

Minutes of the meeting of Environment and Sustainability Scrutiny Committee held in Herefordshire Council Offices, Plough Lane, Hereford, HR4 0LE on Monday 22 January 2024 at 10.00 am

Board members present in person, voting:

Councillor Dave Davies
Councillor Robert Highfield
Councillor Louis Stark
(Chairperson)
Councillor Richard Thomas

Board members in attendance remotely, non-voting:

Note: Board members in attendance remotely, e.g. through video conference facilities, may not vote on any decisions taken.

Others present in person: Simon Cann (Democratic Services Officer), Elizabeth Duberley (Service Manager Built and Natural Environment), Simon Evans (CEO The Wye and Usk Foundation), Christine Hugh-Jones (Campaign for the protection of rural wales), Councillor Elissa Swinglehurst (Cabinet Member Environment), Danial Webb (Statutory Scrutiny Officer)

Others in attendance remotely:

| | | |
|--------------|--|-----------------------|
| Mark Averill | Service Director Environment and Highways | Herefordshire Council |
| Rachael Joy | Interim Delivery Director for Environment Transformation | Herefordshire Council |

63. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Justine Peberdy and Ross Cook (Corporate Director Economy and Environment).

64. NAMED SUBSTITUTES

None.

65. DECLARATIONS OF INTEREST

None.

66. MINUTES

The minutes of the previous meeting were received.

Resolved: That the minutes of the meeting held on 27 November 2023 be confirmed as a correct record and signed by the Chairperson.

67. QUESTIONS FROM MEMBERS OF THE PUBLIC

No questions had been received from members of the public.

68. QUESTIONS FROM MEMBERS OF THE COUNCIL

No questions had been received from councillors.

69. NUTRIENT MANAGEMENT BOARD

The chair introduced the item and explained that the committee's aim was to discuss the history and background of the Nutrient Management Board and to scrutinise what the board had achieved and delivered in relation to the council's business priorities, particularly in terms of the River Wye and the nutrient recovery of the River Wye.

The committee proceeded to ask attending council officers, expert witnesses and the Cabinet Member Environment a number of pre-prepared questions:

What was the Council's original purpose for setting up the Nutrient Management Board with key partners?

1. The Cabinet Member Environment directed the committee's attention to the Atkins paper that had been produced on behalf of the Environment Agency, Natural Resource Wales and Natural England in May 2014. The papers parameters outlined that the Environment Agency's review of consents process in 2010 should include a plan for the River Wye special area of conservation (SAC) to reduce current phosphate concentrations and comply with conservation objectives.
2. The committee heard that in 2013 the Environment Agency and Natural England had issued a joint statement of intent to prepare a Nutrient Management Plan (NMP) for the River Wye SAC, which would also address predicted growth within the catchment. The Environment Agency and Natural England were working together to support Herefordshire Council, to develop a framework for determining planning applications, which were constrained by their habitats assessment process.
3. The proposals informed Herefordshire Council's Core Strategy and other relevant development plans. The Core Strategy was adopted in 2015. These developments were occurring within the same timeframe, with the enabling of Herefordshire Council's Core Strategy and the putting into place of a plan for the recovery of the catchment to favourable conservation status. The inception of the board sat with the statutory agencies, not with Herefordshire Council.

Did the original terms of reference reflect this?

4. The committee enquired if Herefordshire Council had had any input into the terms of reference or were they just prepared by the two agencies?
5. The Cabinet Member Environment suggested that logically, at its inception, the members of the board would have needed to jointly and collectively adopt the terms of reference.
6. The committee raised concerns about conflicts of interest arising between partners and whether or not they had all had a clear understanding of what was meant to be delivered.
7. The committee heard that given the broad range of partners it was unlikely that each member would have had the same understanding of what was expected of the board. It was important to note that over time the board's understanding of where the problem was coming from had changed.

