

Briefing Note on Nutrient Neutrality

Stodmarsh National Nature Reserve

1. Stodmarsh National Nature Reserve in NE Kent is fed by the River Stour which has its source near Lenham.
2. Stodmarsh is a "European site" and is protected under the Conservation of Habitats and Species Regulations 2017.
3. It is suffering from nitrogen and phosphorus pollution, causing 'eutrophication' and a loss of biodiversity.
4. Pollution sources include the use/occupation of buildings (homes especially) located in the catchment.
5. In mid 2020, Natural England (NE) formally originally advised that Nutrient Neutrality (NN) would need to be demonstrated for both foul and surface water discharge from overnight accommodation that would pollute the R Stour by direct or indirect discharge into the catchment and then Stodmarsh itself.

Nutrient Neutrality

6. LPAs can only approve new residential development or overnight accommodation if it passes an Appropriate Assessment (AA)/Habitats Regulations Assessment (HRA).
7. MBC is the "competent authority" which must make the assessment.
8. Natural England is a statutory consultee. It provides advice and specifically produces standardised nutrient budget calculators to assist LPAs making the assessment.
9. The requirement to consider nutrient impacts applies to reserved matters approval stage of the planning application process, and to applications for grants of prior approval and/or certificates of lawfulness for a proposed use or operation.
10. That NN applies to multi-stage consent was established by what is known as the "Fry Judgement", a case from Somerset heard recently in the Appeal Court. Hence conditions (on any issue and including any with triggers pre-occupation) and should be refused unless mitigation is in place.
11. The Regulations require "projects" to obtain neutrality "in combination". The nutrient load of additional housing's wastewater must be counterbalanced. ie a positive project can counterbalance a negative project. There is no requirement for betterment or "additionality". This concept is not mentioned in any of the legislation or guidance related to NN

Mitigation Options to Reduce Pollution of the R Stour

12. Strategic mitigation options for East Kent such as wetlands will be long-term- it may be 2 years at the earliest before acceptable wetland options are in place.

13. Kent's short term strategic solution will include the following within the catchment.
- a. Floodplain meadows where the biomass is cropped and disposed of outside the catchment
 - b. Switching old inefficient septic tanks for modern package treatment plants.
 - c. retrofitting of water saving measures
 - d. land use change where there is a reduction in fertiliser/ animal waste pollution (eg agriculture to woodland or semi natural habitat) –
14. An example of option (d) is the Pleasant Forest scheme which is being created by Forestry England (part of DEFRA) as a nutrient trading scheme.

Pleasant Forest (PF)

28. Pleasant Forest is 57.65 ha of arable land within the Stour catchment that has been taken out of cereal production and planted since 2021 as forest. Natural England is satisfied with the timeline and that is it a "positive" project that can counterbalance "negative" projects such as housebuilding.
29. The land use change at PF generates Phosphorus and Nitrogen credits from the cessation of use of artificial fertilisers onto the cereal crops, **not** the planting of trees as such. However, the benefit of tree planting, is that it very clearly proves that the agricultural use has ceased and so it is easy to monitor long term.
30. Natural England has been supportive of the credits from Pleasant Forest being used by housing developers.
31. It is understood that all of the phosphorus credits at PF have been reserved by developers, mostly by Abbey Developments for its site at Old Ashford Road, the subject of current planning applications in this agenda.
32. This application is currently having a legal agreement drafted to secure credits from PF as mitigation.