

Leader of the Council
Councillor D Hitchiner

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Your Ref: MW/Lugg SAC/phosphates
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Tuesday 1st June 2021

Dear Minister,

The River Wye Catchment in Herefordshire

At our Full Council meeting in March a motion was unanimously supported to request that the executive of Herefordshire Council write to the appropriate government minister to '*request urgent intervention and immediate resourcing for our statutory agencies to address the issues of flooding and phosphate overload which is ravaging Herefordshire's economy, ecology and communities*'.

I would like to take the opportunity to provide some clarity to you on this matter in the very real hope that you will be able to assist us.

Phosphates

In the latter half of 2019, your Natural England team for our West Midland region wrote to Herefordshire Council advising us of the implications of the recently decided law judgement known as the 'Dutch judgement' and how this impacted upon the River Lugg in the north of Herefordshire (a major tributary to the River Wye SAC accounting for 40% of the administrative area of our unitary council). This made reference to how Natural England regarded the 'Nutrient Management Plan', which had been collectively drafted in 2014 by the regulatory bodies, was no longer able to provide them with the certainty that this river would meet its favourable condition status by the target year of 2027 - due to phosphate pollution in our river. Natural England made it plainly clear to my officers that they would not be able to support any Appropriate Assessment made under the Habitats Regulations in support of a planning application unless that particular project or development could show it was phosphate neutral or provide betterment.

As a consequence following further correspondence and numerous meetings with Natural England, Herefordshire Council took legal advice in October 2019 on Natural England's position and subsequently has not been able to approve any housing, industrial or agricultural planning applications impacting upon the Lugg catchment unless it meets tight guidelines in relation to betterment or neutrality. This is incredibly difficult for most developers to meet and currently we have about 1650 houses caught up in applications that cannot be determined until a way forward can be found. The same applies to both commercial and agricultural development as well as proposals for the development of NHS facilities as well. This has had a significantly negative effect on our local communities and their economy, with the effective moratorium on housing also impacting significantly upon our five year housing land supply projections and our Neighbourhood Development Plans, which in effect have now become blocked.

This puts Herefordshire and its rural communities at a significant disadvantage which will have long lasting negative impacts. The investment losses have already been estimated to equate to between £100 and £120 million and by the time the moratorium is lifted it has been projected that this could be as high as £300 million. Likewise, there has already been an identified impact upon Herefordshire's associated development; including our small local schools who rely upon new homes to bring families and investment to our rural settlements, lost affordable housing, the loss of tourism, an increase in house prices due to a lack of supply, a tangible loss of jobs within the construction sector, as well as lost council tax and section 106 monies needed to provide services. Additionally we have seen a reduction in Herefordshire Council's potential New Homes Bonus, with the corresponding loss in commercial profits and business rates.

So what is the problem with the River Wye catchment?

Wordsworth originally wrote - *'These waters rolling from their mountain springs, with a soft inland murmur'*, but now newspapers like the Daily Mail refer to our beautiful river as *'a putrid algae-ridden swamp'*. Countryfile ran a story on this only the other week and a critical documentary called *'Riverside'* is soon to be broadcast. Without a shadow of doubt it has become national news and quite rightly so.

This reporting is because in 2020 a damaging algal bloom wiped out miles of the river ecology. It started in Llanbister, 231km upstream of the tidal stretch and by the time it reached the lower Wye it was like pea soup. Blanket weed blocked out light and the water became oxygen depleted. Around 70 miles of river lost the protected plant water crowfoot (*Ranunculus*) and therefore fish and invertebrate life were impacted as river keepers reported widespread loss of cygnets from starvation.

The causes of the algal bloom are temperature, low flow, sunlight and excess nutrient. We know that the first three are outside of our control and are likely to be more frequent because of climate change but we can, should and must ensure that the excessive nutrient that is killing the river is radically reduced.

A recent study by the Universities of Lancaster and Leeds has estimated an excess loading of 2000 tonnes of phosphate per annum in the catchment. That is equivalent to 1.5m tonnes of farmyard manure being spread, over and above the crop requirements every year. That is an incredibly high number.

Where this devastating algal bloom started in Llanbister, there are very few houses and therefore very little sewage to blame – however, there are now a high number of very new intensive poultry rearing units in this valley. Our local Rivers Trust, the Wye & Usk Foundation, ran a campaign to highlight this obvious link and to seek a solution from the regulatory agencies in Powys.

