

Report of:	Executive Member for Regeneration Director of Regeneration
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Submitted to:	Executive
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Date:	20 June 2023
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Title:	Approach to Nutrient Neutrality and delivery of Middlesbrough Council housing schemes
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Report for:	Decision
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Status:	Public
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Strategic priority:	Physical environment
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Key decision:	Yes
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Why:	Affects 2 or more Wards
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Urgent:	No
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Why:	Not Applicable
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Executive summary

In March 2022, statutory advice was issued by Natural England, requiring the Council to consider Nutrient Neutrality when determining certain planning applications.

This report sets out the background to Nutrient Neutrality and the Council's approach to dealing with it, and seeks approval for the assessment of the Council's land holdings to be used as mitigation to help achieve Nutrient Neutrality.

Purpose

1. This report sets out the background to Nutrient Neutrality and the Council's approach to dealing with it, and seeks approval for the assessment of the Council's land holdings to be used as mitigation to achieve Nutrient Neutrality.

Background and relevant information

2. On 16th March 2022, Natural England published statutory advice for certain local planning authorities, including Middlesbrough Council, setting out a requirement for new developments to achieve Nutrient Neutrality. All planning authorities within the Tees River Catchment are affected by this advice, due to excess levels of nitrogen being recorded in the River Tees.

3. The Conservation of Habitats and Species Regulations 2017 (as amended) are the UK's transposition of European Union Directive 92/43/EEC on the 'Conservation of natural habitats and of wild fauna and flora' (the Habitats Directive). The Habitats Directive states:

'[Whereas] an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'.

4. The Teesmouth and Cleveland Coast Special Protection Area and Ramsar Site (hereafter referred to as the SPA) is a designated European habitat site, meaning it is offered the highest level of protection under the legislation. The Council, in its role as the 'Competent Authority', has a statutory duty to ensure that new development proposals accord with this legislation. Therefore, it must not allow development proposals to proceed if they are likely to have a significant effect on the SPA.
5. The statutory advice issued by Natural England means that certain developments, which could lead to an increase in the level of nitrogen in the River Tees, cannot proceed without achieving Nutrient Neutrality.

What is Nutrient Neutrality?

6. The term 'Nutrient Neutrality' is used to describe an approach whereby the level of nutrients discharged from a site after a development takes place is the same, or lower, than before. In Middlesbrough's case, it currently used to refer to the level of nitrogen discharging from a site and ending up in the River Tees.

Why is this an issue now?

7. It is important to note that there have been no new legislative or policy changes that have resulted in Nutrient Neutrality becoming an issue for Middlesbrough Council. Instead, it is the increased level of nitrogen recorded in the River Tees that has led to the advice being issued by Natural England. Nitrogen can enter the River from various sources, with large contributors being agriculture and industry, with domestic waste water discharge also making a contribution as a result of human activity. Excessive levels of nitrogen can lead to algae blooms, which can significantly affect protected species and their habitats.

What does this mean for development in Middlesbrough?

8. The Council (as local planning authority) is not able to control existing lawful development and uses of land, so the statutory advice is focused on controlling nitrogen discharges as a result of future development. The Council should not issue any grant of planning permission for affected development unless it is satisfied that Nutrient Neutrality will be achieved.
9. In line with the advice, only certain developments fall within scope of Nutrient Neutrality. The focus is on development that would lead to more people staying overnight in the borough, as this would increase the level of nitrogen discharged through the waste water system. Other developments that have a specific process that involves nitrogen use may also fall within scope.
10. Below is a table showing the main development types in Middlesbrough and whether they fall within scope for Nutrient Neutrality.

IN SCOPE	OUT OF SCOPE
Residential development	Commercial
Hotels / other tourist accommodation	Offices
Student accommodation	Industrial (unless nitrogen specifically discharged)
	House extensions
	Hospital development (unless more beds created)

11. Development that already has planning permission, but has not yet started, will still be able to come forward provided it does not require a further planning application (where the Nutrient Neutrality issue may be considered).

Determining Nitrogen Levels of Proposed Development

12. Alongside the statutory advice, Natural England published a “Nutrient Neutrality Budget Calculator” for the SPA. This allows the input existing and future land uses to determine the impact of proposed developments on nitrogen discharges. Brownfield land is disproportionately affected due to it typically having very low levels of existing nitrogen discharge compared to, say, agricultural land.
13. Upon receiving this calculator, it became apparent that its assumption of the impact of new housing development on our population (and therefore nitrogen levels) did not accord with our established understanding of population change that underpins the Local Plan. The calculator assumed an additional 2.4 people for every dwelling provided.
14. With this in mind, a study was commissioned (entitled “Reviewing the evidence on population growth resulting from provision of new homes in Middlesbrough” – see Appendix 2) to look specifically at the relationship between new housing development

and population in Middlesbrough. The report identified that, whilst there has been a significant number of new houses built in Middlesbrough over recent years, the population has seen only a relatively modest increase. This is due to the impact of people living longer, more people leaving the Middlesbrough area than migrating to it, and a general decrease in average household size (meaning the population is spread more thinly across the housing stock).