8. The committee heard that the Dutch judgement increased the relevance of the board, but created internal pressures on partners and exacerbated conflicting interests.
9. The Interim Delivery Director for Environmental Transformation explained to the committee that the Nutrient Management Board did not have the power to direct activity and was more of a steering group. The board was a voluntary partnership with no powers to direct. It comprised central and local agencies, along with environmental, farming and land interest groups - it was a disparate collective with each partner having different remits and responsibilities. The focus in Herefordshire was river recovery, but also the issue of the Core Strategy - delivering housing need was of significant interest to the council.
10. Within the board's new terms of reference there was a recognition that it was essentially a steering group, with no power to direct an individual agency or mandate an agency to put in additional resource. The board could highlight issues and draw together the focus of groups, which meant it had an important role, but it was helpful not to think of it as a traditional board.
11. The committee heard that the perceived difference in river quality between England and Wales, which had existed up until as recently as 2020 (before targets in Wales were revised), potentially accounted for the apparent lopsided makeup of the board. Previously Welsh agencies had not felt it was a Welsh problem. Going back to 2014 this would have accounted for the differing level of engagement with the board by English and Welsh agencies and partners.
12. The Cabinet Member Environment assured the committee that the new terms of reference were a properly consulted on piece of work and that the board had become more inclusive through welcoming contributions from citizen science and the supply chain, which would bring about solutions going forward.
13. The Interim Delivery Director for Environmental Transformation stressed that now was not a time to focus too heavily on governance, but instead to get behind moving to the next stages of building a more robust plan.
14. The Cabinet Member Environment pointed out that statutory agencies could not fix things on their own and that the delivery of some elements of the plan would sit with partners.
15. The committee was satisfied and asked for it to be noted that there was no need for a recommendation regarding the board's new terms of reference at this point in time.

As this was an Environment Agency initiative, in partnership with Natural England, why did we end up as Chair and having to supply the secretariat – was it ever rotated as intended in the original Nutrient Management Plan?

16. The Cabinet Member Environment explained this this topic had been debated by the board and it was agreed that the role of chair should be held by an elected person to ensure there was democratic accountability. The majority view of the board, as debated during its recent governance review, was that the current chair should remain in place. Powys and Monmouthshire councils had been invited to take the chairmanship, but both had declined. Councillor Charlton of Powys had taken on the role of Vice Chair to help bring balance to the Welsh/English mix within the structure of the board.
17. The committee heard that the chairmanship of the board did not offer any significant power other than the ability to set the agenda (with full input from partners) and timing/dates of meetings.
18. The committee heard the provision of the secretariat was fairly minimal and was being funded by Welsh government grants up until April 2025.
19. The committee felt it was worth asking the executive to look into any benefits of rotating the chair of the board between councils.

Why did the original Nutrient Management Plan emphasise economic growth as the primary factor in its design?

20. The Chief Executive Officer (CEO) of the Wye and Usk Foundation pointed out that Herefordshire Council's 2014 Core Strategy was dependent on it.

Was there too much emphasis on planning in it as well?

21. The CEO of the Wye and Usk Foundation pointed out that Herefordshire Council's 2014 Core Strategy and development of planning was dependent on it.
22. In response to a further question from the committee, the Cabinet Member Environment explained that the moratorium was not put in place to stop actual construction, but rather the consequential increase in sewage. The moratorium could not be resolved at the moment, other than through mitigation, because of the Dutch judgement, as you cannot have a plan to have something in place by 2027 if the impact is going to be immediate.
23. The Dutch judgement had seen a major shift in the legal framework around the issue, which was why the nutrient management plan was no longer functioning as a bulwark against the moratorium, which it had been back in 2014.
24. The Interim Delivery Director for Environmental Transformation returned to the question of economic development and what the council wanted. The committee heard that it wasn't possible to look at the river in isolation and that there were consequences for land use management; as an example, if farming became unviable who would manage the land?
25. The Interim Delivery Director for Environmental Transformation suggested that the committee might wish to look at what was happening in the Wye in terms of initiatives, but highlighted that the council itself needed to focus on wider issues such as community responsibilities, housing responsibilities and support for the local economy. As important as a healthy river was, there remained a need to be cautious about favouring one policy objective over another.

Was there too much emphasis on measurement by the Nutrient Management Board rather than delivery of mitigating actions to reduce nutrient overload?

26. The CEO of the Wye and Usk Foundation explained that a lot of action had come out of the original Nutrient Management Board, including the safeguarding soils programme and a significant increase in Environment Agency enforcement.

Did the Nutrient Management Plan confound matters and throw the focus of the Nutrient Management Board off the recovery of our river systems and if so, why did we did not consider another vehicle that could achieve this?

