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BY EMAIL ONLY

Dear Liz,

Planning applications in the River Lugg catchment

I know you have been in discussion with my colleague Rob Sargent about the implications of the Dutch judgement. This letter is our formal response to planning applications in the River Lugg catchment. It provides Natural England's (NE) response to all such planning applications, until the situation changes.

Natural England wrote to you on 18 July 2019, advising the Council to seek a legal opinion on the implications of the Dutch case (Joined Cases C-293/17 and C-294/17). As the Competent Authority for this matter, the council needs to form a view on the correctness of approving projects that allow further damage to sites that are already failing their conservation objectives, and whether the Nutrient Management Plan gives enough 'certainty' around mitigation measures to allow it to be relied upon in Habitat Regulations Assessment.

In discharging our role as statutory consultee, it is Natural England's advice that for plans or projects that have likely significant effects and require an Appropriate Assessment under the Habitats Regulations, the effects are currently uncertain. This is because, in our view, reasonable scientific doubt remains as to whether the Nutrient Management Plan can provide appropriate mitigation. The council may wish to consider, notwithstanding this, whether there are alternative solutions that would avoid an adverse effect on the integrity of the site or whether there are imperative reasons of overriding public interest. If there are not, then permission should not be granted.

Plans or projects that are able to show betterment or nutrient neutrality may be permitted. Betterment in this context would mean certainty that the proposal is not adding to the Phosphate levels within the river, and that permitting it does not make it harder to achieve the Phosphate targets. Natural England would be able to advise on this on a case by case basis if required.

A list of the current consultations for which we are unable to agree there are no adverse effects on the integrity of the River Wye SAC is provided as an annex to this letter. If the council believes that any of the proposals are able to demonstrate betterment or nutrient neutrality, then we would be pleased to revise our response accordingly. For the avoidance of doubt, the advice in this letter can be applied to any further consultations in the River Lugg catchment.

We anticipate close working with the council and other partners on this matter, once the council has formed its own position on the implications of the Dutch judgement for the River Lugg part of the River Wye SAC. In doing this, the council may wish to refer this matter to the Ministry of Housing, Communities and Local Government for further guidance.

For any queries relating to the specific advice in this letter only please contact Rob Sargent on

02080 260872. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Emma Johnson
West Midlands Area Manager