

FAREHAM

BOROUGH COUNCIL

AGENDA

POLICY AND RESOURCES SCRUTINY PANEL

Date: Thursday, 30 July 2020

Time: 6.00 pm

Venue: Teams Virtual Meeting

Members:

Councillor Mrs S M Bayford (Chairman)

Councillor N J Walker (Vice-Chairman)

Councillors M J Ford, JP
I Bastable
T Davies
Mrs C L A Hockley
J G Kelly

Deputies: Mrs L E Clubley
R H Price, JP



1. Apologies for Absence

2. Minutes (Pages 3 - 8)

To confirm as a correct record the minutes of the meeting of the Policy and Resources Scrutiny Panel meeting held on 3 March 2020.

3. Chairman's Announcements

4. Declarations of Interest and Disclosures of Advice or Direction

To receive any declarations of interest from members in accordance with Standing Orders and the Council's Code of Conduct and disclosures of advice or directions received from Group Leaders or Political Groups, in accordance with the Council's Constitution.

5. Deputations

To receive any deputations of which notice has been lodged.

6. Call-In of Officer Delegated Decision No. 2195 - Nitrate Mitigation - Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council (Pages 9 - 34)

A report by the Head of Democratic Services.



P GRIMWOOD
Chief Executive Officer
Civic Offices
www.fareham.gov.uk
22 July 2020

**For further information please contact:
Democratic Services, Civic Offices, Fareham, PO16 7AZ
Tel:01329 236100
democraticservices@fareham.gov.uk**

FAREHAM

BOROUGH COUNCIL

Minutes of the Policy and Resources Scrutiny Panel (to be confirmed at the next meeting)

Date: Tuesday, 3 March 2020

Venue: Collingwood Room - Civic Offices

PRESENT:

Councillor Mrs S M Bayford (Chairman)

Councillor N J Walker (Vice-Chairman)

Councillors: M J Ford, JP, I Bastable, J G Kelly and Mrs L E Clubley
(deputising for Mrs C L A Hockley)

Also Present: Councillor S D Martin, Executive Member for Streetscene (Item 7)



1. APOLOGIES FOR ABSENCE

Apologies of absence were received from Councillors Davies and Mrs Hockley.

2. MINUTES

RESOLVED that the minutes of the Policy and Resources Scrutiny Panel held on 14 January 2020 be confirmed and signed as a correct record.

3. CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's announcements made at this meeting.

4. DECLARATIONS OF INTEREST AND DISCLOSURES OF ADVICE OR DIRECTION

There were no declarations of interest made at this meeting.

5. DEPUTATIONS

There were no deputations made at this meeting.

6. REVIEW OF THE COUNCIL'S COMMERCIAL PROPERTY PORTFOLIO

The Panel considered a report and received a presentation (attached to these minutes) from the Head of Property which reviewed the Council's Commercial Property Investment Portfolio.

Members asked a number of questions in relation to how inherent risks with commercial property are managed and kept under review. The Head of property and Deputy Chief Executive Officer responded to Member questions and highlighted that the measures for managing the portfolio and mitigating the risks are in accordance with the adopted Commercial Property Investment Acquisition Strategy.

The Panel also asked a number of questions in relation to the balance of risk and return, associated with investment properties. The Head of Property explained that the performance of the portfolio was in line with the risk appetite as set out in the adopted Strategy, and that whilst property investment does carry a higher risk, the Council continually monitors investments and has plans in place should performance deteriorate.

RESOLVED that the Head of Property be thanked for his informative presentation and report.

7. CLIMATE CHANGE UPDATE

The Panel considered a report by the Director of Planning and Regeneration on an update to the work that the Council is undertaking in respect of Climate Change and Carbon Reduction.

