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Dear Sir/Madam

Matters regarding development in relation to the Somerset Levels and Moors Ramsar Site

Background

Natural England is writing to your Authority 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

¹ NPPF para. 176.

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 designated as an SPA under the Habitat Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site broadly covers the same area as the Somerset Levels and Moors SPA. While the SPA is designated for its international waterbird communities, 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 designated under the Wildlife & Countryside Act 1981 (as amended) is provided at Annex 1.

In relation to the Somerset Levels and Moors SPA, based on our current understanding, Natural England is satisfied that additional nutrients from typical new developments described in this letter are unlikely, either alone or in combination, to have a likely significant effect on the internationally important bird communities for which the site is designated. On this basis, Natural England is satisfied that the effects of additional nutrients from development on the SPA can normally be screened out of further assessment.

However, 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, Natural England advises that your Authority, as the competent authority under the Habitats Regulations 2017, considers 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. Having carried out that assessment, permission for the plan or project may only be given if the assessment allows you to ascertain that it will not have an adverse effect on the integrity of the site.

Conservation Objectives for Ramsar Sites

Site specific conservation objectives for Ramsar Sites have not been published. However, the following generic Conservation Objectives for all Ramsar Sites have previously been signed off by Natural England:

“With regard to the Ramsar Site and the wetland habitats, individual species and/or groups of species for which the site has been listed (its ‘Qualifying Features’), and subject to natural change;

Ensure that the integrity of the [Ramsar] site is maintained or restored as appropriate, and ensure that the site contributes to achieving the wise use of wetlands across the UK, by maintaining or restoring;

- The extent and distribution of qualifying habitats and habitats of qualifying species
- The structure and function of qualifying habitats and habitats of qualifying species
- The supporting processes on which qualifying habitats and habitats of qualifying species rely
- The populations of each qualifying species, and,
- The distribution of each qualifying species within the site.”

The conservation objectives for the Ramsar Site should also ensure consistency with the published conservation objectives for the Somerset Levels and Moors SPA.

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

Natural England advises that, in light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment proceeding 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.

It has been established that a 'nutrient neutrality' approach to development is likely to be a lawfully robust solution to enable the grant of permissions that give rise to an appreciable effect. Examples of multi authority catchment solutions include the [nutrient neutrality methodology in the Solent](#), the River Avon Local Authorities phosphorous interim delivery plan to deliver phosphate neutrality, the River Axe (Devon) Nutrient Management Plan (currently in draft) and [Nitrogen Reduction in Poole Harbour Supplementary Planning Document](#). Your authority may wish to consider this approach to enable developments to proceed in the catchment that will result in additional phosphates. It is however emphasised that for such an approach to be lawful, it is likely that the measures used to offset such impacts should not compromise the ability to restore the designated site to favourable condition and achieve the conservation objectives.

Development types affected

1. Additional residential units and commercial development

Additional residential units within the catchment are likely add phosphate to the designated site via the waste water treatment effluent, thus contributing to the existing unfavourable condition and further preventing the site in achieving its conservation objectives. Natural England therefore advises that your authority carry out an appropriate assessment of planning applications that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation.

Provided the competent authority is satisfied that new commercial development will not significantly increase loadings at the catchment's waste water treatment works then they may be screened out from further assessment on the basis that people living in the catchment are also likely to work and use facilities in the catchment, and therefore wastewater generated by that person can be calculated using the population increase from new homes and other accommodation.

Tourism attractions (e.g. theme parks) are normally considered exceptions as these land uses attract people into the catchment and generate additional wastewater within the Somerset Levels and Moors catchment. There may also be cases where planning applications for new commercial or industrial development could result in the release of additional phosphates into the system, for

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

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

example through processes that add phosphates, or significant volumes of additional waste water to the sewage treatment works.

Where applicable, the appropriate assessment should consider the improvements to Wessex Water's sewage treatment works secured under PR19. Once up and running these improvements will significantly reduce (although not remove) the offsetting requirements for new residential development in perpetuity. However, additional more temporary measures may be required to take account of the increased nutrient loads in the interim period.

2. Infrastructure that supports agricultural intensification

Increased agricultural intensification within the catchment of the Somerset Levels and Moors Ramsar Site will also lead to increased nutrient loading. For example, planning applications for new or expanded livestock housing (e.g. cattle sheds, chicken, or pig farm facilities, etc.) are all forms of agricultural intensification that if located within the catchment are likely to increase nutrient loads to the designated site and should be subject to an appropriate assessment.

