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Natural England has advised councils that new developments in the Solent region should only be permitted if they are “nutrient neutral”

Why has Natural England issued advice to councils in the Solent?

Nitrogen and phosphorous pollution from waste water and agricultural run-off entering the Solent catchment and its European nature conservation designations is not new, but Natural England’s position on the issue has hardened over the past year. The result has been delays in housebuilding across the Solent.

Natural England has said its advice follows evidence indicating that high nutrient levels in the water are causing eutrophication of habitats associated with European designations – a position with implications under the Habitats Regulations. Recent judgments from the Court of Justice of the EU – including the “Dutch Nitrogen” and “People over Wind” cases, along with the “Wealden” domestic rulings, have also limited how councils can respond to negative impacts on European sites.

What does the advice say?

Natural England has advised councils that certain developments leading to a net increase in the population served by the waste water system discharging into the Solent should not be granted unless they are ‘nutrient neutral’ – specifically in relation to nitrogen.

What do critics of the advice argue?

New development constitutes a small proportion of nutrient loading into the Solent, yet these projects must now achieve neutrality. But how appropriate has the past approach to nutrient pollution in the region been, considering the current situation? Article 6(2) of the Habitats Directive requires member states to take steps to stop European sites deteriorating – a requirement intended to operate alongside article 6(3), which addresses the effects of new plans and projects. Failure to implement article 6(2) adequately has led to more draconian measures being taken under article 6(3).

Other critics point to shortcomings in the assumptions Natural England uses to calculate the amount of nitrogen generated by different land uses. Such assumptions can be adjusted if there is evidence for alternative figures.

What happens next?

Councils around the Solent are working with Natural England, the Environment Agency and water firms to develop interim strategies to progress development. These are likely to be structured around financial contributions from schemes that cannot achieve neutrality to be put toward a nutrient offset. A proposed method to achieve neutrality is to cut the amount of fertiliser used in farming to offset additional sewage from development. Others include waste water treatment improvements.

A more holistic, pan-Solent approach toward an overall fall in pollution is needed. The bar for the evidence to underpin this approach has been set high by the “Dutch Nitrogen” case, but the court did not rule out a strategic approach.

Strategic, pan-authority solutions can take time. In the interim, projects will need creative solutions, such as changes to the management of agricultural land, providing on-site sewage treatment or designing wetland habitats to intercept nitrogen from elsewhere



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