

Nutrient Neutrality: an unexpected blow to housing delivery

June 2022



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Protecting our natural habitats from nutrient pollution is an important part of the government's 25 year Environment Plan.

The problem arises where development of land leads to an increase in phosphate and nitrate levels in watercourses. This mainly arises from foul sewage, but sometimes even surface water run-off can contain these compounds. In March 2022 Natural England (NE) extended advice on nutrient pollution to many more local planning authorities (LPAs) where habitat sites could be adversely affected by additional nutrient loads from development. In total 74 local authorities are now affected by this advice.

If the conservation status of a habitat site has been designated "unfavourable", NE advises that LPAs must consider planning applications carefully. LPAs must consider the possible adverse effects of additional nutrient loads as part of a Habitat Regulations Assessment. In practical terms, this means that before granting any new planning permissions following the receipt of the NE advice, LPAs will need to be confident that the development in question is not required to be nutrient neutral to be acceptable under the regulations or that nutrient neutrality is secured, as part of the proposal.

NE's advice applies to all development, but the focus is on development that results in additional overnight stays, which bring new people into the catchment and generate additional waste water. Controversially NE has said that the requirements also apply to sites with outline planning permission where reserved matters have yet to be approved. NE has evidence that designated sites within the catchments identified are adversely affected by nutrients and that only a development that can prove it will reduce or have a neutral impact on nutrient levels in the catchment will be lawful. Unless an appropriate assessment has been carried out and a mitigation strategy put in place, then making a lawful decision on a planning application will not be possible. Effectively, planning permissions for thousands of new homes are embargoed until the situation is resolved.

The latest advice has several consequences. Huge efforts are being put into identifying appropriate mitigation schemes. These can include:

- offsetting discharges from the proposed development against restrictions on the use of water on existing lawful land uses on an application site, extant permissions or other land under the control of the applicant;

- bespoke direct and indirect mitigation measures such as sustainable urban drainage systems (SUDS), intercepting discharges/waste water at treatment centres or creating new wetlands; and
- purchasing 'mitigation credits' from Councils or private operators, in the form of water efficiency improvement works to the Council's own property, or setting aside existing farmland assets, or other recognised source of 'credit' in perpetuity.

Another approach is to question where NE's advice actually applies, for example in relation to reserved matters applications. The Home Builder's Federation has obtained a convincing QC's opinion that, in a post-Brexit world, the Habitats Regulations do not apply to reserved matters applications.

It is clear that the issue of nutrient neutrality is having an unwelcome impact on the supply of new homes in significant parts of England and that creative solutions are needed to overcome the difficulties.