

## **Lugg Catchment Update - June 2022 Advice Note for Agents and Applicants – Application Review**

### **Background**

As per the advice published to the council's website entitled 'Nutrient Certainty update for developers 30 November 2021' the Council has been progressing with the proposals for "integrated wetlands".

Whilst this work progresses, the council has been reviewing undetermined planning applications that meet the following criteria:

- Residential development
- Situated within the Lugg catchment
- Validated before the 31<sup>st</sup> October 2021

Planning officers are commencing the review of those applications held in the validation date order 'queue'. It has been identified that some of these applications have been inactive for a significant period of time and therefore it is recommended that applicants, or their agents should review their submissions accordingly and below is a checklist of matters to consider.

Any update should then be made in writing quoting the application number to:

[heldwithphosphates@herefordshire.gov.uk](mailto:heldwithphosphates@herefordshire.gov.uk)

*This mailbox will be monitored and submissions directed as appropriate but an officer may not be allocated until one is required to progress the application.*

### **Applicant / Agent contact details**

Please review the agent name and contact details (including an up to date email address that is monitored, as requirements may be time sensitive).

In order to assist with the billing process and the purchase of the credits, please also provide an email address / contact details for the applicant. This will be retained in the back office and not published to the website.

### **Ecology Reports and compliance checklist**

Applications will be assessed having regard to the requirements of the Development Plan policies. In relation to Biodiversity and Geodiversity and Green Infrastructure policies SS6, LD2 and LD3 of the Herefordshire Local Plan Core Strategy and any relevant Neighbourhood Development Plan policies will apply.

**It is important that planning decisions are based on up-to-date ecological reports and survey data.**

However, it is difficult to set a specific timeframe over which reports or survey data should be considered valid, as this will vary in different circumstances. In some cases there will be specific guidance on this (such as for the age of data which may be used to support a 'higher status' (previous European) Protected Species licence application).

All ages stated are based on the actual dates of on-site surveys and not the subsequent date of any report.

In general:

Surveys age	Validity
Under 12 months old or less than one optimal survey period old (specific species surveys)	Likely to be valid in most cases
12-18 months old – or species specific optimal period surveys over 1 season old.	<p>If any potential or actual presence of important or protected species previously/currently identified then relevant update surveys should be completed and an updated report submitted.</p> <p>If any obvious or potential changes to the nature of the site that could change or effect previous survey results or implications on ecology then an update should be completed and revised report submitted.</p> <p>If it can be clearly demonstrated that there are no ‘significant’ changes to the nature of the site or its habitats and no species (flora or fauna) of any interest are actually/potentially present or utilising the site then subject to an appropriate precautionary approach and review an existing report is likely to be valid.</p>
18 months – 3 years old	A revised-refreshed ecology report will be required with all relevant species specific optimal period surveys; and other surveys as appropriate updated and supporting information reviewed and updated.
Over 3 years old	A complete and full new ecology report with all surveys, species specific optimal period surveys, biological records data requests etc <b>must</b> be supplied.

Please note: It is anticipated that in compliance with national guidance and British Standards all ecological reports supplied will be supported by a relevant Herefordshire Biological Records Centre data search under 2 years old.

We would also draw your attention to the [Core Strategy Policy SS6 and LD2 Biodiversity and Ecology Measures compliance checklist](#) and would request that this be completed and submitted (if not already done).

## Drainage Strategy

We are aware that applications have, in some instances explored varying foul and surface water drainage options, potentially avoiding a mains connection in response to the ongoing Lugg catchment position.

It is therefore suggested that the application submissions be reviewed and drainage strategies amended (if required) to reflect policy requirements. In some cases, this may require a change to the layout of the development (or reversion to previous plans).

There are some applications where there is a sewer catchment in close proximity to the application site but as the application form or supporting documents have referred to a non mains option, the LPA **has not considered feasibility of the connection**. This would be a matter that should be explored by the applicants with the provider.