15. The report concluded that 0.6 additional people per dwelling is a more representative figure in Middlesbrough, and this is now being used as a revised input in the budget calculator. The consequence of this is that new housing development is now calculated to have a lower impact on nitrogen levels in the SPA and is considered to be a more accurately reflection of the Middlesbrough situation.

Considering Nutrient Neutrality in Planning Applications

16. In-scope development proposals are required to be supported by a Habitats Regulations Assessment (HRA). This should identify the potential impact of the development on the SPA, and any proposed mitigation. A standardised HRA pro-forma (see Appendix 3) has been produced by the Council for applicants to use (should they wish). The Natural England Nutrient Neutrality Budget Calculator should be used to inform this, in line with our own evidence base.

17. The Council has continued to consider all planning applications received in the normal way:

1. Out-of-scope developments are not affected by Nutrient Neutrality;
2. For in-scope development where the HRA determines that Nutrient Neutrality will be achieved, then applications are determined in the usual way; and
3. Where the HRA identifies that the level of nitrogen would be higher as a result of the development then it is not possible to approve an application until appropriate mitigation is agreed. Refusals can continue to be issued as normal, and it may be necessary to refuse an otherwise acceptable application if appropriate mitigation cannot be agreed.

18. Since the Natural England advice was issued, the Council has been unable to determine planning applications for 1,452 dwellings, 285 bedrooms student accommodation, a 4 bedroom HMO & a 48 bed hotel.

Mitigation

19. There are broadly two approaches to mitigation being promoted by Natural England. The first involves taking agricultural land out of use. Agriculture and farming normally involve high levels of nitrogen discharge as a result of fertiliser or activity associated with animals, and will most likely be a higher contributor of nitrogen than new in-scope development. By ceasing those uses, there will be a net positive impact on the River. The main benefit of this approach is that it is a quick and certain solution. However, it requires a significant amount of land to be taken out of productive food production and laid fallow, and there is a limited supply of appropriate land within Middlesbrough's boundary.

20. The second approach involves the creation of “constructed wetlands”. Natural reed filtration systems are developed to capture water prior to it entering the River Tees. As it passes through the filtration system, nitrogen is removed from the water before it is discharged into the River. This option is more technical, will take approximately 3 years to get in place, and will require ongoing, and often expensive, maintenance.
21. It is the responsibility of the applicant to identify appropriate mitigation where it is required. Both approaches to mitigation will come at a cost to the developer/landowner and may have an impact on the amount of development taking place in Middlesbrough, especially the number of new dwellings.
22. Natural England has confirmed that mitigation must be provided within the Tees Catchment. Therefore, any solutions must prevent additional nitrogen entering the River Tees. Mitigation must be secured “in perpetuity”, in line with the legislation

Levelling Up and Regeneration Bill

23. Although the existing legislation requires mitigation to be secured in perpetuity, the new Levelling Up and Regeneration Bill proposes placing a new duty on water authorities to remove nutrients in affected areas by 2030. Whilst the level of benefit will vary for each area, the latest analysis by Natural England suggests that 98.27% of nitrogen impacts arising from new housing development in the Tees Catchment will be mitigated by this new duty. Therefore, assuming this legislation is enacted, the vast majority of mitigation required to support development proposals in Middlesbrough will only need to be in place until 2030.

Natural England’s Nutrient Mitigation Scheme

24. Natural England has implemented its “Nutrient Mitigation Scheme” for the Tees Catchment from 31st March 2023. This involves Natural England progressing both the purchase of agricultural land and the development of constructed wetlands, in order that they can sell ‘credits’ to developers to mitigate their development proposals.
25. Natural England started issuing certificates from its scheme in May 2023, and with the scheme being designed to make credits available during 4 application periods each year. However, there is unlikely to be sufficient mitigation provided through this scheme to support all of the development affected within the Tees Catchment. Natural England have confirmed that credits will be issued on a first-come/first-served basis with a focus on prioritising the delivery of new housing (wherever that may be).

The use of Council-owned land as mitigation

26. The Council owns a significant amount of land that is currently in use for agriculture purposes, and subject to farm business tenancies. There is an option to take this land out of agricultural use to help achieve Nutrient Neutrality on some in-scope development sites elsewhere in the borough.
27. The Council’s agricultural land holdings have been subject to an initial assessment to identify those field that would be suitable for taking out of use to help achieve Nutrient Neutrality. This has concluded that 12 parcels of land, totalling 60.3 hectares, are suitable, all of which are located in the south of the borough near Coulby Newham and

Nunthorpe. An initial assessment of these sites using the Natural England’s Nutrient Neutrality Budget Calculator suggests that approximately 765 kg TN/year of nitrogen mitigation could be achieved by removing them from agriculture. A list of these sites and map are attached at Appendix 4.

