Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation

Natural Resources Wales Version 3.1 Updated July 23

Amended to update wording for sections covering new connections to mains sewer in association with progression of the NRW Review of Permits.

Our advice

This advice to Planning Authorities is the opinion of Natural Resources Wales in relation to nature conservation, and the impacts of proposed developments requiring planning consent, on phosphorus sensitive river Special Areas of Conservation (SACs).

For the purposes of the Conservation of Habitats and Species Regulations 2017 (referred to in this Advice as the Habitats Regulations), the Planning Authority is a

competent authority responsible for undertaking the Habitats Regulations Assessment of implications of a plan or project on an SAC. As such, it is a matter for the Planning Authority to determine whether a plan or project is likely to have a significant effect on an SAC having considered this advice. NRW must be consulted for the purposes of the Appropriate Assessment, as the Appropriate Nature Conservation Body (ANCB), where we will advise on the implications of proposed developments for the site's conservation objectives. It will ultimately be the responsibility of the competent authority to ensure that the requirements of the Regulations are satisfied prior to consent being given. For this purpose, Planning Authorities should obtain their own independent advice wherever necessary.

Given the diversity of development proposals received by Planning Authorities, we advise that the principles set out below are considered and applied on a case-by-case basis – exceptions will apply and this will be a matter of judgment for Planning Authorities.

What is the issue?

There are nine rivers in Wales that are designated as SACs under a UK law called the Conservation of Habitats and Species Regulations 2017 (as amended). They are the Afonydd Cleddau, Eden, Gwyrfai, Teifi, Tywi, Glaslyn, Dee, Usk and Wye. These river ecosystems support some of Wales's rarest and most important wildlife including Atlantic salmon, freshwater pearl mussel, white-clawed crayfish, and floating water-plantain.

The environmental targets these rivers should meet to be in favourable condition are detailed as conservation objectives in site Core Management Plans. Public bodies in Wales have a statutory duty to achieve these targets and protect the river SACs through regulation of activities for which they are responsible.

In January 2021 we published a report (Natural Resources Wales / Compliance Assessment of Welsh River SACs Against Phosphorus Targets) in which we presented our assessment of how much phosphorus there is in SAC rivers measured against revised water quality targets. The evidence review showed that over 60% of the water bodies assessed in SAC river catchments were failing to meet the revised water quality targets for phosphorus.

Phosphorus is naturally present in river environments but at very low levels. Human activities such as agriculture and discharge of treated wastewater elevate levels of phosphorus in river flow. High concentrations of phosphorus lead to the process of nutrient enrichment, also known as eutrophication, and can alter the balance of plant species in our rivers causing significant ecological damage.

For the purposes of this Advice a *SAC river catchment* describes the hydrological catchment area for a designated river SAC. This includes non-designated tributary catchments draining into the SAC. Under the Water Environment (Water Framework Directive) (England & Wales) Regulations 2017 hydrological features are formally divided into units known as *water bodies*, with each given a unique identification

reference. Water bodies represent a length of river or estuary, a lake, artificial or heavily modified feature such as a canal. *Water body catchments* are hydrological catchments associated with a given water body.

How does this affect development planning?

Some new developments such as housing or agricultural enterprises can lead to increased amounts of phosphorus entering the river environment from additional wastewater or from poor management of manures and slurries. Under the Habitats Regulations, Planning Authorities must consider the phosphorus impact of proposed developments on water quality within SAC river catchments.

Planning Authorities should consider case law when determining planning applications with the potential to affect river SACs. More detail on case law is provided at the end of this advice.

In SAC catchments failing to meet phosphorus targets, it is possible that new developments can be authorised if it can be demonstrated they will not lead to further deterioration of water quality in the SAC water bodies failing to meet water quality targets and will not undermine the ability for the SAC to meet its conservation objectives.

This may be achieved if:

- developments are not a source of phosphorus or
- developments are a source of phosphorus but there is no pathway for it to enter the SAC river environment or
- measures associated with a given development are put in place so that nutrient neutrality can be achieved and that development does not lead to a net increase in phosphorus entering the SAC river environment.

