

Hereford Enterprise Zone Local Development Order 2019

**Addendum to the Environmental Report
July 2019**

1. Introduction

- 1.1 To ensure that the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015 are met, and more particularly, the Conservation of Habitats and Species Regulations 2017 are complied with. it is necessary to consider the proposed Main Modifications to the Local Development Order (LDO) through the HRA process. The principal concern in this regard is whether they would be likely to increase the generation of waste water and hence levels of phosphates beyond that which can be stripped at the Wastewater Treatment Works such that there might be an increase in phosphate levels from that works entering the River Wye that might have a significant adverse effect upon its integrity as a Special Area of Conservation.
- 1.2 In addition, Natural England's comments upon the consultation draft LDO included the need to consider the ruling made recently by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of *People Over Wind and Sweetman vs Coillte Teoranta* (ref: C-323/17).
- 1.3 More recently Natural England has also highlighted the ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of *Coöperatie Mobilisation* (AKA the 'Dutch Case 12') (Joined Cases C-293/17 and C-294/17) considering it most relevant to the River Lugg stretch of the River wye SAC.

2. Main Modifications to the Draft LDO

- 2.1 The main modifications to the consultation draft LDO are:
 - i) A change to grant permission for development falling within D1(c) of the Use Classes Order within a relatively small and defined area on the north-west edge of the Enterprise Zone (edged blue in the LDO) in addition to that falling within Use Classes B1, B2 and B8.
 - ii) Restricting the use of an area at the eastern end of the Enterprise Zone (edged brown) to Use Class B1 only, together with other restrictions (condition 16) aimed at protecting residential amenity of dwellings on the south side of Holme lacy Road.
 - iii) Amending the condition relating to external lighting so that any subsequent external lighting installed after the permission is implemented will also require prior approval, again primarily to protect amenity.
- 2.2 Use Class D1(c) is for the provision of education. The change is primarily to enable the area to be used by NMiTE (New Model in Technology and Engineering) which wishes to promote 'on the job training', especially in association with local firms upon the estate. As such it is understood that the level of wastewater generated would be similar to that for employees in engineering companies within the Enterprise Zone. No additional environmental effects to those covered in the previous Environmental Report have been identified. Although the Use Class provision might apply to any form of education, it is considered unlikely that other more mainstream educational use would seek to become established in this location.

- 2.3 The restriction of use within the area edged brown to B1 should not affect the level of wastewater generation envisaged in the previous Environmental Report (including Habitats regulation Assessment) for the wider range of business uses. It would provide protection to residential amenity from development upon this site which the consultation draft LDO did not contain.
- 2.4 The third change would not affect wastewater generation. It should ensure longer term protection to amenity arising from any light pollution in areas where this might be a material consideration.
- 2.5 In conclusion, the changes should not increase wastewater generation and thereby potentially phosphate levels above that originally envisaged which has been determined to have no significant effect on the River Wye SAC.

3. Consideration in relation to the '*People Over Wind and Sweetman vs Coillte Teoranta*' Ruling

- 3.1 This ruling relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required.
- 3.2 The LDO is the 'plan/project' and needs to be read in its entirety, including its conditions. In effect it is the planning permission and compliance is such that mitigation to its current provisions is not required to ensure the LDO has no significant effect. This is different to cases where a plan is submitted for consideration and a screening suggests conditions should be imposed on the grant of planning permission to mitigate any significant effects on the SAC.
- 3.3 It is concluded that the LDO as currently drafted does not conflict with the above ruling.

4. Consideration in relation to the '*Dutch Case 12*' ruling

- 4.1 The elements of the judgment pertinent to the LDO are considered to be:
 - 1. A specific level for the overall amount of chemical deposition (in the Dutch case – Nitrogen; in the case of the River Wye – Phosphates) can be deemed compatible with the objectives set for protection provided an 'Appropriate Assessment (AA)' undertaken in advance where a thorough and in depth examination of scientific soundness of that assessment makes it possible to ensure there is no reasonable scientific doubt as to the absence of adverse effects of each plan or project on the integrity of the site concerned.

It is understood that the current approach to assessing the effects of proposals upon the River Wye SAC is based principally upon ensuring that the level of phosphates is below a certain threshold. Again, it is understood that the threshold has been determined by UK TAG [UK Technical Advisory Group upon the Water Framework Directive} Its document 'Updated Recommendations on Phosphorus Standards for

Rivers: River Basin Management (2015-2021)^{1]} does not suggest that in setting standards it has undertaken an AA. If this is the case and these are being relied upon then the Dutch ruling may have major implications for the basis of work being undertaken as part of the River Wye Nutrient Management Plan. However, The River Wye Nutrient Management Plan refers to the conservation objectives set for the SAC in its Evidence Base document². The UK TAG document is understood to have been used in the Evidence Base study to set phosphate targets specifically for the River Wye SAC. At the outset of the process for preparing the Nutrient Management Plan both Natural England and the Environment Agency agreed these targets to be used for the long term management of sites and deterring the ecological risks for development such as housing growth. The evidence used to produce UK TAG's advice appears to have been based upon numerous scientific studies and research, peer reviewed and accepted by all the relevant agencies. As such it is considered to have met the provision of having had an 'in depth examination of scientific soundness'. It is a matter of interpretation as to whether this amounts to an 'Appropriate Assessment' and suggested that given the support received, it is reasonable to conclude that this is the case.

