

From: Derek Murphy, Cabinet Member for Economic Development
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To: Growth, Economic Development and Communities Cabinet Committee – 22 September 2022

Subject: Nutrient Neutrality

Classification: Unrestricted

Past Pathway of report: n/a

Future Pathway of report: n/a

Electoral Division: Ashford Central, Ashford East, Ashford Rural East, Ashford Rural West, Ashford Rural South, Ashford South, Canterbury City North, Canterbury North, Canterbury City South, Canterbury South, Herne Village & Sturry, Herne Bay East.

Summary: Nutrient Neutrality is a requirement of the Conservation of Habitats and Species Regulations 2017. Developments in the River Stour catchment are required by Natural England to achieve nutrient neutrality i.e., that no additional nitrogen or phosphorus enters the river. This requirement is having a detrimental impact on planning permissions for housing developments in East Kent and leading to unsustainable developments.

The Government has recently announced a package of measures to support the delivery of strategic mitigation for nutrient neutrality, which KCC is coordinating.

Recommendation(s):

The Cabinet Committee is asked to note the report.

1. Introduction

- 1.1. In Summer 2020, Natural England issued advice to the local planning authorities in the catchment of the River Stour (Canterbury, Ashford, Folkestone and Hythe, Maidstone, and Dover), to inform them that new developments must not increase the level of nutrients nitrogen (N) and phosphorus (P) in the River Stour, as they are having a negative impact on Stodmarsh National Nature Reserve, a nationally and internationally designated site.
- 1.2. These nutrients are in the effluent from wastewater treatment works (WwTW). Any new development in the catchment of the WwTW will increase the amount of effluent they discharge and therefore the amount of nutrients that enter the River Stour.
- 1.3. To meet planning requirements, proposed new developments with overnight accommodation must demonstrate that the development achieves nutrient neutrality i.e. the level of nutrients in the river is the same after the development as it was before. Achieving nutrient neutrality is complex but

planning authorities cannot approve planning applications for developments including overnight accommodation that cannot demonstrate this.

- 1.4. This effectively put a hold on housing developments whilst mitigation options were sought. Some developments have been able to demonstrate nutrient neutrality and get planning permission. For most it is a significant constraint and many will require a strategic mitigation option to buy into or significant on-site infrastructure, at an additional cost, to be able to get planning permission.
- 1.5. [A paper introducing nutrient neutrality](#) was presented at the GEDCCC on 22 March 2022. That paper contains more background on nutrient neutrality and options to mitigate it.

2. Impacts on development

- 2.1. The requirement for nutrient neutrality has led to a major impact on the delivery of residential development across the Stour catchment. It is affecting the ability of the local planning authorities to demonstrate a five year housing land supply and may lead to a possible failure to meet Housing Delivery Test thresholds in the medium term.
- 2.2. This is particularly the case where the advice affects development in and around the main urban areas which are often identified as the most sustainable locations for new development in adopted and emerging Local Plans, in particular the towns of Ashford and Canterbury.
- 2.3. Figure 1 shows the major and minor planning applications for dwelling that were granted in Ashford and Canterbury since 2016, similar data for Swale¹ is also shown as a comparison, as the nutrient neutrality advice broadly coincides with the COVID pandemic. The Ashford and Canterbury data shows a decline since Q3 2020, when the Natural England advice was first issued, a similar decline is not seen in the data for Swale.

¹ Note, a small part of Swale Borough is within the Stour Catchment, but none of the Wastewater Treatment Works that serve Swale discharge to the Stour and this area is not a significant area for development in Swale.

