

Environmental pressures on planning and housing growth – dealing with nutrient and water neutrality restrictions

Purpose of report

For decision.

Summary

There is an underlying tension between national ambitions for high standards of environment protection and rapid housing growth. Environmental law designed to protect fragile natural habitats has stopped all planning decisions on new development in certain river catchment areas, having a range of impacts on councils' ambitions for places and communities. It is also a challenge to local plan led development. This is a significant and growing concern for the 30 or so councils currently affected by these directions, including some of the councils represented on the Board. It is possible that more councils will be in a similar position as new data emerges. Councillor David Hitchiner, the Leader of Herefordshire Council, will join the meeting to discuss the impact on planning and other council activity.

Councils are actively seeking solutions, but there is growing concern that the support offered so far from Defra and DLUHC is not going far enough and will not reduce pollution at source. Long term action will require joint working with water companies, agricultural industry, housing developers, the Environment Agency, Natural England and the Government.

The report also notes new advice to local authorities where development is suspended to protect fragile natural environments from water extraction.

Is this report confidential? Yes No

Recommendations: Board members are asked to note the issues raised in the report and to provide feedback on next steps, including the option for officers to expand their work on this topic. This is a complex issue that will need an organisational response from the LGA including improvement support.

Action/s

Officers will take actions as directed.

Contact officer: Hilary Tanner/Nick Porter
Position: Adviser/Senior Adviser
Phone no: 07899 896577/ 07786541830
Email: hilary.tanner@local.gov.uk/nick.porter@local.gov.uk

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Background

1. There is an underlying tension between national ambitions for high standards of environment protection and rapid housing growth, which will likely grow as places experience more severe weather events and new environmental protections set out in the Environment Act come into force. These are growing tensions that councils will often have to try and manage locally.
2. This paper reports on the impact of recent advice to local planning authorities on a) **nutrient neutrality** - maintaining a balance between new development and levels of phosphates and nitrates in river catchment areas, and b) **water neutrality** - maintaining a balance between new development and limited water sources. Separately, councils are under scrutiny for approving development in areas of flood risk. Looking ahead, new duties to develop Local Nature Recovery Strategies as land-use plans and strengthened air quality roles could bring about further tensions.

The legal context and underlying causes of damage to special habitats

3. In England, Natural England monitors the condition of special habitats and provides advice to local planning authorities. Special habitats are protected by international law, set out in the Habitats Directive. A judgement in the European Union Court of Justice in 2018 (known as “the Dutch case”) tested the interpretation of the Directive and judged that the competent authority (the local planning authority) must not allow any development that would worsen the condition of a designated special habitat.
4. Phosphates and nitrates are both types of nutrients that can damage wildlife at high levels. Phosphates enter the water system through farming practices and water industry discharges at locations like wastewater treatment works¹. Nationally, agriculture contributes around 70% of the nitrogen loading to rivers with sewage effluent as the

¹ <https://www.gov.uk/government/news/action-needed-to-fix-somerset-levels-and-moors-phosphate-level>

second highest source². Patterns vary across regions according to population density and the extent and type of agriculture. Individual habitats can be affected by either high levels of nitrates or phosphates in water systems, or in some cases by both types of nutrients.

5. There is growing dissatisfaction with the environmental performance of the water companies. Southern Water recently received a record £90m fine³ and Thames Water has been fined over £32 million since 2017 for 11 cases of water pollution⁴. The new Environment Act will update the regulatory framework for water quality and introduce new safeguards to prevent sewage discharge into rivers.

Scale of the issue

6. Local planning authorities in the Solent area were the first to be notified of high levels of nutrient pollution in the river catchment area and advised to pause all planning decisions with immediate effect. Around thirty local planning authorities in England are currently affected by advice on nutrient neutrality and the problem has also affected councils in Wales. A list of the areas currently subject to advice is included at the end of this report at Table 1.
7. There is a separate issue on the threat to protected habitats from water extraction. Where this is identified as an environmental threat, the local planning authority must pause decisions on planning applications in the affected area until a water neutrality strategy has been agreed. Three district councils in Sussex have been advised by Natural England to defer decisions on planning applications in protected areas until a water neutrality strategy has been agreed. Their concerns have been raised with the LGA and with DLUHC.
8. It is possible that more local planning authorities will become subject to advice on these issues.