If you require further information about Sewer Connection in the area then please visit:

<https://developers.dwrcymru.com/en/applications/waste-connections/new-sewer-connections>

<https://developers.dwrcymru.com/en/applications/planning/locating-our-water-pipes-and-sewers>

If you are looking at a Non Mains option then we would also draw to your attention the advice published to the Council website entitled '[Natural England and Environment Agency – roles in planning and permitting](#)'

Where a Non Mains solution is suggested, to assist in the calculations to undertake the appropriate assessment it is suggested that you provide the following package of information:

- Package Treatment Plant (PTP) specification / manufacturer details
- Confirmation of phosphate stripping capabilities
- Outfall details
- Management / Maintenance plan
- Relevant BD6297 percolation and groundwater testing report

## ***Update / Review Drainage plans***

When considering the final drainage strategy you should ensure that drainage strategies (drainage fields / positions of PTP / outfalls) are within the red edge of the application site and the required ownership certificates are correctly served. The drainage strategies and their future maintenance will likely be controlled by an appropriately worded condition (and would therefore need to be satisfied that delivery of the strategy falls within the control or ownership of the applicant).

## Review of policy position

### *Neighbourhood Development Plans (NDP)*

Whilst this is a matter that officers have tried to maintain an awareness of during the process, there are circumstances whereby Neighbourhood Development Plans have progressed to different stages and can now either be given significant weight or form part of the Development Plan (having been made or having passed a successful referendum).

There may be policies within emerging or made Neighbourhood Development Plans that have relevance to the proposal, as such, you may wish to review the relevant NDP to see how it may apply. If an emerging NDP you may wish to engage in local consultation on its policies.

#### *Five Year Housing Land Supply*

In July 2021 the council published its Annual Position Statement and concluded that its current supply is 6.9 years. As per the guidance contained within the National Planning Policy Framework, whether a council has a 5 year supply does impact upon decision making (paragraph 11).

You can read more about the current position here: <https://www.herefordshire.gov.uk/local-plan-1/authority-monitoring-reports>

### **Review of consultation responses**

All responses received as part of the consultation period are published to the Council's website. You can find these by entering your application number in the [Planning Application Search](#)

If amended plans are received, the LPA may need to formally re-consult on the information that you supply.

If there are matters raised by consultees that are yet to be resolved, then you should contact the case officer, or provide any clarification / amended plans to address this matter. For example: requests for additional drainage information or landscape plans. If no case officer allocated, please email [heldwithphosphates@herefordshire.gov.uk](mailto:heldwithphosphates@herefordshire.gov.uk)

### **Climate Change Compliance Checklist**

On 8th March 2019, Herefordshire Council unanimously passed a motion declaring a Climate Emergency. This signalled a commitment to ensuring that the council considers tackling Climate Change in all its future work and decisions taken. With this resolution came a countywide aspiration to be zero carbon by 2030. From a planning perspective, it is therefore imperative that the council needs to demonstrate explicitly how the policies relating to Climate in the adopted Core Strategy, SS7 and SD1, are being fully taken into account in the decision making process

In response, the council has introduced a [Climate Change Compliance Checklist](#). If this has not been submitted in respect of your application, please complete and submit this.

If, in response to the checklist, amended plans are forthcoming in support of these measures re-consultation may be required.

**If you wish to apply for credits you will also be required to submit as part of your application:**

### **1. Natural England Calculation**

We are unable to progress your application until you have provided a Phosphate budget using the [Natural England Calculator](#).

### **2. Section 106 Agreement**

In the event that the proposed development (application) is invited to apply to purchase Phosphate Credits there will be a requirement to enter into and complete a section 106 agreement prior to any planning permission, consent or approval being granted.

For the majority of applications relating to developments of 10 or less dwellings, a simple Section 106 legal agreement can be used and the Council will provide a template for this purpose. There will be an associated Herefordshire Council Legal fee of £500.

In some instances, there may be no requirement for the applicant to engage a solicitor, if it is purely for payment to purchase Phosphate Credits. In this case legal fees for entering into the completion of the agreement will be required to be paid up front and the fee for this will be £500.

However, where there are other planning obligations or land ownership issues there will be a requirement to engage a solicitor and a legal undertaking to pay the councils legal fees.

To assist with this process please:

- Ensure the land, subject of the planning application, is registered with Land Registry.
- Provide copies of an up to date Land Registry title and plan (no more than 6 months old) to the land subject of the planning application.
- Ensure all signatories are aware of the requirement.
- Please note that there will be a requirement for the section 106 agreement to be registered as a notice against the Land Registry title if there are other planning obligations alongside the payment for Phosphate Credits, and all section 106 agreements will be registered as a local land charge.

**We've created a checklist which identifies all the above to ensure that all actions have been carried out and to help us streamline this process.**

If your application has been placed in the queue then please [complete the checklist](#) and return it, with any updated information you wish us to consider. This should be sent to: [heldwithphosphates@herefordshire.gov.uk](mailto:heldwithphosphates@herefordshire.gov.uk)