The Panel was informed that, at the Executive meeting on 2 March 2020, the recommendation in the report was amended to include the following wording to the terms of reference:

Acting as the Member Champion on climate change matters, Councillor Martin will be the recipient of any information proposals arising from elected Members for carbon reduction planning or other climate change work. Councillor Martin will present any such proposals to the Working Group to allow these to be investigated and considered in more detail, in order to determine whether they should form part of any formal climate change proposals presented to the Policy and Resources Scrutiny Panel and the Executive for consideration and decision.

And, that the Members' Newsletter will include updates on the progress of the Climate Change Working Group and that this will be added to the Terms of Reference.

At the invitation of the Chairman, Councillor Martin, Executive Member for Streetscene, addressed the Panel on this item. He provided an update to members on the progress made by the Working Group to date and stressed that the priority for the Council is to tackle its own carbon footprint first before looking to influence changes across the borough with residents. He explained that it was important that the Council has a good understanding of the issues and the ways in which to tackle them before it can start to advise residents on steps that they should be taking. He explained that this is an evolving process that will change over time as the Working Group gains a better understanding of the challenges ahead.

The Climate Change Officer addressed the Panel to set out the work that the Working Group will be undertaking over the next 12 months. She explained that the first priority will be to calculate the Council's carbon footprint, which will inform the measures needed in the Carbon Reduction Plan. She was asked regarding timescales for this work and informed the Panel that the carbon footprint calculation should be completed by the Summer, enabling the Carbon Reduction Plan to be developed by the end of the year.

Councillor Walker suggested that the Working Group be tasked with trying to influence Central Government with regard to Planning Policy to encourage the development of more carbon efficient homes. Councillor Bastable enquired as to whether the Council could strengthen the requirement via the Council's current Draft Local Plan and in line with the current National Planning Policy Framework (NPPF). The Panel asked Officers to consider if this would be feasible. Councillor Martin agreed to feed back the suggestion from the Panel, to the Climate Change Working Group to consider the scope for further investigation.

RESOLVED that the Panel thank the Climate Change Officer and Executive Member for Streetscene be thanked for their informative update.

8. EXECUTIVE BUSINESS

The Panel considered the Executive items of business which fall under the remit of the Policy and Resources Portfolio, including Executive Member decisions and Officer delegated decisions, that have taken place since the last meeting of the Panel on 23 October 2020.

The Panel considered the decisions shown at items 8 (1) to 8 (12) of the agenda.

RESOLVED that the Policy and Resources Scrutiny Panel considered the following items of Executive Business.

(1) Beach Hut Site Rent Review

Councillor Ford enquired as to whether the comparisons that were made with the beach hut rents in Hayling Island was a fair comparison to those in Fareham. The Deputy Chief Executive Officer addressed the Panel as explained that comparisons were made other areas in addition to that of Hayling Island to ensure that a broad picture was established. He also informed the Panel that the Executive resolved at its meeting to move to a fixed percentage increase, rather than relying on comparable beach hut sites.

(2) Secure Access to the Western Side of the Solent Airport and provide further car parking for children's play area

Councillor Bastable enquired in respect of the provision of car parking as to whether, in light of the Council's climate change work, if any thought has been given to the provision of electric vehicle charging points for this site. The Deputy Chief Executive Officer addressed the Panel and informed them that issue electric vehicle charging points has been discussed at the Climate Change Working Group and is likely to be investigated as part of the Council's Carbon Reduction Plan.

(3) Construction of Economic Hangars at Solent Airport Daedalus

Councillor Bastable enquired if the Council had considered the suitability of the power supply for these hangars, to meet the demand of high power consuming businesses. Deputy Chief Executive Officer confirmed that this had been looked into, and that the Executive had recently approved additional funding to upgrade the capacity of the power supply at Faraday Business Park.

(4) Finance Strategy, Revenue Budget and Council Tax 2020/21

No comments were received.

(5) Fees and Charges 2020/21

No comments were received.