In addition, there may be a limited number of cases where increases in final effluent phosphorus discharges may be made from a wastewater treatment works up to the limit conditioned on the associated environmental permit. This *operational headroom* may be used where the permit has been reviewed against the revised conservation objectives for a river SAC and in some cases varied to meet current water quality targets.

In SAC catchments meeting phosphorus targets, it is possible that new developments can be authorised if it can be demonstrated they will have no likely significant effect or not lead to an adverse effect on site integrity (i.e., will not undermine the ability for the SAC to meet its conservation objectives).

The following sections offer advice for Planning Authorities to consider when determining planning applications that have the potential to affect river SACs.

What is a Habitats Regulations Assessment?

Development proposals within a SAC river catchment need to undergo a Habitats Regulations Assessment (HRA) to determine their impact on the designated site and its features. Two principal stages of an HRA are:

- Test of Likely Significant Effect – this is a screening assessment to determine whether a development has the potential to affect a SAC. Where a likely significant effect can be ruled out, no further assessment under the Habitats Regulations is required.
- Appropriate Assessment – where a proposed development is considered likely to have a significant effect, or such an effect cannot be ruled out, a more detailed assessment of the potential impacts is required. The purpose of the Appropriate Assessment is to determine whether or not it is possible that a development proposal will have no adverse effect on the integrity of the river SAC.

What development proposals are unlikely to increase phosphorus levels within a river SAC?

Every development should be considered by Planning Authorities on a case-by-case basis.

The Test of Likely Significant Effect screening process should apply to developments within SAC river catchments. Catchment boundaries can be found on DataMapWales.

The following developments can be screened out as not likely to have a significant effect on a river SAC in relation to phosphorus inputs, as there is unlikely to be a source of additional phosphorus or pathway for impacts:

- any development that does not increase the volume and phosphorus concentration of wastewater
- any development that improves existing water quality discharges by:
  - reducing the phosphorus concentration of wastewater without increasing volume or
  - by decreasing the volume of wastewater produced without increasing the concentration of phosphorus
- developments intended to provide services, facilities, commercial sites, or places of employment (e.g., community buildings, schools etc.) for a local population already served by residential connections to existing public or private sewers discharging within the SAC river catchment.
- any development that reduces the frequency, or volume of irregular phosphorus discharges within a SAC river catchment such as the erection of agricultural structures and drainage schemes to separate rainwater from manures and slurries by covering yards and existing manure/slurry stores. Note that any such development must not be linked to an increase in

livestock numbers or the capacity for an increase in livestock numbers through provision of additional infrastructure.

- private sewage treatment systems discharging domestic wastewater to ground, which meet all the following criteria:
    - built to the relevant British Standard (BS 6297:2007+A1:2008)
    - maximum daily discharge rate is less than 2 cubic metres (m^3)
    - the drainage field is located more than 40m from any surface water feature such as a river, stream, ditch or drain and located more than 50m from a SAC boundary and at least 200m from any other known discharge to ground (Lle - Water Quality Exemptions (gov.wales)) .

There may be cases where developments proposing new connections to a public sewer can be screened out as having no likely significant effect. Please see the section *What does this mean for development proposals involving connection to a public wastewater treatment works?*

Although some development proposals associated with existing activities of spreading or discharging to land or water may be able to demonstrate phosphorus neutrality, they may continue inappropriate practices of applying/discharging high or excess levels of nutrient rich materials. These activities may contribute to the long-term accumulation of excess phosphorus in the land and water environment. Such practices could disrupt restoration work to the SAC, or the potential for future restoration, if they undermine the site's conservation objectives. In such circumstances Planning Authorities should consider whether measures can be secured via planning consent to optimise nutrient management or limit nutrient discharge to watercourses. Measures could include, for example, a requirement for nutrient (or other appropriate) management plans secured under planning condition and/or nature-based interventions, such as establishing integrated buffer zones along river corridors, to disrupt the pathway for run-off to enter streams and rivers. The LPA should additionally consider whether planning obligations could be utilised for this purpose.

