

ENVIRONMENT AND PLACE OVERVIEW AND SCRUTINY COMMITTEE



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| Report subject | Nutrient Neutrality |
| Meeting date | 20 November 2024 |
| Status | Public Report |
| Executive summary | Update on Nutrient Neutrality in respect to phosphates in the River Avon Special Area of Conservation. |
| Recommendations | It is RECOMMENDED that: a) the report be noted |
| Reason for recommendations | The Environment and Place Overview and Scrutiny Committee requested an update on this issue following a scrutiny request from a Councillor. |

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| Portfolio Holder(s): | Cllr Millie Earl, Leader of the Council and Portfolio Holder for Planning |
| Corporate Director | Glynn Barton, Chief Operations Officer |
| Report Authors | Wendy Lane, Director of Planning & Transport |
| Wards | Council-wide |
| Classification | For Information |

Background

1. Phosphorus and nitrogen are chemical elements that provide nutrition for plants and animals and are required for them to grow. Substances containing phosphorus and nitrogen are therefore also called 'nutrients', and these substances are what are commonly referred to when discussing nutrient neutrality and water pollution.
2. Phosphorus and nitrogen can enter waterways as part of chemical compounds such as phosphates and nitrates. This can happen via natural means, such as when organic matter decomposes, or through sewage and agricultural run-off. If there are too many nutrients in rivers and lakes, it can cause excessive growth of algae and plants. This can affect the quality of the water and damage local ecosystems. This process is known as eutrophication.

Main sources of nutrient pollution

3. According to the Environment Agency, the main sources of phosphorus and nitrates in rivers and lakes are agricultural run-off and sewage effluent.
4. Fertilisers (such as manure and compost, or inorganic fertilisers) are used by farmers to increase crop yields but may not be completely used up by the target crops. The remaining nitrogen and phosphorus can enter the water system by being washed into rivers and drains by rainfall or can enter groundwater from the soil.
5. The most significant sources of phosphate in sewage are urine and faecal matter. These can enter the water system through sewage spills and leaks or release of treated waste. Leaking water mains also release phosphates and nitrates into ground and surface waters in England.

The Habitats Regulations

6. The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') transposed the Habitats Directive 1992 and the Birds Directive 1979 (European legislation) into domestic law for England and Wales. The Habitats Regulations establish sites that are important for nature or for protecting threatened habitats and species of international importance. Special Areas of Protection (SPAs) are protected areas for birds, whereas Special Areas of Conservation (SACs) protect certain habitats and species (other than birds).
7. The Habitats Regulations require 'competent authorities' to assess and consider the environmental impact of plans and projects on protected habitats sites. In the

planning process, competent authorities are local planning authorities (LPAs), the government's Planning Inspectorate and the Secretary of State for MHCLG. Other public bodies, such as the Environment Agency, and statutory undertakers, such as water and sewerage companies, are also competent authorities.

8. The Habitats Regulations affect the plan-making process as well as decision-making process on planning applications for individual developments. The process is administered by LPAs, which have statutory duties to protect habitats sites as competent authorities under the Habitats Regulations. The regulations require LPAs to assess and consider whether a plan or project is likely to have "a significant effect" on a protected habitats site. To determine whether a plan or project is likely to have a significant effect on a protected species or habitat, an LPA must undertake an Appropriate Assessment (AA).
9. If the adverse effects of a proposed development on a protected habitats site cannot be avoided or mitigated, the LPA must refuse consent to the proposed development apart from in a case where there is a defined exception.

Nutrient neutrality

10. Nutrient neutrality is the principle that, in areas where protected habitats sites are already in 'unfavourable condition' (due to nutrient pollution), new developments must mitigate more nutrients entering the water system. There are currently 27 protected habitats sites in 'unfavourable condition' in England, affecting 74 LPAs. Poole Harbour and the River Avon are both identified as habitats that are in an 'unfavourable condition'. Nutrient neutrality does not apply to other areas outside the water systems of these areas.
11. On March 16, 2022, Natural England (NE) provided advice to BCP about phosphates in the River Avon Special Area of Conservation. After discussions and sharing technical information, it was concluded that phosphates from residential and tourism development harm the River Avon SAC. There were already arrangements in place for Poole Harbour which meant that development could continue to be approved.
12. For the Avon SAC area, this meant that the Council had to handle planning applications differently as Natural England had advised BCP Council that they should approve new developments only if mitigation strategies were "certain at the time of the assessment" and there was "no reasonable scientific doubt" that the proposed development would not have "an adverse impact on the integrity of the site".
13. Therefore, the Council could only approve new homes and tourism development if the applicant showed they have suitable measures to address the phosphate issue. This meant that a nutrient avoidance and mitigation package would be needed to achieve nutrient neutral development before a planning permission could lawfully be issued in accordance with The Conservation of Habitats and Species Regulations 2017.

Current situation - Advice to be provided to applicants caught by need for Nutrient Neutrality mitigation

14. Options now exist in the market to allow for mitigation measures to be put in place to mitigate the impact of the development.
15. Applicants seeking planning permission for residential and tourism development must show upfront when they are applying for planning permission, that they have

measures in place to deal with phosphates, increasing the chance of their proposal meeting the Appropriate Assessment requirements.

16. Applicants can choose to implement direct measures or buy credits to offset their impact. This applies to applications for more housing or tourism units in the area. It also affects applications which grant new permissions, such as reserved matters applications.
17. Planning permissions that have not fully discharged all their conditions yet and not proven nutrient neutrality will also be affected, including applications for Discharge of Conditions related to new housing units.
18. For applications currently under consideration and new submissions, applicants will be required to complete the River Avon Nutrient calculator and submit it to the Council. The Council will be providing guidance on occupancy rates, soil type and rainfall to increase the likelihood of the correct information being input into the calculator.
19. Once submitted the planning officer will review the calculator for accuracy and confirm that this is in agreement. The applicant will then be required to contact the mitigation provider and obtain confirmation in writing that the level of mitigation required is available.
20. At the moment, there are two potential nutrient credit providers.
21. Subject to these conditions being met the Council will then be able to issue a decision subject to a planning condition to require the mitigation to be secured prior to commencement of the development.
22. For applications to discharge conditions, applicants will be required to undertake the steps outlined above and confirm the level of mitigation required using the River Avon nutrient calculator. Once this is agreed the applicant will be required to arrange for the credit purchase and submit proof of purchase to the planning officer. The Council will then be in a position to discharge the relevant planning condition(s).

Summary of financial implications

23. Not applicable as report is for information

Summary of legal implications

24. Not applicable as report is for information

Summary of human resources implications

25. Not applicable as report is for information

Summary of sustainability impact

26. Not applicable as report is for information

Summary of public health implications

27. Not applicable as report is for information

Summary of equality implications

28. Not applicable as report is for information

Summary of risk assessment

29. Not applicable as report is for information

Background papers

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Appendices

There are no appendices to this report.