

Case Name: *The National Farmers' Union v Herefordshire Council & Ors* [2025] EWHC 536 (Admin) (10 March 2025) (Admin)

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Commentary: The claimant, the National Farmers' Union ("the NFU") sought to challenge the lawfulness of Herefordshire County Council's Minerals and Waste Local Plan ("the MWLP") under S.113(3)(a) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004"). Herefordshire County Council ("the Council") were the first defendant, while the Secretary of State for Levelling Up, Housing and Communities, who found the plan to be sound (subject to recommended modifications), was the second. River Action, a non-governmental organisation concerned with water quality of river networks in the United Kingdom, was granted permission to intervene.

In short, the challenge was to Policy W3, which defined farmyard manure and slurry as a form of agricultural waste requiring a waste management statement and for all agricultural livestock units to demonstrate nutrient neutrality, rather than a by-product of animal husbandry which did not. All grounds of challenge were dismissed by Leiven J, and with them the application as a whole.

The Grounds of Challenge

The NFU was concerned about the serious impact of Policy W3 of the MWLP on the agricultural sector in Herefordshire, and challenged the Council's plan on five grounds. The first three all raised a general submission that the Council illegitimately sought to extend planning control through the mechanism of Policy W3 into areas which are beyond the proper remit of a MWLP. Most agricultural activities fall outside the scope of planning control, and Policy W3 was an unlawful attempt to control otherwise lawful agricultural methods including the use of manure and the operation of livestock units. The Council accepted that Policy W3 was unusual because it sought to control the disposal of agricultural waste, but submitted that such an approach was lawful and justified in light of the environmental degradation caused by large-scale agriculture in Herefordshire.

The Grounds of Challenge pursued were:

1. Policy W3 was an unlawful extension beyond the definition of "waste" in s.117(1) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") and the Town and Country Planning Act 1990 ("TCPA") (which adopts the Waste Framework Directive ("WFD") definition);
2. Policy W3 amounted to an improper extension of policy requirements to the whole *agricultural* unit within which development takes place;
3. Policy W3 was an irrational extension of nutrient neutrality requirements not supported by Natural England;

4. The NFU was substantially prejudiced by the Council's failure to consult with them at the Regulation 19 stage; and
5. The Council failed to provide adequate reasons on the principal important controversial issues.

Ground 1

Counsel for the Claimant made three points relating to all Grounds of Challenge. First, agricultural activities are not generally subject to planning control, benefit from wide permitted development rights under The General Permitted Development Order, and S. 55(2)(e) of the TCPA excludes agricultural use from the change of use permissions. It was submitted that Policy W3 and the definition of "agricultural waste" in the Glossary extended the scope of the policy to agricultural "waste" outside the remit of a Waste Local Plan, and that the Council had not properly defined, or put its mind to, what could or could not be waste under the WFD definition. Second, agricultural activities are comprehensively regulated by non-planning statutory regimes, here through the environmental protection and permitting regimes. Third, there is a distinction drawn in the PCPA between a Local Plan and a MWLP.

Leiven J held that Ground 1 failed. She accepted Counsel for the Secretary of State's submission that the Council was not bound to restrict the scope of the WMLP to "waste" as defined in s.336 TCPA and the WFD. In any event, the Judge held that the overall purpose of the WFD was to reduce and prevent environmental harm. The exclusions to the definition of waste in Article 2(1)(f) of the WFD is made expressly subject to no harm to the environment. An approach which assumed no environmental harm on the basis of a regulatory regime that was clearly failing to protect the environment from harm would be contrary to the statutory purpose. On the third point, the Judge held that the distinction drawn between a Local Plan and a MWLP was of no import to the question of the legal definition of "waste."

Ground 2

Ground 2 was the submission that Policy W3(1)(b) and W3(3), read against paragraph 6.2.25 of the Policy's Supporting Text, are unlawful under the principles in *Newbury v Secretary of State for the Environment* [1981] AC 578 and contrary to "fundamental principles of planning law" that any condition or requirement attached to a grant of planning permission must fairly and reasonably relate to the permission sought. Under Policy W3(1)(b) livestock units that require an EIA will be required to demonstrate in method statements that "natural and non-natural wastes generated by the whole agricultural unit" are "appropriately managed." It was submitted that this requirement was sought for an ulterior motive, extending nutrient neutrality, and that the EIA is of

the development for which consent is sought, not for the use of the wider agricultural unit, which is a unit of occupation irrelevant to planning.