(6) Capital Programme and Capital Strategy 2020/21

Councillor Ford asked if the additional borrowing identified within the decision is within acceptable borrowing limits. The Deputy Chief Executive Officer confirmed that the Council is indeed borrowing within the approved limits as set out in the Council's approved Treasury Management Strategy. He also confirmed to the Panel that the Council's performance is scrutinised and monitored by the Audit and Governance Committee and the Executive.

(7) Finance Strategy, Capital Programme, Revenue Budget and Council Tax 2020/21

No comments were received.

(8) Housing Revenue Account Budget and Capital Plans 2020/21

No comments were received.

(9) Insurance Services Tender

No comments were received.

(10) Treasury Management Strategy 2020/21

No comments were received.

(11) Adoption of BT Telephone Box in Sarisbury Green

Councillor Kelly enquired as to whether the Community Grants budget was the appropriate funding stream to be used for the ongoing maintenance of the phone box. The Deputy Chief Executive Officer explained to the Panel that whilst the Community Grant fund is normally used for funding one off projects, the Executive has the discretion to approve alternative uses for the fund. He reassured the Panel that the whilst it has been agreed that up to £500 could be used annually for the maintenance of the telephone box, money will only be drawn if it is needed for repairs.

(12) Review of the Council's Pre-Application Planning Advice Service and Charges

There were no comments received.

9. SCRUTINY PRIORITIES

Members were given the opportunity to put forward any suggestions for items that they wished for the Panel to consider for a future meeting.

RESOLVED that no additional items be added to the scrutiny priorities plan at this time.

(The meeting started at 6.00 pm
and ended at 7.17 pm).

FAREHAM

BOROUGH COUNCIL

Report to Policy & Resources Scrutiny Panel

Date 30 July 2020

Report of: Head of Democratic Services

Subject: CALL-IN OF EXECUTIVE DECISION No. 2195: Nitrate Mitigation – Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council

SUMMARY

Call-in can be triggered by three non-Executive members giving due notice to the Chief Executive Officer before the end of the call-in period.

A call-in was received on 20 July 2020 relating to the decision made at the meeting of the Executive on Friday 17 July 2020. A second call-in was received on 21 July 2020.

Both call-in notices relate to the decision made under delegated powers by the Director of Planning and Regeneration regarding the *Nitrate Mitigation – Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council*.

This matter is now referred to the Policy & Resources Scrutiny Panel to determine. The options open to the Scrutiny Panel are:-

- (a) to accept the decision made by the Director of Planning and Regeneration, in which case the decision can be implemented; or
- (b) to request that the Director of Planning and Regeneration reconsiders the decision, giving reasons for such a request.

INTRODUCTION

1. At the meeting held on Friday 17 July 2020, it was resolved that the Director of Planning and Regeneration agreed to enter the Council into a legal agreement with Hampshire and Isle of Wight Council to secure nitrate mitigation at Little Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.
2. On 20 July 2020, the Chief Executive Officer received a valid call-in request signed by Councillors S Cunningham, K Barton and Mrs C Heneghan. The reasons for the call-in, contained within the formal notice, are shown at paragraph 6 below. A copy of the call-in notice is included at Appendix A.
3. On 21 July 2020, the Chief Executive Officer received a valid call-in request signed by Councillors R H Price, G Kelly and Mrs K K Trott. The reasons for the call-in, contained within the formal notice, are shown at paragraph 7 below. A copy of the call-in notice is included at Appendix B.
4. As notices of call-in have been received, the implementation of the decision stands suspended at least until the matter has been reviewed by the Policy & Resources Scrutiny Panel. If the matter requires further consideration by the Director then the decision stands adjourned until that reconsideration.
5. The information contained within the call-in notification now needs to be considered by the Scrutiny Panel. This has been identified as information that is within the public arena.