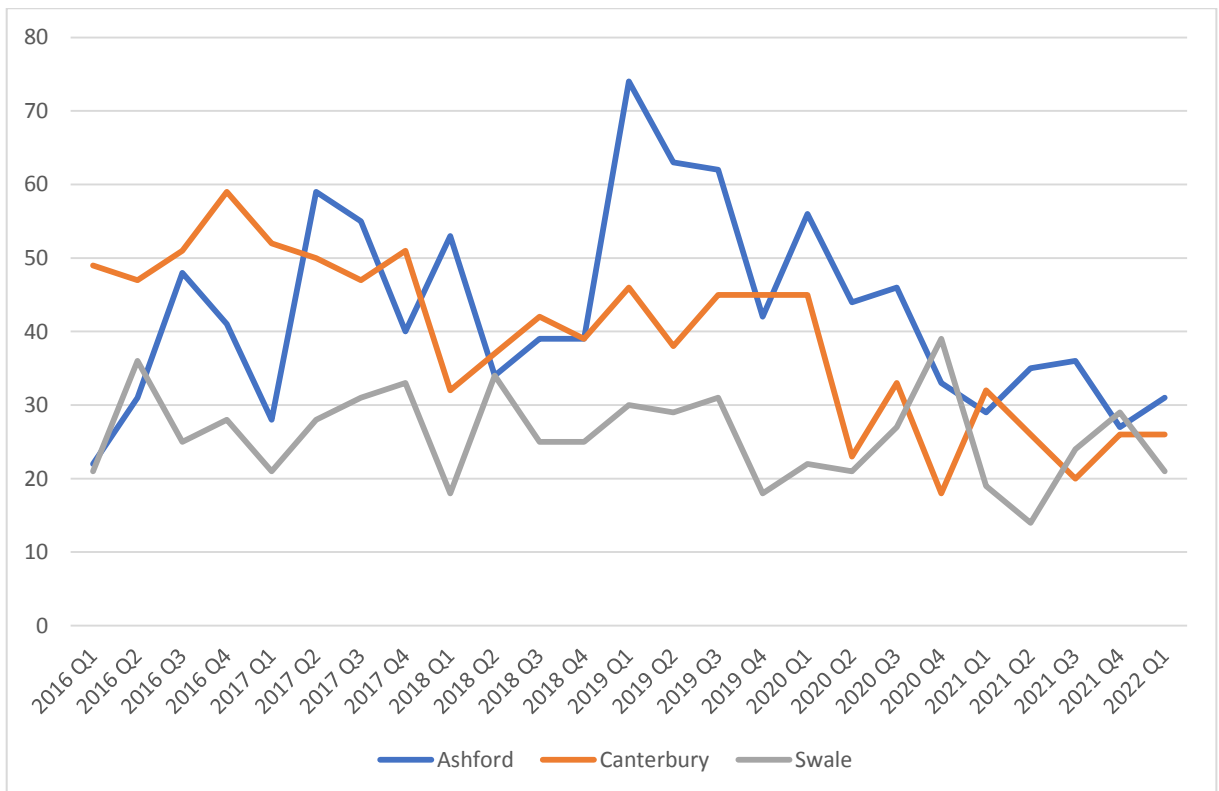


Figure 1 Major and minor dwelling applications granted 2016-2022²

- 2.4. As a consequence, developers and landowners have sought to promote sites that are outside the Stour Catchment, where there is no requirement to achieve nutrient neutrality. These are often 'windfall' sites which have not been allocated through the plan making process, leading to a less sustainable pattern of development in areas where there are existing pressures on local infrastructure and services.
- 2.5. There are recent examples where the local planning authority has refused planning consent for new development that is not in the Local Plan. However, this decision has been overturned at a planning appeal as the local planning authority was not able to demonstrate their five year housing land supply due to local plan sites being held up because of nutrient neutrality requirements.
- 2.6. This also generates risks for the County Council as a key provider of strategic infrastructure and services because it is the plan-led approach to growth that allows infrastructure requirements to be identified (and delivery coordinated) alongside new development in response to local needs. Additionally, for sites within the Stour catchment that can achieve nutrient neutrality, the financial cost might create issues for the overall viability of a scheme. This could trigger renegotiations of existing development contributions towards affordable housing and necessary supporting infrastructure, including that provided by the County Council given the extent of its statutory roles, particularly as Local Education and Local Highway Authority.

