Herefordshire Council

Record of operational decision

Decision title:	The decision to not adopt the **Bredenbury and District Group Neighbourhood Development Plan** due to the lack of Nutrient Neutrality Policy within the plan.
Date of decision:	2nd October 2026
Decision maker:	Roger Allonby
Authority for delegated decision:	Yes
Ward:	Hampton
Consultation:	None
Decision made:	The decision has been made not to adopt the **Bredenbury and District Group** Neighbourhood Development Plan (referred to as 'The NDP').
Reasons for decision:	The Neighbourhood Development Plan (NDP) has remained on hold since 6 May 2021, following a successful referendum on that date. It has not been possible to progress the NDP to adoption due to unresolved nutrient-neutrality issues that emerged during the plan-making process. Because the plan had already passed the referendum stage, it was no longer permissible to modify it to incorporate a nutrient-neutrality policy. The underlying issue relates to phosphate pollution affecting the River Lugg. The river has been exceeding acceptable phosphate levels for several years as a result of pollution from both point sources—particularly sewage discharges—and diffuse sources, most notably agricultural run-off. When the NDP was progressing to Examination in December 2019, two significant European Court judgments concerning Habitat Regulations Assessments (HRAs) had recently been issued: • *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17), April 2018 ("the Sweetman Case") • The "Dutch Nitrogen" judgment, November 2018 The Sweetman judgment clarified that, when determining whether an Appropriate Assessment (AA) is required, competent authorities may not take mitigation measures into account at the screening stage. Mitigation can only be considered within the AA itself. This represented a departure from established domestic case law, which had previously allowed mitigation to be considered at the screening stage. As a result of the Sweetman ruling, Herefordshire Council had to revise its approach to assessing NDPs. The key issue was whether reliance on existing Core Strategy policies—such as SD4 and LD2—constituted

	mitigation. Counsel advised (as summarised in HRA and NDP Advice Post Sweetman Case 2018 that: • Policy SD4 forms an integral part of the higher-level Development Plan, rather than being a standalone mitigation measure. • As SD4 had already been assessed at the Core Strategy level as preventing a "pathway to harm," NDPs could be considered compliant when they conformed to this policy. The Dutch Nitrogen case reinforced and extended these principles, confirming that a plan or project can only be authorised where there is *no reasonable scientific doubt* that it will not adversely affect the integrity of a protected site. A Regulation 16 consultation on the NDP took place in Autumn 2019. Legal advice confirmed that Policy SD4 provided sufficiently certain protection to satisfy the Dutch nitrogen requirements. The NDP was subsequently submitted for Examination in November 2019. The Examiner concluded that all statutory requirements had been satisfied and that the basic conditions were met. The Examiner's Report was issued in February 2020, and the referendum was held in May 2021. In parallel, the Council worked with Natural England to resolve nutrient-neutrality issues affecting the wider progression of NDPs. This collaboration resulted in the development of model policy wording requiring all development to demonstrate nutrient neutrality. However, because this agreement was finalised after the Bredenbury and District Group NDP referendum, and the plan did not contain such a policy, the NDP could no longer meet the Basic Conditions. Subsequent Counsel advice (July 2021) confirmed that the only remedy would be for the parish to recommence the plan-making process to incorporate a nutrient-neutrality policy. Therefore, adoption of the Referendum Plan for Bredenbury and District Group was not legally possible and as per Regulation 19 of The Neighbourhood Planning (General) Regulations 2012, the local planning authority must refuse to make the plan under section 38A(6) of the Planning and Compulsory Purchase 2004 Act. **More recent 2026 legislation implications** Sections 98[1] and 99[2] of the Levelling-up and Regeneration Act 2023 came into force on 25 March 2026. This is by virtue of The Levelling-up and Regeneration Act 2023 (Commencement No. 11 and Saving and Transitional Provisions) Regulations 2026, which were made on 2 March 2025. In relation to neighbourhood plans, sections 98 and 99 amend the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning Act 1990 in respect of the legal compliance and the Basic Conditions requirements. In summary, the further legal compliance requirements are as follows:

[1] Levelling-up and Regeneration Act 2023 Section 98
[2] Levelling-up and Regeneration Act 2023 Section 99

	- *so far as the qualifying body considers appropriate, and having regard to the subject matter of the plan, the plan must be designed to secure that the development and use of land in the neighbourhood area contribute to the mitigation of, and adaptation to, climate change; and* - *so far as the qualifying body considers appropriate and having regard to the subject matter of the plan, the plan must be designed to take account of any local nature recovery strategy under section 104 of the Environment Act 2021 that relates to all or part of the neighbourhood plan area.* In addition, there is a new Basic Condition requirement: - *the making of the neighbourhood development plan would not result in the development plan for the area of the authority proposing that less housing is provided by means of development taking place in that area than if the neighbourhood development plan were not to be made. Note: this replaces the former Basic Condition that the neighbourhood plan be in general conformity with the strategic policies contained in the development plan for the area[3].* Climate change is referred to in the NDP within Policy BW&GB 1 - Promoting a Sustainable Community. Whether the policy adequately meets the new legal requirements remains unknown as this would require examination. Additionally, the Local Nature Recovery Strategy is not referenced within the plan which is understandable because the NDP was examined before their introduction later in 2021. As the examination of the **Bredenbury and District Group** NDP was completed in 2021 but never made because of the lack of a nutrient neutrality policy, the new additional legal requirements make adoption of the NDP not legally possible. This is because of the Plan reaching the very advanced stage of Referendum so there is no avenue to address the latest national legislation. It therefore adds further to the issue of why the Plan cannot be made. It also needs to be noted that the National Planning Policy Framework was issued on 17 August 2026 and it introduces a new raft of policies that need to be taken into account for the purposes of plan making. This would have a bearing on the NDP as it was made against the 2019 NPPF.
Highlight any associated risks/finance/legal/ equality considerations:	The NDP's current position (passed a successful referendum but cannot be made as part of the Local Development Plan), hold weight in planning decisions. This decision will result in the NDPs holding no weight in planning decisions. This will result in the Herefordshire Core Strategy (adopted 2015)

[3] Basic Condition '(e)' is replaced by '(ea)'.

	continuing to hold the weight in planning decisions for the Bredenbury and District Group Neighbourhood area. The latest National Planning Policy Framework 2026 will also be a material consideration in decision making going forward.
Details of any alternative options considered and rejected:	Legal advice was sought into alternative options (ID: 104159). The alternative was if the NDPs can be modified / replaced. On assessment of the legislation, due to the NDP being found to breach "assimilated obligations" as per Section 38A(6) of the Planning and Compulsory Purchase Act 2004, in the case of the NDPs this being Nutrient Neutrality. Therefore, it was on this advice that the plans cannot be modified nor replaced, and the plans cannot be made.
Details of any declarations of interest made:	There are no officers declaring an interest in this decision.

Signed…… Date: 2 October 2026