

Submitted by : Land Promoters and Developers Federation

31st March 2023

Dear Sir / Madam

The Impact of Environmental Regulations on Development

This letter should be read in conjunction with the joint submission made by the HBF and the LPDF which more fully details the framework of environmental legislation that impacts upon the development industry and the consequences of it.

However, the LPDF would like the Committee to consider the contents of this letter which highlights some thoughts on potential positive actions to mitigate the impacts on the housebuilding industry as well as matters at a strategic level which we feel should be given further consideration.

‘Lessening’ the Impact of Nutrient Neutrality on the Housebuilding Industry

The accompanying note speaks to this issue extensively. However, at a practical level we believe that Government, together with Natural England, could lessen the impact, in particular regarding phosphates, by considering the following:

1. Review the Calculator used in each affected catchment to determine the level of mitigation required for a development in certain respects whilst maintaining the ‘precautionary approach’ required by the Habitat Regulations. Some flexibility is built into the calculator and we know of examples where Natural England has taken an evidenced approach in order to change certain of the inputs to the calculator (occupancy, for instance). However, we believe that the assumption that 100% of the new homes on a development will be occupied by people who are not already having a detrimental impact on nutrient levels in the catchment (ie they all currently live outside of the catchment) is illogical, especially when any affordable housing on site is likely to have a ‘local’ tie requirement within the s106 planning agreement. This element of the calculator needs to be consistent with the population growth forecasts for the catchment area as reflected in the Local Plan. The need for a ‘catch all’ contingency in the Calculator is accepted as being consistent with the precautionary approach principles but as outlined by the judge in the case of Wyatt v Fareham Council, this could have been set at any level from 10 – 30% to be viewed as acceptable in law, so why 20%? This only serves to make it more difficult both practically and financially to achieve the required level of mitigation which in the case of phosphates is particularly the case with sites more likely to be being developed by SME housebuilders (sub-150 dwellings);

2. We believe that Government should be working with the industry, perhaps through the Future Homes Hub, to review the water use levels for new homes. The Future Homes Standard sets this at 110l per person per day (Part G Building regulations). This is an input to the Calculator. However, we believe that more could be done to reduce water usage in new homes for a relatively low marginal cost, to say 95l – 100l per person per day, without affecting a householders enjoyment of a property. In addition, this would have a beneficial impact on the growing areas of England where they may be viewed as water stressed;
3. Ensure there is a symmetry between the planning system and Natural England's approach to nutrient mitigation. At present, it is the case that in many instances applicants for outline planning permissions are being asked for detailed designs for mitigation schemes. This increases the cost to the applicant and is completely unnecessary at a point when a scheme cannot be implemented and the final design of the housing scheme is not known, rather only the principle of development is being established subject to discharge of conditions, one of which would relate to nutrient mitigation. In relation to outline planning permissions, Natural England need only have a reasonable level of confidence that any mitigation proposed will deliver the mitigation required, with detail being provided at the time of reserved matters or discharge of conditions;
4. The issue of modelled versus measured outcomes. At present mitigation schemes are viewed as being acceptable by Natural England by reference to modelled outcomes. However, occupations are only allowed against measured outcomes. Some mitigation schemes may take many months to implement / construct and up to 2 years before measured outcomes are derived. A housebuilder is therefore being asked in this instance to invest financial capital into land (as he would be unwilling to invest the capital into mitigation without control of the land) and then wait a further 2 and a half years before risking working capital in building houses, which will themselves take a number of months to build before receiving any positive cashflow. Accepting modelled outcomes would overcome this;
5. Ensure that Natural England encourage private investment in mitigation schemes by not linking a proposed mitigation scheme with a proposed development site in all instances and even where this is the case, allowing 'tradeability' where a surplus is created;
6. Government needs to ensure that wastewater treatment works that serve less than 2,000 people are brought within the scope of the requirement to upgrade as per those above this threshold as set out in the Levelling-Up and Regeneration Bill. This will benefit rural local authorities, such as Herefordshire, Dorset et al, where they have dispersed populations currently disproportionately served by the excluded wastewater treatment works. In addition, many of the settlements within these areas have an increased likelihood of being locations preferred by SME housebuilders;

