Breaking Ground: Government set to Remove Nitrate Neutrality “Red Tape” Surrounding Housing Developments

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The Government is set to scrap “legacy EU laws on nutrient neutrality” that are “blocking the delivery of new homes”. In the latest statement by the Department for Levelling Up, Housing and Communities, Michael Gove has pledged to further amend the Levelling Up and Regeneration Bill (”LURB”) to “do away with this red tape and allow for the delivery of more than 100,000 new homes desperately needed by local communities”.

The move is accompanied by new environmental measures, aimed at tackling pollution at its source and restoring habitats. These measures include a significant expansion of investment in the Nutrient Mitigation Scheme, which is run by Natural England.

Since 2018, when the CJEU handed down a landmark judgment, greater scrutiny of the water quality of European designated sites across the UK has been required. The legacy EU framework has required Natural England to issue guidance to 62 local authorities that halt the determination of planning applications unless nitrate neutrality can be demonstrated in advance of the grant of planning permission.

For many developers, this has meant additional time and cost in securing off-site mitigation through the purchase of a limited amount of "nitrate credits" or attempting to provide on-site mitigation, such as creating wetlands. In many cases, this has blocked or delayed new development, including around a large number of homes that already achieved resolutions to grant planning permission.

In the latest round of amendments to the LURB, we have now seen the amendment paper titled HL Bill 142-IV(f) Amendments for Report (Supplementary to the Fourth Marshalled List), which can be found here. The most relevant of changes, in the context of the Government’s statement to attempt to unlock developments, is the proposed changes to the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) in relation to the grant of planning permissions.

On review, the introduction of a new regulation 85A of the Habitats Regulations introduces by proposed

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amendments to the LURB appear, if they were to become law, to upend the concept of a requirement for an evidence-based appropriate assessment that may result in a planning permission contingent on certainty that the development as permitted will be nutrient neutral. As far as nitrate neutrality is concerned, the following requirements still apply:

85A(2): When making the relevant decision, the competent authority must assume that nutrients in urban waste water from the potential development, whether alone or in combination with other factors, will not adversely affect the relevant site.

The proposed changes eliminate the consideration of nitrate neutrality from an appropriate assessment procedure. See regulation 85A(3):

(3) Accordingly, a potentially adverse effect on a relevant site caused by nutrients in urban waste water, whether alone or in combination with other factors, is not a ground for the competent authority to determine that—

(a) an appropriate assessment is required by regulation 63(1) or 65(2), or

(b) the potential development will adversely affect the integrity of the relevant site or otherwise have negative implications for the site.

Alongside the amendments to the LURB, the key takeaways from the government's proposals are:

- A drive for water companies to upgrade wastewater treatment works to the highest technical standards by 2030.
- A promise to conduct 4,000 inspections on farms each year, ensuring that slurry and other sources of nutrients are being handled in a way that minimises pollution of the water environment.
- An investment of £200m in grants for improved slurry storage infrastructure and precision spreading equipment.
- The introduction of payment premiums into environmental land management schemes from 2024 to accelerate the uptake of certain high-priority options, including those that provide benefits for water quality.
- Investing £25m to drive innovation to help farmers manage plant and soil nutrients.

The focus of these proposals appear to be on wider, strategic, and long-term solutions to address the nitrate

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issue, rather than the current system that operates on an individual basis. Therefore, if both the amendments to the LURB and other proposals are taken forward, many should welcome progress in removing perceived red tape blocking developments caught by nutrient neutrality.

The full statement released by the Government can be found here

A short lived plan?

Whilst housebuilders will undoubtedly welcome these changes, time is running out. The LURB still needs to go through the legislative process in parliament and receive Royal Assent, so it has a long way to go!

There will certainly be more delays, coupled with controversy surrounding the significant amount of late amendments to the bill - and let's not forget the prospect of a forthcoming general election. As a result, and at least for the foreseeable future, the issue of nitrate neutrality in the housing market has not gone away.

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