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YOUR REF:

OUR REF: RGA/JEK/00658059/25

DATED: 12 December 2025

Dear Ards and North Down Borough Council

Response to consultation on Draft Planning Strategy – amendments to planning policy in light of *National Farmers' Union v Herefordshire Council & Ors [2025] EWHC 536 (Admin)*

Introduction

We act for River Action UK. River Action UK is an environmental charity committed to addressing the severe problem of UK river pollution.

We write further to the judgment of Mrs Justice Lieven in *National Farmers Union v Herefordshire Council & Ors [2025] EWHC 536 (Admin)* (the “**NFU claim**”), in which River Action joined the proceedings as an intervener. The judgment was handed down on 10 March 2025 (the “**Judgment**”) and has significant impacts on planning policy and permitting regimes.

This letter seeks to explain the implications of the Judgment for Ards and North Down Borough Council (the “**Council**”) in the context of the Council’s draft Planning Strategy (“**dPS**”) which is currently being consulted on. Please treat this letter as a response to that consultation.

be clearly identified and there must be firm commitments to use the manure as a fertiliser.

The Secretary of State adopted River Action's submissions on Ground 1.

The Judgment

Notwithstanding any potential appeal, River Action welcomes the judge's finding at paragraph [81-82] that (emphasis added):

"81. Further and in any event, I agree with Dr Wolfe's submissions on both limbs. It is apparent from the Recitals and Article 13 of the WFD that the overall purpose of the WFD is to reduce and prevent environmental harm. The exclusions to the definition of waste in Article 2(1)(f) is made expressly subject to no harm to the environment. An approach which assumed no environmental harm on the basis of a regulatory regime which beyond any doubt had failed to protect the environment from harm would be contrary to the statutory purpose. I note what is said at [194] of the 2023 NPPF, but to the degree that the LPA in adopting W3 are not assuming that the regimes will operate effectively, there is clear evidence to support their approach. There is therefore good reason, as set out copiously in the documentation, to depart from [194] of the 2023 NPPF.

82. The exclusion of faecal matter in Article 2(1)(f) applies when the matter is used in farming. It follows from Brady that if there is a high level of confidence that it will be used in farming, and that it will not cause environmental harm, then the exclusion applies at the point of production. There might be arguments on particular cases as to the degree of confidence that is required, and issues around geographical movement. As Mr Kimblin said, there might be a case specific argument on particular application that there was sufficient certainty as to onward use as to fall within the principles in Brady." (emphasis added).

Ultimately, Lieven J concluded that agricultural manure (i.e. at the point of production such as in an IPU and from then) does fall within the definition of 'waste' for the purposes of the WFD unless it can be shown, with a high level of confidence, that the manure will be used in farming (or at the point of such actual use) and that it will not cause environmental harm.

In respect of planning assumptions, this judgment builds on the findings of Thornton J in *Vanbrugh Court Residents' Association v London Borough of Lambeth* [2022] EWHC 1207 (Admin) at [23], cited at paragraph [72], where the court held:

*"[A] local planning authority is entitled to place reliance upon the effective operation of the other regulatory regime(s) in determining an application for planning permission. However, it cannot simply ignore the issues in question. It must assess them sufficiently so as to be able to satisfy itself that the other regulatory regime is capable of regulating the relevant issues. If it is not satisfied, then consent must be refused. The existence of the other regulatory regime is a material planning consideration, to be weighed in the balance. *Gateshead MBC v Secretary of State for the Environment* 1995 Env. LR 37 at [44] & [49] and *R(Bailey) v Secretary of State for Business, Enterprise & Regulatory Reform* [2008] EWHC 1257 (Admin) at [13]." (emphasis added).*

Accordingly, the law now recognises, both in the context of a decision on a specific application for planning permission (*Vanborough Court*) and in the context of plan-making (*National Farmers' Union*) that the presumption that other regulatory regimes operate effectively is a rebuttable one. A planning authority should not make such an assumption in the face of evidence to the contrary (*National Farmers' Union*) and must

satisfy itself that a regime is (or is not) operating effectively where the issue is raised (*Vanborough Court*).

The Council's draft Plan Strategy

River Action has reviewed the dPS and is concerned it does not currently provide sufficient clarity regarding the approach planning authorities should take to planning applications for developments which will generate or process manure.

The only policies in the dPS that contemplate issues around agricultural pollution appear to be Policies ED3 and WM5. River Action has not been able to identify any policies that address the issue of manure as a waste by-product from agricultural development. This is an important issue given, according to Friends of the Earth's Muck Map, the Council's administrative area can produce up to 49.02 tonnes of animal waste per day, resulting in 210/37 tonnes of nutrient pollution per year.¹

The dPS fails to expressly confirm that agricultural manure at the point of production will fall within the definition of 'waste' for the purposes of the WFD unless it can be shown, with a high level of confidence, that the manure will be used in farming (or at the point of such actual use) and that it will not cause environmental harm (as confirmed in the Judgment). The dPS should reflect this definition of waste and include provision for appropriate manure management measures to be put in place.

