

General

What is meant by 'failing'?

The River Lugg is considered to be 'failing' its water quality targets because it has exceeded the phosphate limit over 3 years. This is calculated by using the mean of 3 years' worth of data to derive the annual mean and the growing season mean (March-Sept). [The Commons Standards Monitoring Guidance for Rivers](#) provides further information on monitoring. The Environment Agency undertakes this monitoring of the river and the data can be found [here](#).

Further detailed information is available on the River Wye dashboard:

<https://environment.maps.arcgis.com/apps/Cascade/index.html?appid=1dc5b2adc99e48b095950055f2785d7a>

What are the consequences of 'failing'?

The ecological consequence of the river failing is that elevated nutrient levels can cause 'eutrophication'. This is where a body of water becomes overly enriched with nutrients, leading to excessive growth of algae. A change to plant communities can affect the wider food web, altering the balance between species. Large growths of algae may result in oxygen depletion within the water body, causing further changes.

Why can't applications in the Lugg catchment rely on the Nutrient Management Plan?

Previously, the Nutrient Partnership had agreed that further phosphate could be added into the River Lugg as we had a plan to mitigate for this at a strategic level and reduce phosphate down below the target by 2027 (the Nutrient Management Plan). However, the Dutch Judgment means that we can no longer rely on this plan as there is not enough certainty that the measures set out will be delivered. Therefore at the current time, the NMP cannot be relied upon to provide adequate mitigation for identified adverse effects on integrity.

Interim solutions

What constitutes 'neutrality'?

Put simply, 'nutrient neutrality' means that a plan or project would result in no net increase in the phosphate load being discharged to the river. This could be after controls at source, reduction by treatment, and/or offsetting measures.

Neutrality needs to be demonstrated with certainty, in order to show no adverse effects on integrity. We advise that a phosphate budget is calculated for new developments, showing the phosphate discharging from the site before and after development. This will show that the development either avoids harm to protected sites or provides the level of mitigation required to ensure that there is no adverse effect.

What constitutes 'betterment'?

'Betterment' is an improvement in the current situation regarding phosphate impacts, above and beyond neutrality as defined above.

Can Package Treatment Plants with phosphate stripping achieve this?

Natural England have indicated that if the following criteria are in place then phosphates would be unlikely to reach the river as there is therefore no pathway for impacts. With no pathway for impacts there is no need for further Habitat Regulations Assessment:

- The drainage field is more than 50m from the designated site boundary or sensitive interest feature **and**;
- The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, **and**;
- The drainage field in an area with a slope no greater than 15%, **and**;
- The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times **and**;
- There are no other hydrological pathways which would expedite the transport of phosphorous e.g. fissured geology, flooding or shallow soil.

Mains drainage

Why does mains drainage result in an adverse effect on integrity?

Welsh Water will advise an applicant whether they have capacity to accept an additional discharge to their sewage treatment works. However, this does not mean that the proposal would pass the Habitat Regulations Assessment.

When Welsh Water treats sewage, it does not remove all of the phosphate. The standard it cleans the water to varies between treatment works, but in all cases exceeds the river target of 0.05mg/l. At present the Environment Agency considers the Technically Achievable Limit to be 0.25mg/l. Any application going to mains will increase the quantity of water being discharged from the treatment works, and will therefore be adding phosphate into the river.

Welsh Water is an active member of the Nutrient Management Partnership. Welsh Water has made improvements to its Waste Water Treatment Works to reduce phosphate levels, as part NMP. Discussions are ongoing as to what additional actions Welsh Water might be able to take, as standalone reduction measures or plugged into a revised NMP. However, Welsh Water is not responsible for ensuring that new developments achieve phosphate neutrality.

Would it be appropriate to seek alternative drainage options even where this would be contrary to policy SD4 of the Herefordshire Core Strategy?

No. SD4 remains relevant to this situation as usual.

If a mains connection is proposed, no objection is raised by Welsh Water and the site is in a 'red zone' on Natural England's Impact Risk Zone Map, is there any way forward?

Connecting to mains is still desirable where this option exists, as it gives greater certainty with regards waste water treatment. In many circumstances it will be required under the Environment Agency's general binding rules. The best way forward at the present time is therefore to demonstrate nutrient neutrality.

Why do the requirements in the Position Statement differ to EA's general binding rules?

The council's HRA position statement relates to the Habitats Regulations requirements. This is separate legislation to the EA's requirements. The general binding rules do not take into account site specific situations such as those currently being experienced in the River Lugg.

Sewage treatment and septic tanks/ soakaways

Policy SD4 clearly permits use of a cesspool in exceptional circumstances, where it wouldn't adversely affect water quality. Would an appropriately designed cess pool ensure compliance with the latter?