27. The cabinet Member Environment suggested this was not the case and pointed to the Cabinet Commission (which was a political joined-up approach with local authority neighbours) and the catchment partnership. There were clear differences between these bodies.
28. The committee pointed out that in situations where technical solutions were being offered to problems, the statutory consultation process could be very slow moving.
29. The committee heard that the council had developed an in-house environmental advice service, which would provide advice to developers on their private mitigation schemes and that it would be useful to look into the resources being

made available for this service. The committee agreed it would be useful to have a recommendation to that effect.

Has the Nutrient Management Board spent too much time too on creating plans, such as the recent “Phosphate Action“ plan in 2021?

30. The Cabinet Member Environment pointed out there had been the initial Nutrient Management Plan in 2014, which had been due for revision in 2019, but got derailed by the Dutch judgement, so it wasn't reiterated until 2021 - when it came out as a phosphate action plan and should have been, but wasn't, refreshed within the 12 month period,. Essentially there had only been the plan from 2014, which was refreshed in 2021.
31. The committee heard that a problem with plans was that they had been created at a fixed point in time, within what was often a rapidly evolving situation. It was also difficult to create a plan when two different governments were producing legislation at different rates. The ideal plan would be dynamic.
32. The CEO of the Wye and Usk Foundation discussed how the plan could be improved by separating it into two streams, one to enable housing with certainty and support the actions that would do that, the other stream could recover the river without chasing certainty, which would support initiatives and work out how the council and the people on the board could facilitate those initiatives. This was noted as a basis for a recommendation.

Given the original aim, has it proved value for money for the Council, both in terms of resources committed, time that has passed and what it has delivered?

33. The committee suggested that the council was essentially forced into creating the board in order to get its Core Strategy agreed by the inspector.
34. The CEO of the Wye and Usk Foundation explained that the Nutrient Management Board was the solution that the council had proposed after talking to the Environment Agency about what would get the Core Strategy through. The creation of the board was a proposal of the council.
35. The committee explained that it now wanted to consider what the business priorities of the Nutrient Management Board should be, given that the understanding of the problem(s) has changed considerably since the board's inception.
36. The CEO of the Wye and Usk Foundation stated that the key change was that a solution had emerged. The idea that it was possible to get scientific certainty of offset, with net gain for the river, had created a new pathway and avenue for the council to enable its Core Plan and to move forward.
37. The Service Manager Built and Natural Environment suggested that if there was a proposal to separate out the action plan between what was working towards river betterment and what was working towards certainty to provide growth, then it would be advisable to separate the KPIs out to reflect this. One might be demonstrating trajectory towards compliance in terms of the river and the other might be more planning related, in terms of how much development had been able to be progressed against the strategic mitigation.
38. The CEO of the Wye and Usk Foundation in response to a question from the committee, gave the definition of scientific certainty, as defined in the habitats directive, as “without reasonable uncertainty” and that that had been defined on a data analysis statistical test as 95% certainty.

Why was it still necessary for the Council to invest itself in wetlands and should that not have been an outcome driven by the Nutrient Management Board with the investment costs shared between partners?

39. The Service Manager Built and Natural Environment explained that the wetlands were primarily to facilitate growth within the county and therefore were the priority of the council rather than Natural England.
40. The CEO of Wye and Usk Foundation stated that it was an impact investment by the council. It was a case of getting the first one across the line, then the council would get its money back in the sale of housing credits and be able to move forward to build the next one.
41. The committee then asked if there would be more wetlands coming on stream if others were sharing the burden?
42. The Cabinet Member Environment explained that the council only needed to offset the amount of phosphate that it needed to offset. Wetlands couldn't just be popped down anywhere, they needed to operate as tertiary treatment to rural sewage treatment works - this required Welsh Water to agree sites and the council to obtain the land. The council only needed to offset a certain amount - the quantity that was already held up, the quantity that was latent and the applications that would come within the plan period and that would be the totality. The Cabinet Member Environment was confident that this process was covered off and that funding would work through over time.
43. The committee heard that plans for additional wetlands were being slightly held up by the need for understanding what the Amp 8 for Welsh Water was. The council was waiting for Welsh Water to provide the information in order that the council could do some feasibility assessment work around the south of the county for wetlands in the south. It was suggested that a recommendation to contact Welsh Water to share that information would be helpful.