MATTERS FOR CONSIDERATION

6. The reasons given within the first call-in notice are as follows:-
 - i. Incomplete / Insufficient Documentation within the published report;
 - ii. Scheme was not complete at the time of the decision maker making his decision. Nitrate credits still to be worked out;
 - iii. Scheme potentially unlawful;
 - iv. Decision should be placed before the appropriate Scrutiny Panel to allow full overview.
7. The reasons given within the second call-in notice are as follows:-
 - v. In our view there has been insufficient consultation with Members and insufficient scrutiny by Members of the nature of the decision.
We request that further Member consultation takes place before this agreement is entered into.
8. Neither of the call-in notices have identified that the decision was contrary to, or not wholly in accordance with the Council's Policy Framework or budget and therefore the Scrutiny Panel is able to determine the matter without reference to the Council's Monitoring Officer or Section 151 Officer.
9. To assist the Scrutiny Panel in its review of the decision, a copy of the report considered by the Director of Planning and Regeneration in relation to this matter is

included at Appendix C, together with a copy of the record of the Officer decision number 2195 at Appendix D.

BACKGROUND

10. In September 2019, a report was presented to the Executive to outline the situation in the Planning Service in relation to advice from Natural England, the statutory advisor on protected sites, that developments in the Borough must be nitrogen neutral in order to mitigate a likely significant effect on internationally important protected sites in the Solent. As a result, planning permissions have been curtailed for a number of months. The report detailed a package of measures which together form an interim mitigation solution which would move the Council towards a position of issuing planning permissions.
11. A copy of that report is included at Appendix E as it provides the background to the interim solution as adopted by the Executive. (The originally published report was updated by way of tabled information presented during the meeting of the Executive. The report at Appendix E includes those updates, as agreed).
12. The Head of Development Management has reviewed the decision of the Director of Planning and Regeneration and can provide the following comments:
13. The proposed approach to mitigation, as set out at paragraph 15 the Executive report (at Appendix E) includes a mix of different measures. One of the first measures identified relates to the 'management of existing agricultural land' and managing land in a way that involves the use of less nitrogen fertiliser.
14. The land acquired at Little Duxmore Farm on the Isle of Wight by the Hampshire and Isle of Wight Wildlife Trust (HIOWWT) was last used for agricultural uses. The way in which the HIOWWT would use and manage the land would substantially reduce nitrogen inputs into the land and therefore nitrogen run-off and other discharge into the protected sites.
15. The legal agreement will provide a legal framework to facilitate the purchase of nitrate credits for applicants/ developers, will control how the land at Little Duxmore Farm is managed and for what period of time, and will ensure monitoring is undertaken to ensure compliance with the legal agreement
16. The legal agreement does not specify how many nitrate credits will need to be provided in mitigation for specific development sites. The amount of mitigation needed for each development proposal will need to be agreed on a case by case basis with this Council as part of the planning application process. Once the level of mitigation has been established, and the Council has concluded following an appropriate assessment that there will be no adverse effect on the integrity of protected sites as a result of the development, the applicant/ developer will then enter into arrangements with the HIOWWT to purchase the nitrate mitigation. The applicant/ developer will need to satisfy this Council that the mitigation has been secured at the time of granting planning permission, with proof of the purchase of credits to be provided before their development commences.

RISK ASSESSMENT

17. There are no significant risk considerations in relation to this report

CONCLUSION

18. On considering this matter, the Scrutiny Panel will need to decide if it wishes to accept the decision made by the Director of Planning and Regeneration, in which case the decision can be implemented; or request that the Director of Planning and Regeneration reconsiders the decision, giving reasons for such a request.

Appendices:

A: Call-in notice 20/07/20

B: Call-in notice 21/07/20

C: Report of the Head of Development Management on 17 July 2020

D: Decision Sheet 2020/21/ 2195

E: Report to the Executive Interim Nitrogen Mitigation Strategy on 2 September 2019

Enquiries:

For further information on this report please contact Leigh Usher. (Ext 4553)

FAREHAM BOROUGH COUNCIL

NOTICE OF CALL-IN

(See notes overleaf)

**To: The Chief Executive Officer,
c/o the Head of Democratic Services, Fareham Borough Council.**

We, the undersigned, require the following Decision of the Executive (or an individual member of the Executive) to be called-in for review under Part 43 (Chapter 10) of the Fareham Borough Council Constitution.