7. There needs to be a far greater effort to communicate and engage effectively with the industry by those bodies responsible for the implementation of the nutrient measures. This would include Government, all elements of the water industry, Natural England and local planning authorities;
8. This leads to our final point, resourcing. All of the bodies previously mentioned are human resource (and financially) constrained and some lack the depth of skills to play a leading role in the communication and evolution of mitigation solutions that is required in the very short term. We do not believe the sums of money allocated by Government to date go anywhere close to providing adequate funding for the resourcing required. Indeed, unlike nutrient neutrality, no funding has been allocated to the relevant bodies to address the issue of water neutrality.

Due to the nature of the schemes required (large scale engineered or nature based schemes) for phosphate mitigation, the impacts fall on sites most likely to be of interest to SME housebuilders (sub-150 dwellings, though the threshold may be higher). Even sites sized between 150 and 500 dwellings will see the land use efficiency reduced as they provide on site mitigation meaning more land will be required to be released for housing going forward.

We are aware of the Government's announcement contained within the Budget regarding the possibility of further funds to develop local mitigation schemes in addition to the national schemes being brought forward by Natural England. If this investment is to have maximum effect it will, in the opinion of the LPDF, require 1 – 8 above to be addressed.

Imperative Reasons of Overriding Public Interest

We would respectfully ask the Committee to consider whether at a time when Government has introduced Awaab's Law (Social Housing (Regulation) Bill), recognising the impact of housing on our citizens' health, there is the ability for Government to override the Habitats Regulations on public health grounds (as we believe is possible within the Regulations). We would envisage that this would only apply to development proposals where affordable housing is being delivered in whole or part (at least to the level of a Local Plan policy) on the site in question of which social rented accommodation would need to form an element.

Biodiversity Net Gain

The note accompanying this letter details fully the impact and implementation of the principle of Biodiversity Net Gain.

We would make only two additional points. First, the Environment Act sets the requirement at a minimum of 10%. However, many Local Planning Authorities have begun to set the requirement at a higher %, most frequently 20%, either through a Local Plan process or through the introduction of an untested Supplementary Planning Document. The impact on the development industry and its ability to purchase offsite credits has not been considered in a holistic way. Accordingly, this may well serve to delay or indeed lead to certain sites becoming undeliverable (see comments below).

As with the issue of nutrients, especially phosphates, the ability of smaller sites (150 dwellings or less) which form the lifeblood of SME housebuilders to deliver onsite BNG is the most constrained. Therefore, the necessity to source, at an additional cost, offsite credits is placed on SME housebuilders who are resource constrained (both human and financially). Where authorities have set BNG at levels in excess of 10% it serves to exacerbate the problem.

Strategic Land Use Strategy

We have not seen from DEFRA any estimates of the impact on the extent of agricultural land of the measures noted above. When taken with the changed farming subsidy methodology of ELMS we question the extent of the land which will now be 'lost' from productive use.

The Sector's Commitment to Environmental Gain

Notwithstanding the above nothing in this letter should be read as a desire on the part of our members to play anything other than a full role in reversing the impacts being felt on our natural environment. We fully support the BNG initiative and recognise the impact being felt on our water courses by nutrient pollution. In addition, new homes continue to be at the forefront of energy efficiency and the move to a net zero carbon environment.

However, both the accompanying note and this letter should serve as a sign of the stress inflicted on one sector from the impacts of a wider society, an industry which plays a positive role economically, socially and in terms of health outcomes.

Should the Committee require any further assistance from us in reaching its conclusions we will be delighted to assist.

Kind Regards

Yours sincerely



Paul Brocklehurst
Chairman