The dPS also does not reflect the Court's finding that local authorities cannot assume that other regulatory regimes are operating effectively in the face of clear evidence to the contrary. It is important that local planning authorities properly consider whether or not regulatory regimes are sufficiently capable of mitigating environmental harm. If that is not the case, then planning policies should direct that planning permission should be refused.

Next steps

River Action looks forward to reviewing any amendments to the dPS further to its consultation response.

Yours faithfully



Leigh Day

¹ [The muck map | Friends of the Earth](#)

Regional Planning Policy & Casework



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8th September 2025

Dear Ms Aktar

Amendments to planning policy in light of *National Farmers' Union v Herefordshire Council & Ors [2025] EWHC 536 (Admin)*

Thank you for your correspondence to the Minister for Infrastructure dated 21 August 2025 on behalf of River Action UK regarding the above High Court judgement and planning policy in Northern Ireland.

As you may be aware, the Strategic Planning Policy Statement (the SPPS) 'Planning for Sustainable Development' is a statement of the Department for Infrastructure's policy on important planning matters that should be addressed across Northern Ireland. It has a statutory basis under Part 1 of the Planning Act (NI) 2011 which requires the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of local development plans (LDPs) and are material to all decisions on individual planning applications and appeals.

In your letter you state that "*River Action is aware that DfI issued a call for evidence in respect of planning policy and climate change, with a view to amending and updating the SPPS, in January 2024. The consultation closed in 2024 and the updated SPPS is said to be "...at an advanced stage of completion, and it is expected that the revised policy will be published as soon as possible following Executive agreement."* Given the focus on climate change amendments, no changes in respect of waste policy were proposed."

For clarification, I can advise that although the Department did issue a Call for Evidence (CfE) in January 2024 on a potential focused review of the SPPS in relation to Climate Change in the context of DfI's priorities regarding transport, water, and planning, it is not the case that it is "*at an advanced stage of completion, and it is expected that the revised policy will be published as soon as possible following Executive agreement.*" This may have been confused with the current status of the review of regional strategic planning policy on renewable and low carbon energy. With regards to the current position on the CfE, the information received has been analysed, and work is ongoing to prepare an options paper to inform the way forward, including the consideration of the scope for any such potential future review.

Under the two-tier planning system in Northern Ireland council planning authorities are responsible for the formulation of local policies and proposals in LDPs for their plan areas including for policies in relation to development in the countryside (agriculture and forestry development) and waste management. Local policies should support the aims and policy objectives of the SPPS tailored to the local circumstances of the plan area.

As part of their plan-making role, councils must carry out a Sustainability Appraisal (SA) to ensure that plans are assessed against social, economic and environmental objectives. The SA incorporates the Strategic Environmental Assessment (SEA) of plan documents which must also comply with the requirements of the European Directive 2001/42/EC on the assessment of effects of certain plans and programmes on the environment (SEA Directive). The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development.

The SEA Directive requires councils to consult the Department for Agriculture, Environment and Rural Affairs (DAERA) as the 'consultation body' or authority with environmental responsibility, at various stages of the SEA process, and the delivery of this function is led by the Northern Ireland Environment Agency (NIEA), an Executive Agency within DAERA. A Habitats Regulations Assessment (HRA) is also required by The Conservation (Natural Habitats, etc.) Regulations (NI) 1995 (as amended). It aims to assess possible adverse effects on Natura 2000 sites (Special Areas of Conservation, Special Protection Areas) and Ramsar Sites as a result of the implementation of policies and proposals contained in LDPs.

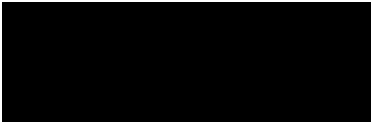
Councils are also responsible for development management in their areas, including the determination of planning applications for a range of agricultural development proposals. Where relevant, council planning authorities carry out their statutory obligations to screen development proposals as part of the Environmental Impact Assessment (EIA) process required by the Planning (EIA) Regulations (NI) 2017. This process is to determine whether or not a project is EIA development and therefore whether an EIA is required. As with development plans some projects may also require a Habitats Regulations Assessment (HRA) as set out in the preceding paragraph. Such applications are considered by councils on a case-by-case basis, taking into account the local development plan; regional strategic planning policy (including the SPPS and extant planning policy statements retained under the transitional arrangements of the SPPS); local circumstances and characteristics; the views of relevant statutory consultees, and all other material considerations.

Importantly, statutory consultees assist councils in discharging their responsibilities and this includes NIEA, the statutory conservation body for the environment in Northern Ireland whose primary purpose is to protect and enhance Northern Ireland's environment, and in doing so, deliver health and well-being benefits and support economic growth. DAERA is responsible for waste policy and together with NIEA they are responsible for making sure that waste and resources are managed in a sustainable and safe way.

In your letter you refer to local plans and planning applications which are yet to be adopted or determined and you may wish to contact the relevant planning authority (or authorities) directly with any representation you wish them to take into account in discharging their responsibilities.

I trust you will find this information to be of assistance.

Yours sincerely



Kathryn McFerran
Director, Regional Planning Policy & Casework