Unfortunately, although Natural England and Environment Agencies are equally responsible for the protection of the River Wye's Special Area of Conservation (SAC) habitat and water quality respectively in England, it is with great disappointment that neither of these agencies have been forthcoming with a solution. Although not within your jurisdiction, in our considered opinion Natural Resources Wales has been even less effective in Wales, if this is possible, with Powys County Council continuing to consent to Intensive Poultry Units within the upper reaches, without appropriate mitigation and despite what we now know.

In desperation, Herefordshire Council has felt compelled to unilaterally take the lead and find a way forward for our housing blockage, resulting in a formal decision taken in August to pursue:

- (1) The purchase of land for the construction of integrated constructed wetlands to remove phosphate from small Welsh Water sewage works with no phosphate stripping;
- (2) The purchase of high phosphate yielding land for rewilding; and
- (3) The commissioning of an Interim Delivery Plan to set out a phosphate calculator, recommend mitigation measures and agree a mechanism for the trading of phosphate credits.

The Environment Agency, Natural England and the local Wye & Usk Foundation consider that Herefordshire Council's unilateral actions are incredibly innovative and hope that they can create headroom to allow at least some housing applications to be determined. Our planned work will only have a marginal impact on the overall condition of the Wye SAC and its projected favourable condition status. Our members strongly feel that it should be your agencies striving to fund such actions to protect this most valuable of rivers, rather than the local planning authority in its desperation.

However, our actions are only a sticking plaster and do not address the cause.

In this respect, we feel that much of the problem stems from the fact that the River Wye SAC starts in Wales, passes through England and then finishes its journey in Wales and England – as a result the river suffers from embarrassingly inconsistent regulation and differing regulatory and planning standards. Similarly, although the pollution apportionment was originally thought to be 50% from housing (waste water treatment works) and 50% from agriculture (manure and fertilizer), we are now aware from recent Welsh Water and Environment Agency SAGIS modelling that this is now likely to be 66% or more attributable to agriculture, which is likely to increase to circa 90% as and when the sewage works are improved in 2024/25 as per their scheduled improvements agreed with OFWAT.

As a consequence our local housing developers feel that there is not a level playing field and that the punishment to their sector is disproportionate and demonstrably unfair. Although the contribution of new house building is minute (less than 1%) compared to the contribution of agricultural diffuse sources, there is now effectively a moratorium on house building imposed by Natural England because of the Dutch Judgement, whereas the improvement to agriculture seems to have halted.

We are advised by the Environment Agency, Natural England and Natural Resources Wales' experts within the Technical Advisory Group (TAG) serving the Nutrient Management Board (NMB), that the main reason for such a high agricultural percentage is due to the increase in the proliferation of intensive poultry units (IPUs) in the upper catchment in Wales and the resultant application of poultry litter applied to land within both the upper (Welsh) and lower Wye (Herefordshire) catchment. This cannot be sustainable and we surely deserve the intervention of central government to resolve this, comparable at least to the £3.9m solution offered by central government to our council partners in the Solent region for their encountered problems with nitrates.

Flooding

Herefordshire has a severe and exponentially growing problem with flooding. In February 2020 when we had the highest flood events ever recorded which seized national headlines for what seemed weeks. My elected members have no doubt that this is as a result of climate change which we take most seriously, however we must also acknowledge that much of our flood problems could be resolved if only landowners and farmers took more regard for the environment and a visionary approach to natural flood management, which can be encouraged by central government policies. As with phosphates, I would see that the forthcoming ELMS policy could bring about such changes that Herefordshire so desperately requires.

What is needed.

We need a 'glide path' to follow so that we can once again have a healthy river with reduced flooding. This path will need to be supported by massively increased monitoring and enforcement on both sides of the border. Likewise, farming subsidies will need to be absolutely aligned to local targets of reduced fertiliser spreading, reduced arable, restoration of river meadows/flood plains, reduced pathways for run off, increased soil structure and organic materials, increased field margins, increased zero/min till practices and so on. Our local poultry industry now recognise the need for an alternative means of disposal for their growers' poultry litter and would be interested in support to achieve this. We see that many farmers both sides of the border are in a holding pattern - they know that they shouldn't be farming the way that they are but they are waiting for the government to tell them to do it differently. The delay

to the Environment Bill and the timelines for ELMS are all adding to this situation and our members feel that the RHI/FIT for anaerobic digesters is akin to subsidising ethanol produced on rain forest land.

