



Department for Levelling Up, Housing & Communities

Joanna Averley
Chief Planner

***Department for Levelling Up, Housing
and Communities***

3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Chief Planning Officers
Local Planning Authorities affected by nutrient pollution

Email:
PSPlanningDirectors@levellingup.gov.uk

By email only

16 March 2022

Dear Chief Planning Officer,

NUTRIENT POLLUTION: NEUTRALITY, SUPPORT AND FUNDING

I am writing to you today in relation to nutrient pollution, which is having an adverse effect on some rivers and waterbodies in the catchments of Habitats Sites. Your authority will have received advice from Natural England about the adverse effect that nutrient pollution is having on Habitats Sites in your area.

Natural England have issued this advice where Habitats Sites are in an unfavourable conservation status and additional nutrient loads, such as from development, may have an adverse effect. This advises that planning applications and plans affecting habitats sites in an unfavourable condition should be carefully considered and mitigation should be used to ensure there are no adverse effects in order to meet the requirements of the Conservation of Species and Habitats Regulations 2017 (as amended).

This is an environmental issue which we must work together to address. I wanted to personally take this opportunity to write directly on the issue and in particular draw your attention to the funding support available, as well as the wider offer of support from the Planning Advisory Service (PAS). Council Leaders and Chief Executives have separately received a joint letter from the Minister for Housing and the Minister for the Environment on this.

NUTRIENT NEUTRALITY

The advice letters you will have received from Natural England provide advice and supporting information on the issue of nutrient pollution affecting Habitats Sites which are now considered to be in an unfavourable conservation status. The letters also cover a short-term policy response to the issue called nutrient neutrality.

The affected Habitats Sites are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The National Planning Policy Framework also contains protections for these sites. Local Planning Authorities (LPAs) have statutory duties as competent authorities, including under Habitat Regulations Assessments for planning decisions and plan-making, as well as broader duties under Regulation 9.

Nutrient neutrality advice requires that competent authorities¹ under the Habitats Regulations carefully consider the nutrient impacts of any new plans and projects on habitats sites, and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation.

The advice is accompanied by a package of information and tools from Natural England. This includes maps of the affected catchments, details of the affected sites, a national Nutrient Neutrality Methodology, and site-specific evidence documents and nutrient calculators to assess the nutrient loads from development proposals.

SUPPORT TO ENABLE DEVELOPMENT

In addition to the nutrient calculator and tools supplied today, Natural England is developing an additional framework for assessing the effectiveness of habitat restoration and mitigation proposals and an associated reference tool. These are expected in spring and will be developed into guidance for landowners/managers and LPAs on the use of nature-based solutions to mitigate nutrient pollution. This will assist in determining appropriate and effective mitigation measures and complement the nutrient calculator tool.

We have heard from LPAs that have already been delivering nutrient neutrality and, in response to their feedback, we are providing funding to LPAs so that nutrients officers can be recruited to work across the affected catchments (more detail provided below). This funding offer will be complemented by support from the PAS, who have recruited two additional advisors to offer advice to the new catchment-based nutrients officers, and to share best practice between them. These offers are expanded on below.

WHAT DOES THIS MEAN FOR DECISIONS AND PLANS

For planning applications in the affected areas, this means you need to consider the possibility of adverse effects, as a result of additional nutrient loads (including from residential developments); as part of a Habitat Regulations Assessment (HRA). In practical terms, this means that before granting any new permissions following the receipt of the Natural England advice, you will need to be confident that the development in question does not require nutrient neutrality to be acceptable under the regulations or that nutrient neutrality is secured, as part of the proposal.

The nutrient neutrality methodology allows for mitigation to be secured to ensure there are no adverse effects. There may be a need to reconsult Natural England and consider requesting additional information. When undertaking an appropriate assessment, to consider mitigation and ensure there are no adverse effect as part of a HRA, there is a statutory 21-day consultation with Natural England.