What types of non-residential development lead to increases in phosphorus discharges?

These include developments expected to serve a population from outside of an SAC catchment who are not already served by residential connections to existing public or private sewers discharging within the SAC river catchment. This includes, but is not limited to, self-service and serviced tourist accommodation such as hotels, guest houses, bed and breakfasts, self-catering holiday facilities, camping and caravan sites. There may be cases where planning applications for new commercial or industrial developments, such as conference facilities, large retail sites or major tourist attractions could result in the release of additional phosphorus into the river system.

In addition, new developments involving the production, storage, management and spreading of organic manures and slurries within the SAC river catchment have the potential to contribute towards the amount of phosphorus entering the designated site.

In such cases, further assessment is likely to be required to determine if the proposal will have an adverse effect on the integrity of the river SAC.

What does this mean for domestic extensions?

Domestic extensions can provide increased living space within existing properties. They may not result in a change in the number of occupants and in our opinion, it would appear reasonable for domestic extensions to be screened out at the test of likely significant effect. Our view is that unless the proposal would result in the creation of independent living accommodation, a separate planning unit and/or a change in use, where it can no longer be said to be ancillary to the main residence, such developments are unlikely to lead to significant effects on a SAC through changes in discharge of wastewater. However, proposals that lead to the creation of independent living accommodation as a separate planning unit may lead to an increase in occupancy by residents from outside a SAC river catchment, and in these instances, proposals require further assessment.

What does this mean for development proposals involving connection to public wastewater treatment works?

Prior to confirming capacity for new connections to a public sewer, Planning Authorities should determine whether the environmental permit for the associated wastewater treatment works has been assessed against the revised phosphorus targets set out in the conservation objectives for the river SAC.

NRW is undertaking a review of existing water company permits (with a dry weather flow, final effluent discharge of =>20m^3/day) against revised phosphorus targets. Planning Authorities may access permit information via our public register Natural Resources Wales / Public register: environmental permitting, water resources and marine licensing information or by contacting us at sacriversenquiries@cyfoethnaturiolcymru.gov.uk

Where a wastewater treatment works permit has been reviewed against revised phosphorus targets and, in some cases, varied accordingly, new developments connecting to the associated public sewer should still be subject to a Habitats Regulations Assessment by the Planning Authority. While the phosphorus impacts of new connections should be considered on a case-by-case basis, it is likely that a conclusion of no likely significant effect could be drawn in some cases in the context of water quality impacts where the following apply:

- the environmental permit for the associated wastewater treatment works has been reviewed against revised conservation objectives for water quality

- there is capacity in place to accommodate the additional wastewater in compliance with revised permit limits
- the sewer network and associated WwTW has the hydraulic capacity for new connections without leading to an increase in the environmental impact of storm overflows

For such development proposals, we advise the Planning Authority to seek the following information in support of a planning application:

- confirmation of how foul drainage will be managed
- scale plans showing the location of the nearest public sewer and proposed connection point

The Planning Authority should consult with the sewerage undertaker, as statutory consultee, on the potential for a development to connect to a public sewer, and receive a copy of their formal response confirming:

- there is capacity to treat additional wastewater from the proposed development within revised environmental permit limits, or
- the necessary treatment capacity to remain within revised environmental permit limits will be delivered within the agreed Asset Management Plan (AMP) and that when implemented the treatment capacity will ensure that additional wastewater generated in consequence of the proposed development will remain within the revised permit limits and
- that the sewer network and associated WwTW has the hydraulic capacity to accommodate additional wastewater without contributing to an increase in frequency or duration of storm overflows.

The scope of a Habitats Regulations Assessment may need to be wider than the scope of the permit review and consider other site characteristics, new information or changes in circumstances.