28. There would be financial costs to the Council in taking these sites out of agricultural use. Firstly, there would be a loss of income associated with the farm business tenancies. If all the sites were subject to tenancies, the Council would receive a rental income of approximately £16,000 per annum. However, not all the sites are currently subject to tenancies, so the income for 2023 is expected to be well below this level. All the tenancies currently in place are due to expire on 30th September 2023, meaning there would be no termination costs, and no new leases would be agreed. Secondly, there would be ongoing maintenance costs associated with managing these sites. The total maintenance costs have been estimated below:

Flail cut hedgerow	£4,400
Total cut and bale costs	£12,000

29. The actual costs incurred will depend upon management regime, and future use chosen for each field.

30. The financial costs need to be considered against the potential benefits associated with the Council bringing sites forward for development, namely housing schemes. Firstly, from a planning perspective, every house built contributes to the identified housing requirement, meeting local needs. Secondly, there will be extra Council Tax revenue each year for every new property occupied. Thirdly, for each new home built in the borough, the Council receives additional grant funding through the New Homes Bonus. And finally, for sites brought forward on Council-owned land, there will be a capital receipt payable to the Council. A list of Council-owned housing sites that could benefit from this approach is attached at Appendix 5.

31. Whilst the most benefit could be achieved by supporting development of Council-owned land, it would also be possible to support the delivery of third-party land through the sale of nitrogen credits in a similar way to the Natural England Mitigation Scheme. This is likely to be considered on a case-by-case basis.

32. Given the wide range of development opportunities available, it is not possible to accurately determine the exact financial benefits to the Council of supporting development through using agricultural land to mitigate for Nutrient Neutrality. However, it is estimated that the agricultural sites could help achieve the following:

- Over 1,400 additional dwellings;
- Over £380,000 in additional Council Tax receipts during the Medium Term Financial Planning period to 2025/26, and over £3.37m in additional Council Tax receipts per year once all the sites are developed;
- Contribution to additional New Homes Bonus grant (subject to its continuation); and
- Approximately £54.8m in capital receipts (gross).

33. Therefore, the potential financial benefits associated with removing the sites from agricultural use considerably outweigh the costs.
34. In order to meet the requirements of the Habitats Regulations, mitigation must be in place 'in perpetuity', meaning the Council must ensure agricultural land is no longer used for such purposes, and managed accordingly. However, this can be reviewed either once the provisions set out in the Levelling Up and Regeneration Bill come into effect, or should any other approach that achieves the necessary mitigation be implemented.

Alternative Uses for Agricultural Land

35. Whilst one option in taking land out of agricultural use is to allow it to lay fallow, it is perhaps preferable to find alternative uses for the land to bring wider public and community benefits. Such benefits can take many forms and it is important to consider a variety of uses that complement each other and deliver these community benefits.
36. The fields provide an important strategic opportunity to create an accessible green infrastructure network that serves the whole of the Middlesbrough community delivering numerous Council priorities. For example, the fields around the Newham Hall development could be used to extend the proposed green infrastructure and greenspace networks required as part of that development, this will significantly improve access to recreational, leisure, and green space opportunities and enhance the setting and value of the development.
37. Potential may also exist for improving access to organic community gardening opportunities, other uses include the potential to deliver increased biodiversity and wildlife opportunities to help the Council meet its biodiversity obligations, opportunities for active sports and playing field provision, and create and extend the network of Public Rights of Way. Alternatively, an economic use, such as a solar farm, may be an appropriate compatible use. In considering such uses it is important that regard has had to not increasing nitrogen loading as this would negate the purpose of taking the sites out of agricultural uses.
38. Going forward it is proposed that a masterplan is developed identifying these opportunities, how they all link together and contribute to the delivery of wider Council aspirations and priorities, and how they can be delivered. This masterplan will be subject to a future report to the Executive.

Next Steps

39. The Council will continue to determine planning applications in the normal way, requiring an HRA to consider the issues with in-scope development. It is anticipated that more of these applications will be able to proceed to an approval as a result of Natural England's Nutrient Mitigation Scheme, and as a consequence of our own evidence base on the relationship between housing and population growth.
40. Further work will be undertaken to firm up the mitigation levels that the Council's farm assets can deliver to determine their potential to help achieve Nutrient Neutrality. This will then be used to develop a programme for taking farm holdings (or parts thereof) out

of agricultural use. Management plans will be prepared for the ongoing maintenance of these sites (or until an alternative compatible use is agreed).