Date of Decision: <i>17 JULY 2020</i>	<i>17TH JULY 2020</i>
Minute Number:	
Decision Title and Brief Description:	<i>OFFICER DELEGATED DECISIONS NITRATE MITIGATION - LEGAL AGREEMENT WITH THE HAMPSHIRE AND THE ISLE OF WIGHT WILDLIFE TRUST.</i>
Reasons for Call-in:	<i>1) INCOMPLETE / INSUFFICIENT DOCUMENTATION WITHIN THE PUBLISHED REPORT. 2) SCHEME WAS NOT COMPLETE AT THE TIME OF THE DECISION ^{MAKING} HIS DECISION. NITRATE CREDITS STILL TO BE WORK OUT. 3) SCHEME POTENTIALLY UNLAWFUL. 4) DECISION SHOULD BE MADE BEFORE THE APPROPRIATE SCOTMISE PANEL TO ALLOW FULL OVERVIEW.</i>
Is the Call-in of this decision made on either of the following grounds:	
(i) Contrary to the Council's Policy Framework (see over);	(i) YES / NO / N/A *
(ii) Contrary to, or not wholly in accordance with the Council's budget.	(ii) YES / NO / N/A *
(if yes, a report will be required from the Monitoring Officer. Please therefore state the relevant plan or strategy from the policy framework or the budget concerned).	* delete as appropriate
Councillors' Names (Please Print)	Signature
<i>SHAWN CUNNINGHAM</i>	<i>S. Cunningham</i>
<i>KEITH BARTON</i>	<i>K. Barton</i>
<i>CAROLYN HENECHAN</i>	<i>C. Heneghan</i>
	Date
	<i>20 JULY 2020</i>
	<i>20 JULY 2020</i>
	<i>20 JULY 2020</i>

To be completed by Democratic Services:

Date notice received:

Date of Scrutiny board to undertake review:	Scheduled meeting:
	Special meeting:

NOTES:

- (a) The Executive or Individual Executive members will, as far as is practicable, publish its minutes within **two** working days.
- (b) A decision will come into force at the expiration of **seven** working days after the publication date (or such longer period as may be specified on publication).
- (c) At any time prior to the date on which the decision falls to be implemented (ie. come into force) at least three non-Executive members of the Council can give notice, with reasons, to the Chief Executive Officer, Fareham Borough Council, that the decision should be referred to the Scrutiny Board for review.
- (d) The same procedure will apply to the call-in of key decisions made by officers, as is applicable to the call-in of Executive or individual Executive member decisions.

"Policy Framework" means the following plans and strategies:-

Policy/Strategy	Last adopted or approved by	Date
Sustainable Community Strategy	Council	01 February 2010
Housing Strategy	Council	22 April 2010
Licensing Policy	Council	28 April 2016
Development Plan Fareham Local Plan Part 1: Core Strategy	Council	04 August 2011
Fareham Local Plan Part 2: Development Sites and Policies	Council	08 June 2015
Fareham Local Plan Part 3: The Welborne Plan	Council	08 June 2015
Community Safety Strategy	Council	29 May 2014
Corporate Strategy	Council	14 December 2017
Statement of Gambling Policy	Council	18 April 2019

FAREHAM BOROUGH COUNCIL

NOTICE OF CALL-IN

(See notes overleaf)