Where appropriate, Planning Authorities are advised to condition timing of development to correspond with delivery of future improvements at wastewater treatment works scheduled under AMP. Grampian conditions may be used but, as development specific mitigation, should be considered on a case-by-case basis at Appropriate Assessment. Where future improvements or enhancements are required to enable a treatment works to meet reviewed permit limits, conclusions of no likely significant effect or no adverse effect on site integrity can only be made if those improvements within the AMP are certain at the time of the HRA.

Where a permit for a wastewater treatment works has not been reviewed against the revised phosphorus targets, we advise that even where increased discharges may remain within *existing* permit limits for phosphorus, the findings of the extant Appropriate Assessment for the permit should not be relied upon to conclude no adverse effect on site integrity, as changes to permit limits may be required following

the current permit review. Instead, and in advance of completing NRWs permit review (for discharges of >20m^3/day), a Planning Authority should consider whether they need to carry out their own Appropriate Assessment of new connections to a public sewer taking into consideration the revised phosphorus targets for the river SAC and extant permit conditions.

There is a presumption for all developments that rainwater is kept separate from foul wastewater and discharged in line with planning guidance on rainwater disposal.

Read more about drainage on our Sustainable Drainage Systems page.

Can chemical pre-treatment be used to enable connection to a public sewer where phosphorus constraints apply?

Chemical pre-treatment to reduce phosphorus in wastewater discharging to a public sewer may adversely affect the hydraulic and biological performance of the wider sewer system and treatment works. In the first instance Planning Authorities / developers should seek advice from the water company for any such proposals.

What does this mean for development proposals involving private sewage treatment systems?

The first presumption when drawing up sewerage proposals for any development, must always be to provide a system of foul drainage discharging into a public sewer - see Planning Policy Wales and the Welsh Government Circular 008/2018 *Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants* here.

If, by considering the cost and/or practicability, it can be shown to the satisfaction of the Planning Authority that connection to a public sewer is not feasible, a private sewage treatment system consisting of package treatment plant can be considered. Only if it can be clearly demonstrated by the developer that connection to the sewer, or the use of a private package treatment plant is not feasible, should a septic tank system be considered.

With regards to feasibility, it is NRWs position that connection constraints associated with the environmental performance of a wastewater treatment works, and/or the capacity of the SAC catchment to receive increased phosphorus discharges and meet water quality targets is not a valid reason to justify use of a private sewage treatment system in a sewered area. Private sewage treatment systems are likely to require an environmental permit for a discharge activity unless they meet the criteria to register an exemption. We are unlikely to issue a permit for such systems if the proposal is within a sewered area.

Where private treatment systems can be properly justified, small discharges to ground (<2m^3/day) via a suitable drainage field, built in accordance with criteria set out in this advice, are preferred over direct discharges to watercourses as they are considered unlikely to have a pathway for phosphorus to enter the river environment and unlikely to have a significant effect on an SAC. Larger discharges to ground will

need to be subject to an Appropriate Assessment along with other forms of development involving private sewage treatment systems not addressed above.

For advice on cess pits, please refer to the section on sludge disposal.

With regards to environmental permits, additional guidance on the use of private sewage treatment in an area with a public sewer can be found on our web page Private sewage treatment in an area with a public sewer. We encourage developers to use our environmental permitting pre-application advice service when considering private sewage treatment systems to identify any constraints that may apply.

We advise Planning Authorities to seek the following information in support of a planning application or Habitats Regulations Assessment for a scheme involving a private sewage treatment system:

- confirmation of how foul wastewater will be managed
- clear scale plans showing the location of the proposed private sewage treatment system and discharge location
- where a private sewage treatment system is proposed within a sewered area, evidence to justify why a connection to public sewer is not feasible in line with Circular 008/2018 and Planning Policy Wales. For all other private sewage treatment systems, evidence that Circular 008/2018 has been followed
- where discharges to ground are proposed, developers should provide the results of infiltration testing with calculations to demonstrate that the drainage field size and design is appropriate for the volume of discharge proposed and follows the relevant British Standard.