Counsel for the Council and the Secretary of State submitted that the environmental effects, as assessed through the EIA process, are necessarily focused on environmental effects beyond the application site, such is the nature of “indirect effects.” Therefore, assessing and controlling what happens to agricultural waste arising from the livestock unit was plainly a matter for planning control. The Court agreed, holding that the approach did not offend the *Newbury* principles: policy W3(1)(b) amounted to no more than consideration of the cumulative impacts of the proposed development. In respect of the nutrient neutrality requirement in Policy W3(3), the Court held that the policy requirement clearly applied to the development proposal and not the agricultural unit as a whole. The judgment stated that there was sufficient flexibility in the Supporting Text to not cut across the meaning of W3(3) *“and to the degree that it might be read to be extending W3 illegitimately to impose a requirement for nutrient neutrality across the entire agricultural unit, then this judgment makes the position clear”*.

Ground 3

Counsel for the Claimant submitted that the Council acted irrationally in requiring nutrient neutrality for the entire LPA area, when Natural England’s position was that nutrient neutrality was only justified on the upper reaches of the River Wye catchment, i.e. the River Lugg area, and only limited to phosphate pollution. It was also submitted that the approach of the LPA was inconsistent, because a similar approach to nutrient neutrality was not taken in the Local Plan. However, as Counsel for the Council pointed out, Natural England did not object to W3, and in the Statement of Common Ground stated that they agreed with nutrient neutrality in Policy W3 and raised no objection to the reference to the River Wye Special Area of Conservation as a whole. While Natural England were working on a national scheme to address the issue of nutrient neutrality, Natural England was also clear that it was open to the LPA to take a local approach so long as that was justified on the facts and before the Inspectors. They made this clear in the letter of 6 September 2022 where in respect of nutrient neutrality they said *“if the Council wishes to take this approach then this is the council’s decision”*.

Ground 4

The Council did not consult the NFU at the regulation 19 stage of the process of consultation for a Local Plan. It was submitted that the NFU was materially prejudiced by that failure. The Council accepted that there was a failure to consult with the NFU at that point in the process, but submit that there was no prejudice because materially the same points were made at both earlier and later stages, and the NFU’s issues were fully dealt with.

The NFU was consulted at the regulation 18 stage on the Consultation Draft of the Local Plan. After the Examination, the NFU wrote to the Council to make representations, to which the Council responded. In addition, in June 2023 there was a consultation on the main modifications stage of the Local Plan, and the NFU made detailed representations there too. It was submitted by Counsel for the Claimant that it was particularly important they be consulted properly, because it is accepted that the extension of the policy to cover agricultural waste was viewed as both unusual and innovative.

While the Court accepted that regulation 19 is an important stage in the procedural process, and features elements which do not exist in other prior or subsequent stages, it was important to note the expertise and inquisitorial role of Inspectors', who can be taken to be knowledgeable about the context of the issues before them. The mere fact that the NFU might have provided more detail and could have made oral submissions does not by itself establish they suffered substantial prejudice as a result of the procedural error. The claimants more detailed submissions purporting to show that their key concerns were not dealt with were also rejected by the Court, and so the NFU were found not to have been substantially prejudiced by the accepted procedural error.

Ground 5

The final ground of challenge was that the Council had failed to give adequate reasons in respect of the principal important issues, namely:

1. The appropriate scope of the MWLP as regards agricultural waste, in particular having regard to the legal definition of "waste."
2. The soundness of Policy W3 in light of existing regulations and the duplication of the policy with those controls, having regard among other things to the 2023 NPPF.

Counsel for the Defendants pointed to the express language of the Inspector's Report, as well as the background documentation that they said was well known to the Inspectors and the parties, to submit that the reasons for the policy were eminently clear in the LPA's documentation. The Court agreed that the background documents, which were available to the NFU, explained in detail the rationale and justification for the policy, and that the argument raised that animal manure should not be treated as waste, was ultimately a legal issue which had been determined under Ground 1. Even if the inspector's report did not deal with all aspects of the legal argument, that matter now had been determined by the Court with full reasons.

The Court rejected this Ground , and with it the application as a whole.