

Your guide to...

NFU v HEREFORDSHIRE COUNCIL & ORS [2025]

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

The National Farmers' Union (**NFU**) sought to challenge the lawfulness of Herefordshire County Council's Minerals and Waste Local Plan (**the MWLP**). 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 was granted permission to intervene in relation to Ground 1 of the claim.

In short, the challenge was to Policy W3 of the MWLP, 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 as an agricultural by-product.

The NFU was concerned about the 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 grounds of the challenge 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.

There were five grounds in total, but of particular relevance here was Ground 1, in which the NFU argued Policy W3 of the MWLP was an unlawful extension beyond the definition of "waste" in s.117(1) of the PCPA 2004 and the Town and Country Planning Act 1990 (**TCPA**) (which adopts the Waste Framework Directive (**WFD**) definition).

The judge held that Ground 1 failed. She accepted River Action'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 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".

Importantly, the judge made a finding on a paragraph of the NPPF which says that "other pollution control regimes" outside the planning system should be presumed to operate effectively, meaning. The judge found that that presumption is a rebuttal one and that in the case of river pollution other pollution control regimes are clearly not operating effectively. **This is an important judgment to refer to if you believe that a development might lead to impacts to a river or watercourse.** All five grounds of challenge were dismissed by Lieven J, and with them the application as a whole. The judgment can be found [here](#).