The Planning Authority should also ensure that, where available, copies of any Natural Resources Wales environmental permit or registered exemptions to discharge to ground or to a watercourse are made available. It should be noted that registration of an exempt discharge does not mean that planning consent for a development with a new private drainage system can be granted and as such will need to be assessed by the Planning Authority in considering the planning application.

Where a new drainage field is proposed in close proximity to other known existing and proposed drainage fields, there is risk that the effectiveness of the drainage fields is compromised. Many private drainage systems qualifying for an exemption from Environmental Permitting have not been registered with NRW and as such there may be limited data available on the location of existing drainage fields. In the absence of complete data, Planning Authorities are advised to use mapping/aerial photography to assess proximity to existing properties likely to have a private drainage system and consider whether further site investigation may be required. Poor operation of drainage fields can lead to increased phosphorus discharges to

SAC river systems. We therefore advise Planning Authorities to consider site conditions (such as proximity to adjacent drainage fields, soil type, depth to groundwater, distance to surface water features and SAC boundary etc) to determine with certainty that existing and proposed drainage fields will operate effectively in the future and prevent any phosphorus from entering a river SAC. Planning Authorities may wish to refer to advice on groundwater risk assessments to inform any technical assessments Groundwater risk assessment for your environmental permit - GOV.UK (www.gov.uk).

Can additional wastewater be discharged to existing private sewage treatment systems?

Development proposals resulting in additional wastewater being discharged to an existing private treatment system are not likely to have a significant effect if:

- the existing discharge is to ground and
- the drainage field is located more than 40m from any surface water feature such as a river, stream, ditch or drain and located more than 50m from a SAC boundary and
- the design of the existing private sewage system (including the drainage field) has the capacity to effectively treat and discharge the additional wastewater and
- increases in effluent discharge to ground can be made where the discharge remains eligible for an existing exemption under the Environmental Permitting Regulations or can operate in compliance with conditions of an extant environmental permit.

Where increases in wastewater to an existing private sewage treatment system are being proposed in association with a development, Planning Authorities are advised to obtain a detailed design of the private drainage system (including an assessment of ground conditions in the drainage field) to demonstrate that it can accommodate increased flow and continue to operate effectively.

Will compost toilets increase phosphorus discharges to SAC rivers?

Compost toilets are unlikely to lead to increases in phosphorus discharges to the SAC river environment. Well-designed and maintained compost toilets can reduce water usage and provide material that is suitable for use as a fertiliser. The design of both permanently sited and portable compost toilets should separate the urine and sanitary waste from the solids.

Any compost toilet that does not separate solids and liquids is considered to be a cesspool and should have the resultant waste collected by a registered waste carrier for disposal at an appropriately permitted site and should not be applied to land.

Can phosphorus reduction technology be used in private sewage treatment systems?

Technologies to reduce phosphorus in effluent discharges from private sewage treatment systems are usually based on a chemical dosing technology. There are risks associated with the use of chemical dosing systems in small, private treatment systems in terms of their ability to deliver phosphorus reductions in the long term. Such systems require high standards of maintenance for them to operate effectively including management of the chemicals and dosing system, as well as regular desludging where dosing increases the amount of sludge deposited. Many small, private treatment systems are not well maintained and failure to maintain a private system with chemical dosing system may lead to chemical contamination of river water, deterioration of effluent quality and increases in phosphorus discharges over time. Their use may also lead to breaches of permit conditions as well as being a risk to personal and environmental safety where handling and storage of chemical substances is involved. Chemical dosing systems are more suited to operation in large scale, public wastewater treatment works.

If phosphorus reduction technologies are proposed for a private system, developers applying for planning consent should provide sufficient information with their application for Planning Authorities to have certainty that the proposed system can be installed and operated effectively in accordance with manufacturers specifications for the lifetime of the development. Supporting information should include:

- test performance certification issued by a recognised body demonstrating the effluent phosphorus standards that can be achieved by the proposed treatment system
- a method statement detailing how the sewage treatment plant and phosphorus reduction technology will be operated and maintained

Note this information is in addition to the provision of manufacturers specifications, design information and drainage plans etc that should accompany any application.