I appreciate that this will have an immediate impact on planning applications and appeals in affected areas. There may be a need to reconsider the acceptability of

¹competent authorities include planning decisions-makers such as Local Planning Authorities (LPAs), the Planning Inspectorate and the Secretary of State. It also includes all government departments, public bodies (such as the Environment Agency and Ofwat), Statutory Undertakers (such as water companies) and persons holding public office.

current proposals, in light of the advice issued and you may need to consider seeking further information from applicants and reconsult as appropriate. In this situation you should follow the usual process of requesting a reasonable extension of time as necessary.

We recognise that in the newly affected areas, it is unlikely for there to be mitigation solutions in-place or readily available and so the ability for development to be made acceptable will be necessarily limited in the short term. As we have seen in catchments already affected by similar advice, it may take time for applicants to secure mitigation to be able to demonstrate neutrality.

As set out in the National Planning Policy Framework, I would encourage you to approach decisions on proposed development in a positive and creative way². This should include working with developers to identify mitigation solutions, and may be aided by the use of local validation lists to clarify the level of information that is required to adequately consider proposals in the context of nutrient neutrality.

I realise that the issuing of this advice may be particularly challenging in relation to plan making. Our Local Plans team will engage with those local authorities who are facing challenges to understand what support can be provided to enable plans to continue to progress, such as the funding and PAS online workshops outlined below.

We are considering wider ramifications for this advice and are actively reviewing the relevant sections of the Planning Practice Guidance to ensure it provides the best support for decision-making and plan-making in-light of the challenges of nutrient neutrality. We also recognise that there may be implications for the Housing Delivery Test and 5 Year Housing Land Supply and will keep the situation under review.

DLUHC FUNDING SUPPORT AT A CATCHMENT LEVEL

Every catchment is different, and local authorities will be best placed to make decisions on how to support strategic management and mitigation plans in their areas. For this reason, national policy interventions must be supplemented by local action to work in collaboration with Natural England and the Environment Agency. This action would enable the nuances of nutrient pollution in specific catchments to be understood, the required strategies for restoring habitats sites to be formulated, and for mitigation solutions to be identified.

As mentioned above, the department will provide a nutrient support fund, with £100,000 available for each Habitats Site catchment. This will enable affected areas to hire catchment nutrients officers to respond to the challenges of nutrient pollution in a partnership approach. We are aware that catchments who have received nutrient neutrality advice before today have already incurred costs in relation to this. In order that we can make this payment to these existing catchments before the end of the financial year, we would appreciate your quick engagement in reaching agreement on which LPA in your catchment is to act as the lead and so receive the funding. All other LPAs in your catchment have also received this letter. Should you wish to take up this funding offer, please respond no later than 25 March 2022.

² Paragraph 38 of the NPPF

For these existing catchments, PAS are hosting a dedicated informal meeting on Monday 21 March at 10am to discuss this funding, how to apply for it and how they might best support you in the short and medium term. Invites to this meeting will follow this letter.

For catchments where Natural England have issued nutrient neutrality advice for the first time today, the funding will be available from April 2022. Given the cross-boundary nature of this issue, we expect it will be most effective for the affected LPAs in your catchment to come together and agree a lead authority. This lead authority will sign a memorandum of understanding with DLUHC, setting out that all the LPAs will work together and offering suggestions for how the funding will be used. We will be able to provide you with the funding as you start to work on understanding nutrient neutrality in your area.

Regarding this funding, please contact nutrient.ppd@levellingup.gov.uk.

SUPPORT FROM THE PLANNING ADVISORY SERVICE

We recognise this issue may bring novel issues for authorities. We are therefore working closely with the Planning Advisory Service (PAS) to put in place a comprehensive package of support, including the facilitation of sharing of best practice through an officer network.

PAS will be running a series of six online workshops on the nutrients issue. The first workshop will be on 24th March at 2pm and this will be repeated on 29th March at 10am. The workshop series will seek to support new and existing LPAs in understanding the issue, responding to the implications with development management teams and teams who are plan-making, and beginning to understand and address the issue strategically. Please find further details of the workshop series annexed below.

PAS have hired additional dedicated nutrients advisors who will work with the catchment nutrients officers. The PAS nutrients advisors will offer advice to the nutrients officers and chair regular meetings between the catchment officers allowing for the sharing of best practice and knowledge sharing as we learn what works best. For example, we recognise the benefits that partnership working in the Solent has delivered and the solutions being identified in catchments through the development of Nutrient Management Plans.

