

Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans within the River Lugg hydrological catchment area

Position Statement update

1 March 2021

The River Lugg is a tributary of the River Wye and forms part of the River Wye Special Area of Conservation (“River Wye SAC”) from Hope under Dinmore. The River Lugg hydrological catchment area (“River Lugg Catchment Area”) covers predominantly the north of Herefordshire and includes the catchments of the River Arrow and the River Frome. The River Lugg is currently exceeding its limits for phosphates as a result of water pollution from both ‘point’ source (in particular sewerage outlets) and ‘diffuse’ source (in particular agricultural run-off). A map showing this area is attached below.

To date, Herefordshire Council’s approach, which has permitted the continued progression of neighbourhood plans in the River Lugg Catchment Area, has been based on previous legal advice sought following the ‘Dutch Case’. That advice was that the application of Policy SD4 of the Core Strategy would ensure that the neighbourhood plan provides no pathways to adverse effects on the integrity of the River Wye SAC. Previous position statements are available [here](#)

There are a number of draft neighbourhood plans progressing for areas that are located within the River Lugg Catchment Area which the Council has received recent consultation comments from Natural England (“NE”) upon. NE have stated their view that the neighbourhood plans are unable to demonstrate there will be no likely significant effects, on the basis that the Nutrient Management Plan no longer offers sufficient certainty that the phosphate targets in the River Lugg can be met, is unable to mitigate against the effects of development in the River Lugg Catchment Area and the strategic mitigation provided by Policy SD4 of the Core Strategy cannot guarantee scientific certainty with regards to water quality and therefore should not continue to be relied upon in policy terms.

Although the neighbourhood plans themselves do not grant planning permission for development they are subject to compliance with The Conservation of Species and Habitats Regulations 2017 as the regulations apply to any plan as well as any developments requiring planning permission.

Until it can be demonstrated that there are no adverse effects on the integrity of the River Lugg Catchment Area as a result of the proposed allocations in the neighbourhood plan, the Council is unable to continue to promote a neighbourhood plan which allocates sites for residential development within the catchment area.

Therefore until water quality conditions improve sufficiently and measures and/or treatment works are in place to conclude that there would be no adverse effect on the River Lugg Catchment Area, the neighbourhood plans will fail part of the 'Basic Conditions' test.

The basic conditions include compliance with the Conservation of Species and Habitats Regulations 2017. In order to progress neighbourhood plans and meet the basic conditions it is necessary for the Nutrient Management Plan to provide sufficient certainty and improvements to the water quality in the River Lugg Catchment Area, which as referred to above, it cannot at this point in time.

Therefore at this stage any neighbourhood plans within the River Lugg Catchment Area will be subject to the following:

- Those neighbourhood plans awaiting referendum **cannot be made/adopted** notwithstanding if they achieve a positive referendum result as they will be unable to meet the requirements of the basic conditions. This includes neighbourhood plans where the referendum has been placed on hold due to the Coronavirus Act 2020 as the advice on not being able to comply with the basic conditions has been received post issuance of the examination report and Decision Document.
- On completion of the consultation by the parish council at Regulation 14, they would normally submit a suite of documents to the local planning authority including a statement at Regulation 15 which would need to explain how the neighbourhood plan meets the requirements of the basic conditions (The Basic Condition Statement). At the present time, due to the failing water quality levels in the River Lugg Catchment Area, **it is not possible** for the parish council to demonstrate that this part of the basic conditions can be met.

Whilst the parish council could submit the required information at Regulation 15 to progress, the Council would strongly **advise not to** proceed to Regulation 16 consultation as beyond that the examination would incur costs, would **fail the basic conditions** and **would not be able to proceed to referendum**.

- As part of the consultation on the neighbourhood plan at Regulation 14, the Council produce an HRA for the parish council. The Council **will not be able** to produce an HRA demonstrating that there will be no likely significant effects on the River Lugg catchment area.

It is important to stress that this is the current position and advice, this is a complex situation with many moving parts and the Council are actively working with partners through the Nutrient Management Board to address the phosphate issues within the River Lugg Catchment Area. This issue is also being raised nationally. For up to date information and position statements on the progress of work to address this, they can be found [here](#)

River Lugg Catchment Area

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