² <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

3. Updates

March announcements

- 3.1. In late March 2022, the Government announced that more areas are affected by nutrient neutrality; 32 local authorities were already affected and an additional 42 new local authorities were announced as new protected sites were found to be subject to nutrient neutrality requirements. This brings the total number of local authorities affected to 74 across 27 catchments of protected sites.
- 3.2. At the same time as announcing these new areas, a package of support for the affected catchments was also announced. The Government expanded the role of the [Planning Advisory Service](#) (PAS) to lead on coordinating the affected areas and also announced that it would provide £100k of grant funding for each affected catchment. The funding was towards a catchment coordinator to strategically coordinate mitigation activities across the catchment.
- 3.3. KCC took the role of catchment coordinator for the Stodmarsh catchment and received the funding from the Government in April 2022.
- 3.4. The guidance documents and methodology for nutrient neutrality were also revised and updated, including small changes to some of the calculations.

July announcements

- 3.5. [A ministerial statement](#) was released in July 2022, prior to the summer recess. In the statement, the Government confirmed its support for improving water quality and announced that it would provide seed funding for mitigation schemes. This funding would be made available through Natural England from autumn 2022 for spending in 2023. More details about what the fund will contribute to and how it can be accessed will also be released in the autumn.
- 3.6. The Government also announced that it would review planning guidance to reflect the impacts of nutrient neutrality on housing delivery targets and implement minimum treatment standards in wastewater treatment works in affected catchments.

Southern Water

- 3.7. Southern Water has been progressing its study of nutrients in the catchment. This study has not been published yet but stakeholders are aware of the draft findings.
- 3.8. Southern Water has found that wastewater discharges in the catchment are currently responsible for the majority of the phosphorous in the River Stour and a significant portion of the nitrogen.
- 3.9. Southern Water has tested scenarios to mitigate the phosphorus at its wastewater treatment works and has found that it cannot achieve the acceptable level of phosphorous in the River Stour using best available technology. It has also tested other options that go beyond best available technology, but these also do not achieve the acceptable level of phosphorus.
- 3.10. Southern Water is continuing to discuss its draft report with the regulators.

Local mitigation

- 3.11. Each of the affected local planning authorities in Kent has developed a strategy to manage the impacts of nutrient neutrality. Some are well progressed in this and are planning to start developing detailed proposals.
- 3.12. KCC, as the catchment coordinator, is planning to commission consultants to develop a catchment-wide strategy based on the strategies of the local planning authorities. This will help stakeholders to understand where mitigation is needed outside of the local authority areas where development is planned and to support the bids for seed funding once the fund becomes available in the autumn.

4. Financial Implications

- 4.1. There are no funding implications from this work. DLUHC has funded the staff time and consultancy work that KCC is spending on this and is planning to release funding to support the delivery of mitigation measures.
- 4.2. Disposal of sites that are in the nutrient neutrality catchment are being held up and it is impacting S106 negotiations.

5. Legal implications

- 5.1. There are no legal implications for KCC from nutrient neutrality.

6. Equalities implications

- 6.1. There are no equalities implications for KCC from nutrient neutrality.

7. Other corporate implications

- 7.1. There are no other corporate implications.

8. Governance

- 8.1. There are no governance issues.

9. Conclusions

- 9.1. The Government has increased the level of support for nutrient neutrality and has announced that seed funding will be available in the autumn for mitigation projects.
- 9.2. Following funding from the Government, KCC is coordinating the work in the catchment to mitigate nutrient neutrality. Local planning authorities have developed strategies to manage it within their authority boundaries and KCC will be commissioning a catchment strategy.

10. Recommendation

Recommendation(s):

The Cabinet Committee is asked to note the report

11. Background Documents

None

12. Contact details

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