PAS have set up an online resource on nutrient neutrality, and this will continue to be updated. This can be found along with further details of the workshop series, the officer network and other PAS resources here:

<https://local.gov.uk/pas/topics/environment/nutrient-neutrality-and-planning-system>

TACKLING NUTRIENT POLLUTION IMPACTS NATIONALLY

The Government is clear that nutrient neutrality can only be an interim solution. We must act to address the sources of pollution and tighten up the associated regulatory

frameworks to prevent further harm to protected sites. We are committed to taking action to reduce the mitigation burden in order for communities to get the homes they need.

DLUHC and DEFRA have a cross-Government task force to tackle nutrient pollution and enable development to continue. The cross-Government taskforce continues to identify the range of options in the short, medium and long term. Defra have recently published the Strategic Policy Statement to Ofwat, making clear that Ofwat and water companies should consider nutrient pollution in line with their environmental duties, which include duties under the Habitat Regulations; working with wider stakeholders to support efforts to tackle nutrient pollution.

These are pragmatic short-term steps but do not amount to a permanent solution that will improve water quality and allow sustainable development to proceed, and so we are going further. The Government already has highly ambitious plans to reduce nutrient pollution from both agriculture and sewerage works and has further plans for the future. We welcome the new and proactive investment from Severn Trent Water, United Utilities, South West Water and Yorkshire Water in collectively investing an additional £24.5m to fund nature-based based 'strategic solutions', like new wetlands, to tackle nutrient pollution. We will work with the wider industry to deliver further action, as far as possible.

Finally, we will explore legislation to further strengthen requirements to reduce nutrients at source enabling more sustainable development. This will provide greater certainty for Local Authorities.

I understand that this is a very challenging situation and I would like to reassure you that we are here to provide you with the support you need to keep the planning processes running in your local area. We will keep working on this to help solve nutrient pollution for the long-term and reduce nutrient loading into the environment for the future.

I am also copying this letter to the Planning Advisory Service.

Yours faithfully,

**Joanna Averley
Chief Planner**

ANNEX 1: PAS nutrients workshops series

Run on Thursday afternoons and repeated the following Tuesday morning, via Teams.

Week 1 Nutrient Neutrality for Chief Planners – 2pm 24th and 10am 29th March

Audience - Chief Planners

- An overview for Chief Planners.
- Nutrient neutrality and why is it needed?
- What does it mean for your Council and what support is available?

Week 2 The Implications of Nutrient Neutrality for Councils

Audience – Heads of Service, Managers, Officers

- Nutrient neutrality and the planning system.
- Understanding the issues and how it will affect the Council and customers.
- Delivering an immediate response.

Week 3 A Deeper Dive into Nutrient Neutrality

Audience – Managers, Officers

- Diving into the details of nutrient neutrality.
- Exploring the legal context and risk.
- How to approach the workload implications of nutrient neutrality.
- Finding solutions – what is the best approach for your Council?

Week 4 Delivering a Catchment Approach for Nutrient Neutrality

Audience – Heads of Service, Managers, Officers

- How to deliver a partnership approach to nutrient neutrality.
- Working within a catchment to deliver solutions for nutrient neutrality and site restoration.
- The issues for strategic planning and housing land supply.

Week 5 Nutrient Neutrality – Planning for a Better Environment

Audience – Managers, Officers

- Delivering more for people and wildlife in an integrated landscape.
- Focus on the multiple benefits of mitigation solutions and delivering wider objectives.
- Ways to avoiding nutrient impacts through best practice urban design.

Week 6 An Introduction to the Ongoing Support and the National Network

Audience - Officers

- Introducing a network of help and mutual support for existing and new catchments.
- A national LPA network to share knowledge and learning, pool resources and help deliver solutions.
- Let us know how PAS can help you going forward.

Further details may be found on the PAS website, including the sign up links:

<https://local.gov.uk/pas/topics/environment/nutrient-neutrality-and-planning-system>