Impact and potential solutions

9. The collective impact of these moratoriums on planning is likely to be more than 60,000 homes and therefore an economic cost measured in billions. A determination halting councils' ability to permit new development in these areas significantly curtails plan-led development across the whole local authority, as well as impacting council finances and workforce. The lack of notice puts a sudden stop to work by planning teams, and affects the wider development industry, for example cash flows for smaller to medium sized housebuilders and local developers. Income for planning fees drops at the same time as

² Environment Agency River Basin Management Plan, 2021

³ <https://www.gov.uk/government/news/record-90m-fine-for-southern-water-following-ea-prosecution>

⁴ <https://www.gov.uk/government/news/thames-water-fined-4-million-after-30-hour-waterfall-of-sewage-discharge>

additional costs arise, such as external expertise to advise on mitigation schemes, and the implications on New Homes Bonus are not clear either.

10. Some of the first areas to be affected have put solutions in place to mitigate nutrient pollution, for example offset schemes and the creation of wetlands, and to try and bring together all partners across catchment areas to work towards joint whole system solutions, such as through nutrient management boards. The Planning Advisory Service has provided support to councils through workshops and case studies and is being provided with further funding by DLUHC to provide further support to affected councils.

11. However, the challenges and solutions go much wider than the planning function. In November 2021 we held an initial meeting with councils in the areas affected by nutrient neutrality and invited them to share their experiences and views on what support would be helpful from the LGA and PAS. Their concerns are summarised below:

11.1. Councils feel that they've been left to deal with a problem at the "end of the pipe" with little support from relevant partners. Some councils reported that it took a long time to get other partners such as the Environment Agency around the table (a year in one case).

11.2. Councils sense there is a new orthodoxy in some government agencies about using land to mitigate pollution in novel ways and they are the guinea pigs. They are worried that regional and national partners are placing "blind faith" in nature-based solutions to nutrient pollution in river catchment areas. At best, the creation of wetlands and other nature-based solutions are providing a stop gap to offset high levels of nutrient pollution. The long-term answers must bring about changes to **agricultural practices** and investment in **water treatment infrastructure**. Farming practices are a recognised source of nutrient pollution, but it is unclear whether incentives and penalties for farmers to manage nitrate pollution are making a difference.

11.3. Some councils have approached government for flexibility on land supply and housing delivery targets, but with no positive feedback on this so far. The consequences for future development are real and serious. Councils will find it a challenge to identify a 5-year land supply pipeline, and there will be pressure from developers to increase development in other parts of the area, where nutrient neutrality is not a concern. This leads to development not planned for and therefore less likely to contribute to environmental and economic objectives.

11.4. Agencies are not giving consistent advice to councils e.g., from Natural England.

Local government asks

12. Councils are raising their concerns directly with their local MPs and with Defra and DLUHC. In terms of dealing with the **short-term pressures the LGA could:**

13. Ask DLUHC for dispensation from 5-year land supply requirements, and other interventions to support the local planning system. While making it clear that this is not a planning problem, but a whole system issue within wider river catchment areas.
14. Challenge the view that nature-based offset solutions are the sustainable long-term solution and comparing it with ending pollution at source in terms of the various factors impacting costs/impacts. For example, removing phosphates at wastewater treatment facilities compared to setting up a wetland. This would need to consider costs in the round, such as the cost of taking land out of agricultural production. It should also link to the environmental principles embodied in the Environment Act, such as the “polluter pays” principle.
15. Organise a national level round table/forum, with senior representatives from government, environment agency, Natural England, agriculture, the water companies and developers to begin raising the profile for whole system solutions with a focus on prevention.
16. Set up a network or forum for councils to learn from each other and share information on approaches to mitigation, strategic planning, coalition building.
17. Begin developing whole system policy solutions to ensure all partners consider their role in reducing pollution and moving towards sustainable development, for instance looking at:
 - 17.1. **Government:** investigate how both the Department for Levelling Up, Housing and Communities and the Department for Environment, Food and Rural Affairs can work together to support whole-system approaches in catchment areas that are embedded in principles of the Environment Act, such as polluter pays. Focus on joining up the legislative, policy, regulatory and workforce strategy and delivery plan.
 - 17.2. **Regulators:** look at how the Environment Agency (EA) could operate more in the open by sharing data about permits, water quality and its models for catchment pollution. How it could allow scrutiny of the number of permits within whole catchments to ensure they are within appropriate limits of nutrients, and reviewing and revisiting permits if necessary. Also, the EA could update/tailor their guidance to authorities affected by nutrient neutrality. The current guidance on new private wastewater treatment works⁵ could be amended to make specific reference to it

⁵ (<https://www.gov.uk/guidance/discharges-to-surface-water-and-groundwater-environmental-permits#discharges-in-sewered-areas>)

being "reasonable" to grant a permit where authorities are affected by nutrient neutrality issues.