Phosphorus reduction in private systems does not remove all of the nutrient from effluent. Therefore, developers and Planning Authorities will need to consider the effect of residual phosphorus in effluent on a river SAC, as a pathway for impacts remains where discharges are to watercourses or discharges are to ground not meeting the criteria set out in this advice. Guidance on private system sludge is provided below.

Developers should obtain an environmental permit or register an exemption for any discharges to ground or surface water. We recommend that developers proposing additional treatment to reduce phosphorus make use of our pre-application advice service prior to applying for an Environmental Permit. There is a charge for this service. Once constructed, the private treatment plant should be maintained by a suitably qualified contractor in accordance with the manufacturers requirements and comply with conditions of an environmental permit.

How should the disposal of sludge from private wastewater treatment systems be considered in a Habitats Regulations Assessment?

In our opinion, with the current regulatory framework in place governing carriage, treatment and disposal of private system sludge, Planning Authorities can reasonably conclude that the disposal of sludge from new, private sewage treatment systems is unlikely to have a significant effect on a river SAC.

Developments connecting to private drainage systems will lead to accumulation of sludge in the treatment unit and require regular 'desludging' to operate effectively. In most cases, the waste removed from a private treatment system tank will include a combination of the liquid fraction, treated waste and untreated sewage. For the purposes of this advice, the combined waste will be given the generic term of private system 'sludge'. Sludge should be taken via a registered waste carrier to an appropriate public wastewater plant for further treatment. After being deposited at the public wastewater plant, treated sewage sludge in Wales follows a pathway with resultant material spread to land. The process of treatment at the public works, anaerobic digestion and spreading to land is governed by a range of environmental regulations, an assurance scheme, and codes of practice. Controls are set out within this governance framework to reduce the risk of nutrients, including phosphorus, from entering the river environment where compliant land spreading operation is undertaken.

For private drainage systems i.e., septic tanks and package treatment plants without phosphorus reduction technologies, the phosphorus in effluent presents the greatest risk to the river environment. We advise in earlier sections of this guidance how the impacts of effluent discharges to ground and watercourses should be considered in an HRA. The sludge only retains a small proportion of total phosphorus.

Where phosphorus reduction technology is installed in private sewage treatment systems, it alters the balance of phosphorus distribution between effluent and sludge, with increased accumulation of sludge and the majority of phosphorus being retained in-tank in this material. We advise in earlier sections of this guidance of the risks associated with the use of phosphorus reduction technology in private systems. As a result of the altered balance of phosphorus distribution between effluent and sludge, such systems will lead to an increase in phosphorus rich sludge being taken to public works for treatment. However, key water company infrastructure currently has capacity to receive this material within the existing regulatory framework.

Sealed cesspits are not a sustainable drainage solution and their use should be regulated in accordance with Welsh Government Circular 008/2018. Planning Authorities are advised to carry out an Appropriate Assessment for any proposals involving use of sealed cesspits as a likely significant effect from disposal and treatment of waste from these systems cannot be ruled out due to their retention of *all* wastewater from a development.

Avoidance and mitigation measures

As a result of the 'People over Wind' ruling (case C-323/17), mitigation measures intended to avoid or reduce the harmful effects of a plan or project on SACs should not be considered at the screening stage for likely significant effect.

The efficacy and reliability of any mitigation measures should be established through the Appropriate Assessment.

Planning Authorities should seek evidence from developers who are proposing measures to avoid or mitigate potential phosphorus impacts, demonstrating those measures are guaranteed, effective, reliable, timely and will be maintained for the lifetime of the development.

We also advise Planning Authorities to seek confirmation that the proposed measures can be legally enforced.