Additional considerations relating to slurry storage

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010, abbreviated to the SSAFO regulations, require agricultural holdings to provide storage infrastructure for silage, slurry and agricultural fuel oil to a given standards, sizes and lifespan to prevent water pollution. The size of a slurry store needed by a holding is determined by factors including the number of livestock, area of uncovered yard, presence of a separator, volumes of parlour washings etc. The installation of a new slurry store, or in some cases the enlargement of an existing slurry store, requires planning permission.

Natural England advises that when your Authority is seeking to determine applications for new or enlarged slurry stores on agricultural holdings within the catchment of the Somerset Levels and Moors Ramsar Site it should, in accordance with Reg. 63 of the Habitats Regulations 2017, consider the plan or project that underlies the application for planning permission. The need for a new slurry store will in many cases be part of a broader plan or project, namely an increase in livestock numbers on the holding in question, with the slurry store being a legally necessary means of enabling that plan or project. The grant of planning permission for a new slurry store is likely to unlock the ability to intensify the use of the holding in question.

When carrying out an appropriate assessment of this sort, Natural England advises that a competent authority should proceed on the basis of an analysis of the added livestock capacity that a new slurry store would unlock. This principle has been established in decision making (see Torridge Council Appropriate Assessment under the Habitats Regulations of Planning Application 1/1041/2015/FULM: Land at Beckland Farm, Hartland).

3. Anaerobic digesters

Natural England has particular concerns relating to the potential impacts of additional anaerobic digester (AD) plants within the Somerset Levels and Moors catchment. AD plants require the input of organic matter, often in the form of farmyard manure and arable plant matter. Livestock and arable crops within the catchment are significant contributors to the elevated phosphate and unfavourable condition of the designated sites, in particular at locations where there are runoff pathways. New (or increased capacity) of AD is therefore likely to be driving local land use changes such as the production of maize, which is known to be a significant contributor to diffuse water pollution.

It follows that permitting new, or increasing the capacity of existing, AD plants through the grant of planning permission is likely to unlock land use change which is known to contribute phosphorous and sediment to the catchment watercourses. Natural England advises that the competent authorities should consider new or enlarged AD facilities as simply one aspect of a plan or project of land use change. In this regard, when an application for a new or extension to an existing AD plant is within (or within close proximity) to the catchment of the Somerset Levels and Moors Ramsar

Site, your authority should consider the risk that the development will indirectly increase the amount of phosphates entering the designated site. If an increase in the catchment's phosphate loads is considered likely then the implications of the proposals, along with any measures that may be implemented to alleviate that risk, should also be considered through an appropriate assessment.

4. Other development types

We have focused here on the main types of development that result in additional phosphates in the Somerset Levels and Moors catchment. There may be other types of development that fall into that bracket and we would welcome further discussion in that respect.

Mitigation options

Nutrient offsetting mitigation should be in place 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. 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 AD plants need only be effective for the duration of the operation facilitated by the permission and therefore less permanent mitigation measures may be appropriate. Natural England would be happy to discuss potential phosphate mitigation options for different types of development in due course.

Note

This is the opinion of Natural England as statutory consultee to local planning authorities in relation to nature conservation and impacts of plans or projects on designated sites. It is up to individual planning authorities to take their own legal advice when exercising their statutory functions.

Natural England is keen to help your authority to understand the scope of the issues discussed above and to establish solutions which do not undermine the delivery of your plan policies. There are a number of mitigation measures which may be available to enable developments to proceed, whether on-site or off-site. We are also happy to engage directly with applicants on bespoke solutions through our Discretionary Advice Service.

If you have any queries relating to the advice in this letter please contact me on 07900 608072.

Yours sincerely

Simon Stonehouse, Natural England Wessex Team

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.

Somerset Levels and Moors Sites of Special Scientific Interest

[Catcott Edington and Chilton Moors SSSI](#) [Curry and Hay Moors SSSI](#) [King's Sedgemoor SSSI](#) [Moorlinch SSSI](#) [Shapwick Heath SSSI](#) [Southlake Moor SSSI](#) [Tealham and Tadham Moors SSSI](#) [West Moor SSSI](#) [West Sedgemoor SSSI](#) [Westhay Heath SSSI](#) [Westhay Moor SSSI](#) [Wet Moor SSSI](#)