**To: The Chief Executive Officer,
c/o the Head of Democratic Services, Fareham Borough Council.**

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Date of Decision:	17 July 2020	
Minute Number:	Officer Delegated Decision No. 2195	
Decision Title and Brief Description:	Nitrate Mitigation – Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council	
Reasons for Call-in:	In our view there has been insufficient consultation with Members and insufficient scrutiny by Members of the nature of the decision. We request that further Member consultation takes place before this agreement is entered into.	
Is the Call-in of this decision made on either of the following grounds:		
(i) Contrary to the Council's Policy Framework (see over);	(i)	NO
(ii) Contrary to, or not wholly in accordance with the Council's budget.	(ii)	NO
(if yes, a report will be required from the Monitoring Officer. Please therefore state the relevant plan or strategy from the policy framework or the budget concerned).	* delete as appropriate	
Councillors' Names (Please Print)	Signature	Date
Roger Price		21/07/20
Gerry Kelly		21/07/20
Katrina Trott		21/07/20

To be completed by Democratic Services:

Date notice received:

Date of Scrutiny board to undertake review:	Scheduled meeting:
	Special meeting:

NOTES:

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- (c) At any time prior to the date on which the decision falls to be implemented (ie. come into force) at least three non-Executive members of the Council can give notice, with reasons, to the Chief Executive Officer, Fareham Borough Council, that the decision should be referred to the Scrutiny Board for review.
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Community Safety Strategy	Council	29 May 2014
Corporate Strategy	Council	14 December 2017
Statement of Gambling Policy	Council	18 April 2019

FAREHAM

BOROUGH COUNCIL

Report to the Director of Planning and Regeneration for Decision 17 July 2020

Portfolio:	Planning and Development
Subject:	Nitrate Mitigation – Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council
Report of:	Head of Development Management
Corporate Priorities:	Protect and Enhance the Environment

Purpose:

This report seeks authority from the Director of Planning and Regeneration for the Council to enter into a legal agreement with Hampshire and Isle of Wight Wildlife Trust (HIOWWT) and the Isle of Wight Council (IOWC) in respect of land at Little Duxmore Farm on the Isle of Wight

Executive summary:

In February last year, Natural England updated its advice to local councils to reflect recent European case law and now recommends an Appropriate Assessment is undertaken within the Borough of Fareham for every application for new dwellings.

Natural England has highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) is likely to have a significant effect upon European Protected Sites (EPS).

Where developers are not able to demonstrate that their proposals maintain or reduce the levels of nitrates leaving their site, mitigation measures need to be identified. The majority of residential planning applications will need to mitigate for increased levels of nitrates entering The Solent; in most instances developers are unable to provide this mitigation on their development site.

HIOWWT are bringing forward land at Little Duxmore Farm on the Isle of Wight for the purposes of wildlife enhancements. The opportunity also exists to use the same land as mitigation for nitrates arising from new residential development within the catchment area.

Authority is sought from the Director of Planning and Regeneration for the Council to enter into a legal agreement with HIOWWT and IOWC, to secure nitrate mitigation at Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.

Recommendation:

That authority be given by the Director of Planning and Regeneration for the Council to enter into a legal agreement with HLOWWT and IOWC to secure nitrate mitigation at Little Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.

Reason:

Securing nitrate mitigation at Little Duxmore Farm will enable Fareham Borough Council to grant planning permission for a number of residential schemes within the Borough, many of which have been stalled for a considerable period of time following the European Court rulings and Natural England's advice. This in turn will ensure that residential planning permissions are granted and housing can be built which will contribute towards meeting the Council's housing need.

Cost of proposals:

The Council's legal costs in connection with the drafting and monitoring of the legal agreement will be met by the HLOWWT.

FAREHAM

BOROUGH COUNCIL

Briefing Paper to Director of Planning and Regeneration

Date:	17 th July 2020
Subject:	Nitrate Mitigation – Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council
Briefing by:	Head of Development Management
Portfolio:	Planning and Development

INTRODUCTION

1. In February last year, Natural England updated its advice to local councils to reflect recent European case law and now recommends an Appropriate Assessment is undertaken within the Borough of Fareham for every application for new dwellings.
2. Natural England has highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) is likely to have a significant effect upon European Protected Sites (EPS).
3. Where developers are not able to demonstrate that their proposals maintain or reduce the levels of nitrates leaving their site, mitigation measures need to be identified. The majority of residential planning applications will need to mitigate for increased levels of nitrates entering The Solent; in most instances developers are unable to provide this mitigation on their development site.