2. The appropriate body can exempt projects which do not exceed certain thresholds (such as nitrogen [Dutch case] or phosphate [River Wye] deposition) from individual approval if it is satisfied that the AA meets the criterion that there is no reasonable scientific doubt as to the lack of adverse effects of the project on the integrity of the site.

The WwTWs serving the Enterprise Zone and LDO area falls within the Upper Wye sub-catchment. HC is advised that this part of the River catchment is not failing and not exceeding its phosphate levels. Dwr Cymru/Welsh Water has advised that the proportional growth proposed, which includes the development of the Enterprise Zone, can be accommodated at its WwTWs utilising its current phosphate stripping measures, without exceeding the phosphate level set for its outfall into the River Wye. Consequently, it is considered that the level of development enabled through the LDO does not require individual approval of each specific proposal submitted in accordance with its provisions.

3. An AA cannot take into account the existence of conservation or preventative measures if the expected benefits of those measures are not certain at the time of the assessment.

Although a Nutrient Management Plan has been prepared that proposes a number of measures to address high levels of phosphates within the River Wye, these are

1

<http://www.wfduk.org/sites/default/files/Media/Environmental%20standards/UKTAG%20Environmental%20Standards%20Phase%203%20Final%20Report%2004112013.pdf>

² Para 3.1: River Wye SAC Nutrient Management Plan Evidence base and options appraisal – “The conservation objectives set by Natural England for the River Wye SAC include targets for in-river water column phosphate concentrations. These have been developed to protect the animal and plant communities within the river from the adverse effects of nutrient enrichment, and are based on a critical, national review of the evidence base (Mainstone, 2011). This work is set out within Natural England Research Report 034: *An evidence base for setting nutrient targets to protect river habitat* which can be accessed on-line at <http://publications.naturalengland.org.uk/category/7005>. If concentrations exceed these targets there is a significant risk that undesirable changes will occur with associated negative effects on the interest features of the River Wye SAC.”

aimed at addressing problems in most particularly the Lugg sub-catchment. The expected benefits for this sub-catchment may be uncertain, but the effect upon the whole system should not be adversely affected by development in the Upper Wye sub-catchment for the reason described under 2 above.

4. An appropriate body must ensure measures, including monitoring and surveillance, are sufficient to comply with Article 6(3).

Herefordshire Council, in partnership with other organisations responsible for decisions affecting the ecological integrity of the River Wye, has prepared a Nutrient Management Plan (NMP) and established a monitoring and surveillance arrangement through the River Wye NMP Board.

4.2 Various other supporting information has been used to support the above analysis including:

i) Natural England planning advice provided to E Duberry (Herefordshire Council) in relation to the River Lugg sub-catchment date 22nd July 2019 following the Dutch Case 12.

ii) Counsel's advice in relation to the Dutch Case 12 which, although given in relation to Neighbourhood Development Plans, indicates that Policy SD4 as a measure to prevent harm is sufficiently certain to meet the Dutch Nitrogen tests. Provision E(e) does not afford permission through the LDO where it is proposed to discharge foul/waste water to other than the public sewer. The requirement to connect to the public sewer will ensure all waste water will pass through the relevant WwTWs thereby complying with Core Strategy policy SD4.

5. NE other concern

5.1 NE responded to the draft LDO that it is not clear from the documents how the original order and revised order compare in terms of phosphate and though it is stated that the revised order is still within the phosphate headroom, it should be made clearer why this is still the case.

5.2 The LDO does not grant consent for any trade effluent to enter the public sewer This is regulated through a different approval regime under the Water Industry Act 1991. The level of phosphates going into the public sewer derives from domestic sewage (toilet, bath or hand wash waste). In addition some surface water and roof drainage (rainwater) can enter the system although this is now required to be separated and dealt with through other means. Domestic sewage has been calculated on the basis agreed with Dwr Cymru/Welsh Water and the level of floor space which is an indicator of likely number of employees. This is explained in the Environmental report paragraphs 3.8 and 3.9 and the HRA Scoping Report within the section titled

'Describe from the above those elements of the project or plan, or combination of elements, where the above impacts are likely to be significant or where the scale or magnitude of impacts is not known.' (Pages 18 and 19).

5.3 Dwelling equivalent estimates have been produced. This is lower than that originally forecast in the 2014 LDO because the experience gained over the previous 4 years

has been that the anticipated floorspace per plot has been smaller than was anticipated at that time. The expected total floorspace across the LDO, including the extension areas is now expected to be much less.