- 17.3. **Natural England:** investigate the responsibility for habitat regulations and explore whether Natural England could have their role consolidated, to be the body responsible for the condition of sites and with the enforcement powers to compel others to respond. Further, investigate how NE can use the Protected Sites Strategy to further support ambitions to reduce nutrients pollution across catchments.
- 17.4. **Water companies:** Water companies are offering sewer connections in affected catchments as a default because of their duties under the water framework directive. However, they should also consider their duties under the habitat regulations and only do so if the development is nutrient neutral. Also, consider the role of Ofwat in setting investment strategies for the water companies, and bringing forward investment in the infrastructure needed to reduce nutrient pollution from waste water
- 17.5. **Agriculture:** explore whether and what stronger regulation could prevent nitrates running off from agriculture, and how reform of farming subsidies could lead to a stronger focus on environmental benefits. Where voluntary approaches are not working (such as supportive farm visits) the next steps should be clearly explained to farmers, this could be through a nutrient enforcement policy.
- 17.6. **Local governance and partnership:** explore models for ensuring good governance and partnership compelling all partners to play their role in addressing the issue in line with principles of Environment Act, including developing common and rich understanding of the issue and plan for redressing.

Defra and DLUHC activity

18. This is an escalating issue within Government. Ministers Rebecca Pow (Defra) and Chris Pincher (DLUHC) have set up an intergovernmental nutrient task force. Membership of the taskforce includes Defra, Natural England, Environment Agency and DLUHC⁶. It does not seem to include any representation from local government, and it is not clear what the outcomes have been.
19. Having engaged with councils, we are now building relationships with officials at DLUHC and Defra to raise these issues and explore the potential solutions. Officials are keen to support councils to put mitigations in place so that development can continue, while they work on longer term plans to reduce nutrient pollution at source.

⁶ <https://questions-statements.parliament.uk/written-questions/detail/2021-10-21/60523>

20. DLUHC have identified funding to allow specialists to be recruited into PAS to support councils dealing with this problem.

Implications for Wales

21. This issue has affected councils in Wales in a similar way and it is a cross border issue. As in England, Welsh local authorities had no notice of the new advice on nutrient neutrality and are facing similar challenges through the sudden halt to development.
22. Policy in Wales is set by the Welsh Government and Natural Resources Wales. While there are different lobbying routes, we have spoken to the WLGA and agreed that we will share information and look for opportunities to bring Welsh and English councils together to share experiences. The WLGA noted concerns over the delivery of new social housing in rural areas.

Financial Implications

23. Lobbying work can be carried out within existing resources. There may be a requirement for additional research, that is not currently allowed for in policy budgets.

Equalities Implications

24. The implications will vary by councils. In general terms, the sudden stop to development has exacerbated housing supply problems. The break in the supply of affordable housing will leave people waiting longer in temporary accommodation or the private rented sector.
25. In the longer term, any costs that fall on developers may reduce the amount they can contribute to section 106 and community-based projects.
26. Further considerations may emerge as this is a relatively new issue.

Next steps

This is a complex issue that will take many years to resolve, in the case of nutrient pollution. The Board may wish to consider whether further time should be spent on research and lobbying, and how best to structure future engagement with stakeholders, including those at national level.

27. The LGA's Senior Management Team (SMT) will also consider the issue and a cross organisational response from the LGA.

Table 1: areas subject to advice on nutrient neutrality

Habitats site	Local Authorities
Solent Harbours	Isle of Wight Havant Portsmouth City Gosport Fareham Winchester City Eastleigh Southampton City New Forest District New Forest NPA Test Valley East Hampshire Basingstoke and Dean Chichester South Downs NPA
Somerset Levels and Moors	Sedgemoor South Somerset Somerset and West Taunton Mendip
Stodmarsh SAC	Canterbury City Ashford Folkstone and Hythe Dover Maidstone
River Wye & Lugg SAC	Herefordshire
River Axe	East Devon South Somerset Dorset
River Clun	Shropshire
River Mease	South Derbyshire Lichfield North West Leicestershire
Peak District Dales SAC	High Peak
Poole Harbour	Dorset Bournemouth, Christchurch and Poole
River Avon SAC	Wiltshire

	New Forest District New Forest NPA Dorset Bournemouth, Christchurch and Poole
River Camel	Cornwall