Should there not be a review date or some glide path timetable by which we decide to focus on implementation of a Water Protection Zone, if progress under the Nutrient Management Board is not forthcoming?

44. The Cabinet Member Environment explained that the Nutrient Management Board voted, by majority, in favour of a water protection zone on January 22. One of the prerequisites was that applicants had to feel that they had run out of road with the existing regulatory framework. A letter went to the then Secretary of State, but the decision to go with a water protection zone needed to be supported by the statutory officers and the Environment Agency and then be agreed by the Secretary of State. The very clear steer from the then secretary of state was no. The board and council could have either put more and more resources into trying to convert that into a yes or just accept the outcome and focus on something else. The feeling was that the board and council didn't want to put more and more officer time and effort into pursuing something that was not within its gift. However, the authority continued to lobby and make noise about the issue.
45. The chair suggested that a recommendation be made regarding the water protection zone in light of the formation of a new statutory officers group.

The committee then adjourned to draw up a set of recommendations based on the discussion. The committee reconvened and proposed and unanimously approved the following recommendations:

Resolved that:

- 1) **After almost 10 years of operation, plus a change in governance, the executive should consider rescinding the chair and secretariat to another partner, in accordance with the original nutrient management plan that the nutrient management board chair should be rotated among partner members.**
- 2) **To achieve value for money from the nutrient management board, the executive should set business objectives with key performance indicators for what is expected from our nutrient management board membership.**
- 3) **Complementary to the nutrient management board, the executive should pursue an informal alliance with Herefordshire sectors responsible for diffuse pollution, including agriculture and livestock representatives, to sharpen the focus on reducing it through voluntary arrangements.**
- 4) **The executive to look at the resources available for the new environmental advice service to ensure that it is properly resourced, to react in a prompt way to any private mitigation initiatives, and that statutory partners respond at pace to such initiatives.**
- 5) **The executive to approach the cabinet commission and statutory officers group to shape future planning to delineate between actions requiring reasonable scientific certainty and other actions for the general benefit of the river.**
- 6) **The executive should set key performance indicators to reflect the recommended delineation between actions requiring reasonable scientific certainty and other actions for the general benefit of the river.**
- 7) **To contact Welsh Water to ask for data from the redacted Water Industry National Environment Programme in order to identify collaboration opportunities with Herefordshire Council.**
- 8) **The executive should seek clarification from the statutory officers group on its plans for a timetable of action on nutrient recovery towards a possible end result of introducing a water protection zone, the so called glide path.**

70. CHAIR UPDATE

Executive Responses to Committee Recommendations

The chair noted that since the committee's inception it had only received back one set of executive responses to the recommendations it had made, these were in relation to flood risk management.

The chair stated to the committee that he had personally forwarded recommendations on the local plan report (made back in 2022) to planners and would be expecting responses in due course. The chair also pointed out that responses to recommendations on: waste and recycling, river pollution and the environment act were still outstanding.

The chair expressed frustration at the lack of response from the executive and asked for approval from committee members to draft and send a letter to the democratic services manager urging that the two month deadline for returning executive responses to scrutiny committee recommendations be observed and adhered to.

Action: Chair to draft a letter to the democratic services manager requesting that executive responses to scrutiny committee recommendations be returned in accordance with the timeframes detailed in the council's constitution.

Work Programme 2024/25

The chair discussed the need for the committee to draw up a work programme for the year 2024/25.

The committee proposed the following areas for consideration as part of the 2024/25 work programme

- Public rights of ways /greenways policy.
- 20 mph speed limits.
- Farming (Intensive livestock).
- Farming (Land management practice).
- Energy efficiency sufficiency (including retrofitting, insulation and renewable energy).
- Resourcing towards net zero and environmental priorities.
- Electric vehicles and quality of charging points in the county.
- Agriculture (possible task and finish group).
- Tree and hedgerow management policy/wildlife corridors.

The committee discussed the importance of being aware of and following best practice in relation to all of the above items.

It was agreed that an informal work programming meeting would be held during May 2024 in place of a formal committee meeting.

71. DATE OF THE NEXT MEETING

Monday 25 March 2024 10.00 pm

****This has subsequently been rescheduled to Wednesday 27 March 2024 2.00 pm****

The meeting ended at 12:50 pm

Chairperson