LEGAL OPINION: ASSESSING CLAIMS ABOUT DOWNSTREAM AND CUMULATIVE NUTRIENT IMPACTS IN PLANNING APPLICATIONS

INTRODUCTION

River Action commissioned Estelle Dehon OBE KC and Dr Lois Lane of Cornerstone Barristers to advise on how planning authorities should deal with the downstream environmental effects of developments that generate manure, slurry, digestate and litter ash.

The Opinion looks at the practical effect of four important cases: *Squire v Shropshire Council*, *Finch*, *NFU v Herefordshire Council* and *Caffyn v Shropshire Council*.

It is designed as a practical reference for:

- planning officers
- councillors
- applicants
- local communities
- and others involved in the planning process.

It explains the legal position on a number of arguments that now arise regularly in planning applications and Environmental Statements ("ESs"), particularly where the environmental effects of manure will occur away from the development site or its final destination is uncertain.

To accompany the Opinion, River Action has conducted research using publicly available datasets from the Environment Agency regarding regulated waste permits and fertiliser use (See Annex 2). This provides evidence about the fate of manure that enters the regulated waste system that can be used as evidence to support the assessment of applications.

The Opinion does not provide project-specific advice in relation to any particular development.

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HOW TO USE THE LEGAL OPINION

The Opinion can be used when commenting on a planning application, reviewing an ES, preparing an objection, making representations in an appeal or inquiry, or asking a planning authority to seek further environmental information.

If you only have a few minutes, start with paragraph 4 on pages 2–3. It summarises Counsel's conclusions on the four main issues addressed in the Opinion.

For more detailed advice, start with the issue you are dealing with and go directly to the relevant section:

- Paragraphs 25-32: Is manure waste?
- Paragraphs 33-41: Can the impacts of manure, slurry or digestate be assessed if its final destination is unknown?
- Paragraphs 42-46: How should biomass combustion be assessed?
- Paragraphs 47-52: How certain must mitigation measures be following Caffyn and Finch?

These sections are particularly useful where an applicant, consultant or planning authority argues that downstream effects on manure cannot or need not be assessed because the material will leave the development site, its eventual destination is unknown, it will undergo further processing, or its management depends on a third-party facility.

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WHEN REFERRING TO THE LEGAL OPINION

If you rely on the Opinion in a planning representation:

- identify the particular issue and relevant paragraphs;
- quote Counsel's words accurately and do not alter their meaning; and
- attach the full Opinion or provide a link to it, so that the planning authority, Inspector, applicant and other parties can read the advice in context.

Remember that the Opinion gives general legal advice on the issues considered. It does not conclude whether any particular planning application is lawful.

For example, where an applicant argues that the effects of spreading digestate cannot be assessed because the eventual receiving land is unknown, a representation might say:

The Environmental Statement states that (for example) the downstream effects of digestate spreading cannot be assessed because the land on which the digestate will ultimately be spread is not known.

I draw the Council's attention to paragraphs 33–40 of the enclosed Legal Opinion of Estelle Dehon OBE KC and Dr Lois Lane, which was commissioned by River Action and provides general advice clarifying the correct legal position on the assessment of downstream and cumulative nutrient impacts. The relevant advice is as follows:

"here quote proposition 2B and paragraphs 34-40"
I ask the Council to consider that advice when deciding whether the Environmental Statement contains an adequate assessment of the likely environmental effects of the development.

STRUCTURE OF THE LEGAL OPINION

Pages 1–3 – Summary of the advice
Paragraph 4 gives a concise summary of Counsel's conclusions on the four main issues.

Pages 4–10 – The key cases
This section explains the main legal principles from *Squire*, *Finch*, *NFU* and *Caffyn* as they apply to assessing downstream and cumulative nutrient impacts.

Pages 11–20 – The main scenarios
This is the most useful part of the Opinion for responding to arguments made in planning applications and Environmental Statements.

Pages 21–25 – Annex 1: Wider EIA principles
Annex 1 explains the wider Environmental Impact Assessment framework, including the precautionary principle, the "Rochdale envelope", worst-case assessment and evidential burdens.

HOW TO USE ANNEX 2

Annex 2 brings together two datasets that can help people preparing planning objections and planning officers test claims about the use of anaerobic digestion (AD) to manage manure from intensive livestock developments.

What does the Waste Data Interrogator tell us?
The Environment Agency's Waste Data Interrogator (WDI) records waste movements to and from permitted waste-management facilities in England. Annex 2 uses waste code 02 01 06 (animal faeces, urine and manure) to show how much manure entering the regulated waste system is received by AD facilities compared with other destinations.

This can help test an application's assumption that sending manure to AD is a realistic and viable management route.

What are the limitations?
The WDI does not capture all manure produced by farms, particularly manure managed or spread directly within agricultural operations. It therefore shows the fate of manure within the regulated waste system, not the fate of all manure produced.

What does the fertiliser data tell us?
Defra's British Survey of Fertiliser Practice (BSFP) provides evidence about the use of digestate on agricultural land, including the amount applied, the area receiving it, and whether digestate is produced on-farm or imported.
This is relevant because AD does not eliminate manure: it produces digestate that must subsequently be transported, stored and/or applied to land.

- Destination: Where will the manure be sent, and is this a viable destination?
- Transport: What transport will be required to move the manure?
- Digestate: What will happen to the digestate produced?
- Environmental effects: Have the effects of these activities been adequately assessed?

Annex 2 should be used to test the evidence and assumptions made in an individual application, rather than to show that a particular manure-management arrangement cannot operate.

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SOURCES

Environment Agency Waste Data Interrogator (WDI), 2024.
Defra British Survey of Fertiliser Practice (BSFP), 2023–2025