41. It is likely that land will need to be taken out of agricultural use in advance of both the planning decision and when it is required for mitigation. In order for the Council to manage this process whilst properly exercising its duties as competent authority, it will be necessary to develop a register and internal credit system to allocate and secure nitrogen credits for residential schemes.

What decision(s) are being recommended?

42. That the Executive:

1. agrees, to take the sites identified in Appendix 4 out of agricultural use, once all existing farm business tenancies have expired, so that they can be used as mitigation to achieve Nutrient Neutrality; and
2. delegates authority to the Director of Regeneration, in consultation with the Executive Member for Regeneration, to agree an internal credit system for the allocation of nitrogen credits to mitigate the impact of new housing development.

Rationale for the recommended decision(s)

43. To enable the use of the Council's landholdings to support the delivery of new housing, which is either being brought forward on Council-owned land or by third parties elsewhere.

Other potential decision(s) and why these have not been recommended

44. If the Council wishes to bring forward its own land for in-scope housing development, then it is likely that offsite mitigation will need to be secured. This could be done through Natural England's Nutrient Mitigation Scheme, any alternative third-party mitigation scheme (should they be forthcoming), through the acquisition of alternative agricultural land elsewhere in the Tees Catchment, or the development of constructed wetlands. All of these are likely to be costly and/or time consuming to achieve, potentially making it more challenging to bring Council-owned land forward for development. It is not recommended that any of these options be pursued in the absence of full consideration of using the Council's own landholdings.

Impact(s) of the recommended decision(s)

Legal

45. The consideration of planning proposals must be undertaken in accordance with the Town and Country Planning Act 1990.

46. The Conservation of Habitats and Species Regulations 2017 (as amended) are the UK's transposition of European Union Directive 92/43/EEC on the 'Conservation of natural habitats and of wild fauna and flora' (the Habitats Directive). Any development proposals which could significantly affect the conservation objectives of a designated site must be subject to an Appropriate Assessment under these Regulations.

47. There are no legal implications associated with the allowing existing farm business tenancies to expire.

48. The sites will need to be maintained by the Council in such a way that they deliver mitigation to achieve Nutrient Neutrality in perpetuity. This position can be reviewed either once the provisions proposed in the Levelling Up and Regeneration Bill come into effect, or should any other approach that achieves the necessary mitigation be implemented.

Strategic priorities and risks

49. The following risks are affected by this report:

O8-055	If the Council doesn't respond effectively and efficiently to legislative changes it could be in breach of statutory duties in relation to service delivery and fail to make the most of opportunities.	There is a legal requirement for the Council to consider the impact of development on the Teesmouth and Cleveland Coast SPA and Ramsar Site.
O1-005	If poor economic growth occurs, then this will reduce public and private sector investment in the town, including town centre retail, housing development and business.	The issue of Nutrient Neutrality has already delayed a significant number of planning applications, which could have an impact on economic growth.
O1-051	A major downturn in housing growth that results in a significant decline in new housebuilding in Middlesbrough, resulting in lower house building rates lower Council Tax receipts and thereby increasing the risk of impact on successful delivery of the MTFP.	The issue of Nutrient Neutrality has already delayed a significant number of planning applications, which could have an impact on the delivery of new housing.

Human Rights, Equality and Data Protection

50. This report has been subject to an initial Impact Assessment (IA), which accompanies this report (see Appendix 1). This identifies that a full IA is not necessary

Financial

51. The Tees Catchment has been awarded £100,000 by the Government to help deal with the issues arising from Nutrient Neutrality in the River Tees. This is being managed by Stockton-on-Tees Borough Council in its role as lead authority and is being used to fund joint work across the catchment.

52. The costs associated with the Council’s approach to dealing with Nutrient Neutrality, and the assessment of the Council’s landholdings, are being met through established departmental budgets.

53. There will be a cost to the Council in terms of lost revenue from the farm tenancies (up to £16,000 per annum) and the implementation of mitigation solutions including their ongoing maintenance of up to £16,400 per annum. This loss of revenue needs to be considered against the benefits in terms of achievement of capital receipt (approximately £54.8m), council tax (over £380,000 in the period to 2025/26 and over £3.37m per annum once sites are fully developed) and any new homes bonus that the Council will achieve from releasing and delivering housing sites.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Agree internal credit system for the allocation of nitrogen credits to mitigate the impact of new housing development.	Richard Horniman	September 2023
Agree maintenance plans for the sites taken out of agricultural use.	Geoff Field	September 2023

Appendices

1	Initial Impact Assessment
2	Reviewing the evidence on population growth resulting from provision of new homes in Middlesbrough (ORS, 2022)
3	Standardised HRA pro-forma
4	List of Council-owned Fields with Farm Business Tenancies and map
5	List of Council-owned Housing Sites

Background papers

Body	Report title	Date

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