We know that other local authority areas are in a similar predicament and are trying different solutions with government support. The Poole harbour measures include a series of 'trigger points' on the glide path where a Water Protection Zone (WPZ) could be put in place. In a recent meeting of our Nutrient Management Board an NFU representative gave a presentation on the Poole solution and actually agreed that the threat of a WPZ acted as incentive and offsets the awkward hiatus between policy development and implementation.

The Solent has benefitted from £3.9m from government to purchase and re-wild 'Little Duxmore Farm' in partnership with Hampshire Wildlife Trust, delivering proof of concept and unlocking 1150 houses from their moratorium. On the other hand, Herefordshire has so far received absolutely no support from Government to deal with the problem. This seems grossly unfair and uneven.

In summary, our elected members believe that Herefordshire's rivers are in dire condition and that we need our MPs and government ministers to acknowledge this unprecedented disaster. We also need them to work with the Welsh Assembly to take a cross border and strategic view on this so that they can resource and enable our statutory agencies to address these issues with the honesty and urgency that they demand.

What is really vital is that we all work together to address the issues with water quality and flooding. It is not just agencies working together that will fix this even if they have unlimited funding and it is not just all political sides coming together. What we really need is to work together as a county, with landowners and farmers working side by side with ecologists and hydrologists, agronomists collaborating with scientists. We all need to do what we can to understand the problem so that we can become an unstoppable force moving towards a solution.

Herefordshire is already doing what Herefordshire does so brilliantly – It is answering the call! We even have citizen scientists working on monitoring water quality to give us more detailed data. We have rural parishes taking on catchment restoration to reduce flood risk working with their local landowners and farmers in conjunction with hydrologists and we have natural flood management experts doing what they can to protect local residents. We have some amazing regenerative farmers who are proudly leading the way in being part of the solution. And of course we have our own council leading the way with wetlands and rewilding whilst your agencies look on with presumably very little resource.

Without a shadow of a doubt, we need a sturdy regulatory floor with a full commitment to enforcing existing regulations to achieve bringing the watercourse back into compliance. If the existing regulation is found to fail then there is only one course left; which is to impose a water protection zone for the catchment – surely a last resort. But without a glide path to follow and regulatory intervention to ensure that it is, I can see very little alternative but for us to pursue a water protection zone.

According to a recent comment by Natural England "*there are few, if any, catchments in England which have seen a larger investment of effort targeting agricultural pollution*" and yet here we are with a failing river. Currently, the Environment Agency has only 4 officers to do all this regulatory work across the whole of the West Midlands, which equates to 0.8 of an officer for Herefordshire – frankly it's not enough. We urgently need more boots on the ground and a simpler regulatory regime, we need more data, a better understanding of the issues and the speedy delivery of phosphate reduction measures.

It's a challenge and in times of challenge we need to work with a single purpose. With this in mind my members and officers have attended a series of meetings arranged by Jesse Norman MP with Bill Wiggin MP, Fay Jones MP (Powys), David Davies MP (Monmouthshire) and Mark Harper MP (Forest of Dean). As a consequence the local Environment Agency, Natural England and Natural Resources Wales teams have drawn together a list of impressive funding requests to 'turbo charge' the actions of our Nutrient Management Plan. I can confirm that we have the support of all the Wye SAC MPs and

what they all tell us we need is government funding to give us a clear line of sight to implement these effective actions already put to you and your agencies.

There clearly is no lack of political will and as a council we speak on this matter with one voice. All of Herefordshire's elected members have made it plainly clear that they care. They care and they want to see action with the right amount of resource in the right place to do all that we can to reduce flooding and improve water quality to avoid the need for a water protection zone.

We look forward to your strongest support in this matter and confirmation as to the government's strategy going forward.

Yours sincerely

A handwritten signature in black ink that reads "David Hitchiner". The signature is written in a cursive style with a large initial 'D'.

COUNCILLOR DAVID HITCHINER
LEADER OF THE COUNCIL

CC Rebecca Pow MP rebecca.pow.mp@parliament.uk
Jesse Norman MP
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