For each measure, we advise Planning Authorities to receive information:

- detailing how the measure(s) would avoid or reduce adverse effects on the SAC (considering the predicted duration of the effects)
- demonstrating how the measure(s) would achieve nutrient neutrality
- confirming how the measure(s) will be implemented, and by whom
- detailing how the measure will be maintained and who will be responsible for maintenance.
- showing how the measure will be monitored to ensure it is effective.

Advice for the review of Local Development Plans (LDPs)

All LDPs should be screened to determine whether any policies are likely to have a significant effect on a river SAC.

Policies can be screened out as not likely to have a significant effect in relation to increased phosphorus loading if:

- the associated developments or activities are not a source of phosphorus or there are no pathways for additional phosphorus to enter the river environment or
- Allocations requiring connection to a public sewer can meet the screening criteria set out in the section *What does this mean for development proposals involving connection to public wastewater treatment works?*

Any LDP policies relating to schemes for private sewage treatment systems should ensure no adverse effects on the integrity of any river SACs where:

- discharges are direct to surface waters; or

- discharges are to ground and do not meet the screening criteria set out in this advice.

Allocations for developments with proposed connection to a mains wastewater treatment works that do not meet the screening criteria and have the potential to increase phosphorus loading, should be subject to an Appropriate Assessment in accordance with advice set out earlier in this document.

Allocations where there is no capacity for additional wastewater

Where a development is proposed with connection to a public sewer but the associated wastewater treatment works has insufficient capacity to accommodate additional phosphorus from new connections or no improvements to increase treatment capacity of phosphorus is planned within the AMP programme, the Planning Authority should undertake an Appropriate Assessment of the proposals. The Appropriate Assessment should consider any other mitigation, nutrient neutrality, or avoidance measures.

Permitted Development

The Habitats Regulations impose a condition on development proposals which comprise permitted development under a General Development Order, such that development likely to have a significant effect on a SAC must not commence until the Planning Authority has given written approval.

For such proposals, developers may first seek the opinion of NRW as to whether they are likely to have a significant effect on an SAC. If a conclusion of no likely significant effect is drawn, then NRWs opinion on the issue can be considered conclusive. Unless NRW rules out there being a likely significant effect, then developers must obtain prior approval to proceed with that development from the Planning Authority who must carry out an Appropriate Assessment and consult further with NRW.

The use of land for caravans as a certified site will be permitted development under the (General Permitted Development) Order 1995 (GDPO) and therefore caught by the relevant provisions of the Habitats Regulations. NRW considers that there will be no likely significant effect where foul drainage arrangements are in place such that occupancy of the caravans / tents would not increase the amount of phosphorus being discharged from the site although such proposals will be assessed on a case-by-case basis.

Case law

As a result of the Court of Justice of the European Union (CJEU), “Dutch nitrogen case” (*Joined Cases C-293/17 and C-294/17*), the scope for authorising new development that will lead to additional phosphorus loading is necessarily limited where the conservation status of the SAC is unfavourable as phosphorus standards are being exceeded.

Planning Authorities should also be aware of the domestic decision in the Compton case (*Compton Parish Council and others v Guildford Borough Council and another [2019] EWHC 3242 (Admin)*). This case clarified the approach to be taken in assessing critical loads when considering if a proposed development would adversely affect the integrity of a SAC that is already subject to excess nutrients, by virtue of the development in question resulting in further nutrient deposition.

In addition, the Wyatt case (*R (Brook Avenue RAD) v Fareham BC*) clarified that the duty under the Habitats Directive to take appropriate steps to avoid the deterioration of SACs does not preclude a nutrient neutrality approach to consenting development which would otherwise give rise to further nutrient loading in European sites already in unfavourable condition.

The Dutch, Compton and Wyatt cases related to nitrogen, but the principles apply to other nutrients, including phosphorus.

Whilst the nature of development which may be permitted will depend on the facts of each case, Planning Authorities should have regard to the principles outlined in case law, including the case law above, when assessing the phosphorus impacts of proposed developments as part of the Habitats Regulations Assessment process.

Last updated July 2023