

Nutrient Certainty Update for Developers – 30th November 2021

Environmental Challenges in the Lugg Catchment

Herefordshire Council has been unable to approve planning consent for new developments within the River Lugg Catchment area unless it is certain that the development will not lead to an increase in phosphate levels discharged into the river Lugg through Welsh Water Treatment Plants (Nutrient neutrality). Herefordshire Council must use the best scientific knowledge in the field and adopt a “precautionary” approach when considering developments to establish that there are no adverse effects from the proposed development. There is currently a backlog of 137 applications for 1538 new homes awaiting to be determined as of 31st October 2021.

Integrated Wetlands

Over the last year Herefordshire Council has been in the process of conducting site appraisals and initial survey work to create what are known as “Integrated Wetlands” The Wetlands will take treated water from a Water Treatment Plant into a natural reed bed which will absorb its phosphate content before discharging it into the Lugg or one of its tributaries.

Before deciding whether a site is suitable for an Integrated Wetland, there are very strict design and measurement criteria that need to be applied to identify suitable sites. Phosphate measurement needs to be undertaken over an extended period of time. Not all sites are available or suitable for Integrated Wetland constructions.

Herefordshire Council has reached the stage where it is in advanced negotiations to purchase two sites which, if completed, will generate sufficient credits to allow several hundred homes to be built by offering developers what are known as Phosphate Credits. However, in order to offer phosphate credits the Council will need to:-

- Complete the purchase of the land
- Achieved Planning Approval – this is a decision of an independent part of the Council
- Received a permit from the Environment Agency to discharge water from the Integrated Wetlands into the Lugg Catchment
- Demonstrated to Natural England how many phosphate credits each Integrated Wetland will create, to the level of certainty required by the regulations.

Herefordshire Council are in discussions with Natural England in order to agree which parts of the Lugg catchment the first two Integrated Wetland sites will generate Phosphate credits for use by developers. They are likely to be directly downstream of sites. Further Integrated Wetlands sites are under negotiation. Herefordshire Council’s preferred approach is to reach a voluntary agreement to purchase wetland sites. However, Herefordshire Council firmly believes that there is a strong public interest in creating Integrated Wetland sites and will therefore consider Compulsory Purchase Order proceedings as a last resort.

Initial Phosphate Credit Allocation for existing applications awaiting determination as at 31/10/21

For all development applications already validated before the 31st October 2021, which cannot be determined because of the need to demonstrate Nutrient Neutrality and are held on our “waiting” list, Herefordshire Council is proposing to allocate phosphate credits on a first come first served basis. This will apply to developments awaiting determination within the “Phosphate Credit” zone we agree with Natural England for each Integrated Wetland Construction. A developers place in the “first come first served” que will be determined by the date their application was first validated.

Phosphate Credit Allocation for Applications received after 31st October 2021

For any development requests validated and awaiting determination after the 1st November 2021

Herefordshire Council is proposing to develop a set of criteria which supports the Council's wider objectives. An independent consultancy will be commissioned to develop the draft allocation policy and carry out a consultation with stakeholders. We anticipate the consultation will take place early next year. We will listen to what people tell us through the consultation before approving a final permanent allocation policy which will commence when the backlog to the 31st October 2021 is cleared.

How much will Phosphate Credits Cost?

Phosphate Credits will be made available on an "at cost" basis comprising the costs of designing the scheme, purchasing land, building the beds, securing EA permits and maintaining Integrated Wetlands over a 80 year period. We are still finalising the cost of the first credits.

How will I be able to buy phosphate credits?

When Herefordshire Council is ready to proceed with offering the first Phosphate Credits for sale to developers we will publish on our website:-

- 1) The waiting list of developments that were validated and awaiting determination prior to the 31st October 2021
- 2) A map of the part of the Lugg Catchment showing where credits have become available and first come first served will apply
- 3) Pricing of the phosphate credits and a draft legal agreement for purchasing the credits
- 4) Details of the process developers will need to follow to purchase credits

Why is this taking so long?

This is a ground breaking solution to a complex issue which has not been applied to Phosphate pollution before and legally Herefordshire Council need to take to time, at each stage, so that we can be certain that the solution will work and will achieve Nutrient Certainty. Herefordshire Council anticipate the first credits will become available in the first half of 2022 and will provide a clearer time frame as work progresses.

The demand for Phosphate credits is likely to outstrip supply for some considerable time to come. The Council is doing everything it can to speed up the delivery of Integrated Wetlands and work with the Environment Agency, Natural England and the farming and agriculture sector to secure the wider actions needed.

What are others doing?

Herefordshire Council are working closely with partner organisations to address the environmental challenges in the Lugg and Wye catchment who are taking other measures to improve river quality. This includes the work undertaken with farmers to improve land management and site specific natural measures to tackle what is known as diffuse phosphate pollution.

The environmental challenges caused by Phosphates are part of a much wider national challenge and Herefordshire Council is also pressing relevant government department for more help in tackling this challenge. The Leader of the Council has twice recently written to Defra setting out the challenge and seeking help. You can read the correspondence here (insert hyperlink)

[Letter to Defra - Motion from Council June 2021 \(herefordshire.gov.uk\)](#)
[Leader of Herefordshire Council Letter to Rebecca Pow –USS DEFRA](#)

Further updates will be provided as new information becomes available.