation is working before development commences and the measures used should offset the increase in nutrients before the point at which they reach the Habitats site.

- iv). The measures should not undermine the objective of restoring the Habitats site to favourable condition by making the 'restore' objective appreciably more difficult or prejudicing the fulfilment of that objective.
- v). Measures that are already in place, or have been identified as necessary, to restore the Habitats site should not be used or relied on (to avoid double counting).
- vi). All measures should be justified. Calculations of the change in nutrient levels before and after the development must be accurate.
- vii). Ensure that the nutrient neutral approach does not undermine the restoration of the Habitats site by 'locking in' high nutrient sources from existing land uses. Where a Habitats site is already unfavourable, there is the potential that making a fresh decision under the HRA process to sustain the current nutrient contribution could mean that development may inadvertently undermine the achievement of the restore objective by others. NE will advise Local Authorities where it considers there is credible evidence that existing land use contributions represent a real risk to compromising the restore objective in a meaningful way. If this is the case, then development may need to do more to reduce the contribution from the existing land use, to a level which is compatible with restoration.
- g) Nutrient Neutrality Summary Guide. This is a non-technical summary of nutrient neutrality for water quality – useful for explaining the basic issues to a non-specialist audience.

Response

3. The WMS refers to advice issued to Local Authorities by NE. The essence of the NE advice to Shropshire Council as one of the newly affected Local Authorities, is that:
- the River Clun SAC is in unfavourable condition.
 - nutrients (phosphates contained in wastewater) from new residential development (employment development is specifically excluded) are likely to have an adverse impact on the integrity of the River Clun SAC.
 - adopting a nutrient neutral approach to residential development is an acceptable means of counterbalancing the adverse effect those nutrients would have on the integrity of the River Clun SAC.
 - a nutrient neutral approach to development requires mitigation measures to be put in place. These must offset the extra nutrients that the new housing would produce, above any nutrients the development site already produces due to its current land use.
4. The Council commissioned specialist consultants Royal Haskoning DHV in January 2022 to prepare a phosphate calculator, phosphate budget and define mitigation measures along with delivery mechanisms to allow development to proceed under a nutrient neutral approach in the catchment of the River Clun SAC in Shropshire. This work was completed on 4th April 2022 and has been submitted to the Inspectors.
5. The River Clun Phosphate calculator is an Excel spreadsheet-based tool which enables prospective developers or the planning authority to calculate the amount of phosphate a development will produce. The figure derived is known as the phosphate budget. Where the calculator shows that a development will produce more phosphate than the current land use, the extra phosphate will need to be fully mitigated for development to be nutrient neutral.
6. The River Clun Phosphate Budget uses the Phosphate Calculator to determine the total amount of additional phosphates from all residential development in the Clun catchment

likely to be completed between 2022 and the end of the Local Plan period in 2038. The budget applies a precautionary approach. It includes: sites with extant outline planning permission (irrespective of whether such sites are allocated or windfall); sites with extant full or reserved matters planning permission with drainage conditions; existing allocations in the adopted Local Plan without planning permission; and proposed allocations and windfall allowances in the Draft Shropshire Local Plan. The figure derived is the total amount of phosphate which will need to be mitigated to allow all the proposed development necessary to achieve the proposed development guidelines in the Draft Shropshire Local Plan, to proceed. As a further precautionary measure, to ensure that the level of phosphates is not underestimated, a 20% buffer is then applied.

7. The River Clun SAC Phosphate Mitigation Solutions for Residential Development Report identifies a series of options for mitigating the total phosphate budget for the Clun catchment over the proposed Plan period. An initial long-list of options has been assessed against a series of criteria to determine their suitability for use in the Clun catchment. From this, the resulting short-listed options (13 in total) have been evaluated in more detail with; timescales for delivery; duration of effectiveness; phosphate removal potential; management and maintenance requirements; additional benefits (e.g. flood risk, biodiversity etc); clear costings; and ability to meet Habitats Regulations requirements, set out for each measure. The most suitable mitigation options for the Clun catchment have then been identified along with the amount of land each would require and a comparison with the amount of such land available within the catchment. High-level maps are also provided showing the areas within the catchment which have the potential to deliver woodland or wetland measures which would remove phosphates.
8. The River Clun SAC Nutrient Neutrality Delivery Options Report discusses the pros and cons for developers, Shropshire Council or third parties providing the mitigation measures and sets out the options for funding the measures through the planning system.
9. It is the Council's view that draft policy DP13 (if modified as suggested in Schedule SD003.02) complies with the advice from NE referenced in the WMS, by requiring all development in the River Clun SAC catchment to be nutrient neutral through the implementation of mitigation measures. Such measures have been identified by recent work carried out for the Council by Royal Haskoning DHV (April 2022) in line with the earlier advice from NE and the Environment Agency set out in their Joint Advisory Position on the Clun catchment 23.07.21 (Appendix C in EV025). The amount of phosphates produced by the proposed new residential development in the submitted Plan has been calculated and a series of costed and deliverable mitigation options along with delivery options for these have been set out.
10. Taken together, the Council considers that draft policy DP13 and the mitigation measures identified are sufficient to safeguard the River Clun SAC and deliver the level of housing growth (NE advice is that employment land does not need to be considered) set out in the Draft Shropshire Local Plan. It is thus the Council's view that the WMS has no additional implications for proposals in the Draft Shropshire Local Plan and there is no need for further mitigation work or changes to the submitted Plan.