Cess pools are not favoured due to the lack of certainty that they will be effectively managed and maintained. These will be reconsidered as part of the update to the Core Strategy.

Does the problem relate solely to foul drainage or does it also apply to surface water drainage arrangement?

This will usually be the case, because this issue relates to the increase in phosphate levels in the river which arise from sewage. However, the potential for surface rainwater to lead to other phosphate pathways being created should be considered (where materials e.g. soils containing phosphates are exposed to rainwater).

Screening proposals in the Lugg catchment out

Do the 5 bullet points apply to septic tanks and/or PTP to drainage fields?

Yes.

The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times – would this require boreholes and a reasonably lengthy period of monitoring, for example over 12 months to allow for seasonal variation?

This would not necessarily be the case. BS6287:2007 remains applicable but with the depth requirement extended to 2m.

We recommend a desk top assessment before embarking on monitoring. The council has access to mapping which includes data on the distance from a watercourse, slope and groundwater. Information on geology can be sourced from soil maps and flooding information from Environment Agency maps.

Reserved matters, Discharge of Conditions and Appeals

Can an application that has failed to pass a HRA be granted at planning committee?

Planning committee can resolve to grant permission and delegate the decision to the planning officer subject to all HRA matters being resolved.

Can an application for a non-material amendment (variation of condition) still proceed?

With regard to applications made under Section 73 of the Town & Country Planning Act 1990 Herefordshire Council as the competent authority:

- Will, in each instance, consider whether or not the S.73 application changes the drainage characteristics of the particular development.
- If a S.73 application involves changes that have no connection with the discharge of water, there will be no likely effect on the SAC in relation to phosphate loading.
- Will exercise a professional judgement.

Where an application has been processed in the Lugg catchment and previously no phosphate or HRA concerns were raised, can conditions relating to this permission now be discharged?

The authority will undertake HRA screening of any application to discharge a drainage condition. If it can be shown that the scheme proposed does not discharge to the SAC then the need for detailed Appropriate Assessment (AA) is avoided. This will apply to schemes with non-mains drainage where the five tests set out in our position statement can be met.

Applications to discharge conditions that do not relate to the discharge of foul water will not be subject to HRA screening. The same will apply to applications for non-material amendments.

Where an outline application has been processed in the Lugg catchment and phosphate/HRA concerns were not previously raised, can the reserved matters now be addressed?

We are currently seeking further advice from Counsel on this matter and will update the FAQs accordingly.

What about a planning appeal where there was previously no HRA issue, but the site is within an area that now requires a HRA?

The Planning Inspector will be the Competent Authority in relation to HRA for a planning appeal and will undertake their own HRA.

Other scenarios

If a proposed barn conversion within the Lugg catchment intended to discharge its foul drainage into an existing septic tank and utilise an existing drainage field, would that be satisfactory?

This would depend on whether the scheme could demonstrate that there would be no increase in the output of phosphates from the scheme.

Where the drainage from an application site would be to a mains sewer outside of the Lugg catchment, could this address the issue?

Generally yes, in terms of the Lugg. However, this would depend upon the phosphate level in the receiving watercourse.

The EU Exit

The European Union (Withdrawal) Act 2018 (the EUWA) will end the supremacy of EU law in UK law, it will convert directly applicable EU legislation (in particular, EU Regulations and Decisions) as it stands at the moment of exit into domestic law, and will preserve legislation previously made in the UK to implement EU obligations.

The legislation will therefore generally have the same effect that it had before the UK left the EU, unless or until it is changed by Parliament.

Further advice

Where can I get further advice?

Herefordshire Council is the decision making authority on planning matters, and as such is the Competent Authority responsible for undertaking Habitats Regulations Assessment of applications.

Herefordshire Council has set out guidance for HRA requirements to help applicants and their agents in preparing suitable information to submit with their planning application, such as requirements for various drainage solutions (mains sewer, septic tank, package treatment plant and cesspits) and as the need for percolation tests etc. where these apply.

Natural England is the Governments adviser for the natural environment in England, and works to protect nature and landscapes. Natural England's role in the HRA process is an advisory one. They are a statutory consultee on Habitat Regulations Assessment. In some situations, Natural England may be able to provide an applicant with bespoke advice through their chargeable Discretionary Advice Service. The Discretionary Advice Service ([DAS](#)) can be used to obtain pre-application, pre-determination and post-consent advice on proposals.

The role of the Environment Agency is to protect and improve the environment, this includes responsibility for water quality and resources. The EA is a statutory consultee on planning applications on matters including drainage and pollution prevention. The EA have a key role in developing the River Wye SAC nutrient management plan and in supporting Herefordshire Council to develop a framework for determining planning applications where HRA applies.