

Matters regarding development in relation to the Somerset Levels and Moors Ramsar Site – Guidance Note (October 2020)

Background

Natural England has written to Somerset West and Taunton Council regarding the implications of the CJEU case known as the “Dutch N” (Joined Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others*) in relation to planning applications that may affect the Somerset Levels and Moors Ramsar protected site.

Dutch-N concerns agricultural N-pollution affecting protected heathland sites. However, the general principles involved are applicable to other pollutants or other receptors – the essential point being that where the conservation status of a protected natural habitat is unfavourable, the possibility of authorising activities which may subsequently compromise the ability to restore the site to favourable condition and achieve the conservation objectives is “necessarily limited”. The ruling has resulted in greater scrutiny of plans or projects that will result in increased nutrient loads that may have an effect on:

- Special Protection Areas (SPA) designated under the Habitat Regulations 2017
- Special Areas of Conservation (SAC) designated under the Habitat Regulations 2017
- Sites designated under the Ramsar Convention, which as a matter of national policy¹ are afforded the same protection as if they were designated under the Habitat Regulations 2017

By informing the way in which Reg. 63 of the Habitats Regulations 2017 should apply to pollution-related matters Dutch-N has resulted in the need for greater scrutiny of the effects of plans or projects that are likely to, either directly or indirectly, increase nutrient loads to internationally important sites (i.e. SACs, SPAs and Ramsar Sites) where a reason for unfavourable condition is an excess of a specific pollutant. Following the Dutch N ruling, the legal difficulty in authorising plans or projects that lead to further inputs of that pollutant is clear.

Somerset Levels and Moors Protected Site(s)

The Somerset Levels and Moors are listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest (SSSIs). Further information relating to the unfavourable condition of the Ramsar Site and the underpinning SSSIs

¹NPPF para. 176.

²Gladman Developments Limited v S of S for Housing, Communities and Local Government and another [2019] EWHC 2001 (Admin)

³Sweetman vs Coillte Teoranta CJEU C-323/17 (“People over Wind”)

designated under the Wildlife & Countryside Act 1981 (as amended) is provided at Annex 1.

The interest features of the Somerset Levels and Moors Ramsar Site are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates. Further, although improvements to the Sewage Treatment Works, along with more minor measures to tackle agricultural pollution have been secured, these will not reduce phosphate levels sufficiently to restore the condition of the Ramsar Site features. The scope for permitting further development that would add additional phosphate either directly or indirectly to the site, and thus erode the improvements secured, is necessarily limited.

Listed Wetlands of International Importance under the Ramsar Convention (Ramsar) are protected as a matter of Government policy (National Planning Policy Framework paragraph 176). Therefore in line with national policy, Somerset West and Taunton Council, as the competent authority under the Habitats Regulations 2017, has been advised by Natural England to consider the implications of these matters on the Ramsar Site through an appropriate assessment of the implications of the plan or project in view of that site's conservation objectives. Once the assessment is carried out, permission for the plan or project may only be given if the assessment allows us to ascertain that it will not have an adverse effect on the integrity of the site.

Implications for development within the hydrological catchment of the Somerset Levels and Moors Ramsar Site

In light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site, if a development is identified as giving rise to additional phosphates within the catchment, planning permission should not be granted until a Habitats Regulations Assessment has been undertaken. This should proceed to an appropriate assessment where a likely significant effect cannot be ruled out, even where the development contains pollution mitigation provisions.

Note the need for an appropriate assessment of proposals that include mitigation measures designed to avoid an adverse impact is established in domestic case law² and European case law³. The appropriate assessment must rule out any reasonable doubt as to the likelihood of an adverse impact on the integrity of the site, having regard to its conservation objectives.

Mitigation options

Where mitigation is identified as necessary in order to make the development acceptable, nutrient offsetting mitigation will need to be included into the development proposals, and implemented as part of the scheme, so as to avoid either permanent, or temporary increases in phosphate loads to the designated site and must be effective for the duration of the effect.

As an example, in the case of new housing the duration of the effect is typically taken as in perpetuity, with the costs of maintaining, monitoring and enforcing mitigation calculated for a minimum of 80 – 125 years. It does not, however, follow that mitigation is not needed after that period, rather the expectation is the mitigation will continue indefinitely (e.g. through securing appropriate permanent land use change).

In contrast, phosphate offsetting measures for agricultural intensification or anaerobic digester plants need only be effective for the duration of the operation facilitated by the permission and therefore less permanent mitigation measures may be appropriate.

Mitigation can take a number of forms depending on the proposal, its location and the site constraints. Mitigation options for a specific development will therefore need to be considered and developed in detail once it has been identified that such mitigation is required. In this event it is likely that you will need to seek specialist advice.

Natural England are also happy to engage directly with applicants on bespoke solutions through their Discretionary Advice Service which can be found here:

[Natural England Advice Service](#)

Note

This information is based on advice provided by Natural England as statutory consultee to local planning authorities in relation to nature conservation and impacts of plans or projects on designated sites.

Somerset Levels and Moors Sites of Special Scientific Interest

[Natural England Designated Sites](#)

Annex 1

Further information on the Somerset Levels and Moors Ramsar Site and SSSIs

The favourable condition of the ditches of the designated sites is in part dependent on the water quality within them. In freshwater habitats it is often the case that the abundance of nutrients, especially phosphorus (P), is a key limiting factor of excessive primary productivity, particularly algae. Excessive nutrients leading to such adverse biological effects is known as "hyper-eutrophication". In lowland ditch systems such as the Somerset Levels and Moors, these effects are typified by the excessive growth of filamentous algal, particularly in the form of large mats on the water surface, and a massive proliferation of certain species of Lemna. This can adversely affect the ditch invertebrate and plant communities through a variety of mechanisms including shading, smothering and anoxia, leading to a dominance of plant species better able to deal with these conditions, with negative competitive effects on others. This can lead to a significant negative shift in habitat quality and structure which in turn affects invertebrate communities.

The vast majority of the ditches within the Ramsar Site and the underpinning SSSI's are classified as being in unfavourable condition due to excessive P and the resultant ecological response, or at risk from this process.

The sources of P, commonly assessed in the form of phosphates, derive from diffuse water pollution (such as agricultural leaching) and point discharges (such as from Waste Water Treatment Works) within the catchment. Phosphorus levels are frequently 2-3 times higher than the target for total phosphorus set out within the Conservation Objectives underpinning the Ramsar Site. There is widespread evidence of biological harm linked to eutrophication in the form of increasing blooms of Lemna and filamentous algae that are threatening the integrity of the biological communities that should be specially protected under the Ramsar designation. This view is reinforced by the Environment Agency's Water Framework Directive (WFD) assessment of water bodies across the Somerset Moors, which is that many are at significantly less than 'Good' status for phosphate. Specifically, Water Framework Directive (WFD) phosphate limits of 100µg/l are exceeded across the Somerset Levels and Moors Catchment. River catchments which lie within the wider Somerset Levels are currently classified as Poor Ecological Status under the WFD.