BACKGROUND

4. As a result of the decisions by the European Court and the subsequent advice by Natural England, there has been a substantial impact upon the grant of planning permission for new housing in Fareham. Very few residential planning permissions have been issued since February 2019, and there are a considerable number of planning applications for residential development (proposing in excess of 1,400 dwellings) currently undetermined.
5. Fareham Borough Council is required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement or local housing need.
6. Annually the Ministry of Housing, Communities and Local Government carries out a 'Housing Delivery Test' which measures the number of residential units delivered over the preceding three years against the Council's requirements. Where delivery is less

than 85% of the Council's housing requirement, the Council is required to apply an increased buffer to its requirements.

7. As the Council has granted very few planning permissions for new residential development since early 2019 this has impacted upon the specific deliverable sites this Council is able to identify as part of its five year housing land supply. Furthermore, the reduction in the planning permissions the Council is able to grant will impact upon the Council's Housing Delivery Test results. Under the current formula, it is likely that this Council will be required to apply an increased buffer to its housing requirement, following publication of the next results. These results relate to the period ending March 2020 with expected publication date by MHCLG being Winter 20/21).

COMMENTS

8. The Council is working hard to find a resolution as, by carrying out its legal duties in one area, namely in considering the effects of proposed developments upon European Protected Sites, it is failing in another, which is to make provision for new housing within the Borough in line with the amount specified by the Government.
9. The potential impacts upon The Solent is an issue which involves a number of councils within South Hampshire. All of the affected councils, including Fareham, are members of the Partnership for South Hampshire (PfSH), a Partnership which seeks to resolve issues through local authorities working together with other relevant statutory bodies. PfSH is working with the Environment Agency, Natural England and Southern Water to address the issue of nitrates within The Solent.
10. Whilst this Council, working through PfSH, continues to explore broader strategic mitigation solutions for nitrates, some short-term mitigation solutions are being bought forward by third parties. One such scheme relates to a site known as Little Duxmore Farm on the Isle of Wight which is being bought forward by the Hampshire and Isle of Wight Wildlife Trust (HIOWWT). HIOWWT are bringing forward this land principally for the purposes of wildlife enhancements. An opportunity has also presented itself to use the same land as mitigation for nitrates arising from new residential development within the catchment area.
11. The land at Little Duxmore Farm was intensively used as low quality arable land within floodplains which required large inputs of fertiliser. The use now envisaged by the HIOWWT will involve extensive uses such as natural habitats, wetlands or woodlands with no fertiliser inputs. Natural England consider that the site represents a workable and viable nitrate mitigation approach. Natural England further consider that the site is suitable as nitrate mitigation for development which would discharge wastewater through the Peel Common WasteWater Treatment Works (WWTW). Development across the whole of the Borough of Fareham is served by the Peel Common WWTW.
12. In the first instance, the Council will need to agree with developers the amount of nitrates leaving the site that will arise from carrying out their proposed development (the amount of nitrates is measured in kilogrammes on an annual basis). Where the development will lead to an increase in the discharge of nitrates, the developer can then establish how many 'credits' they need to buy from the HIOWWT. When developers buy 'credits', the HIOWWT will undertake to manage a specified area of the Little Duxmore Farm site in a way which limits the amounts of nitrates which enters the ground and ultimately The Solent.

13. In order to rely on Little Duxmore Farm site for nitrate mitigation, and to ensure that it is managed in a particular way, the Council must enter into a legal agreement with HIOWWT and the Isle of Wight Council.
14. A legal agreement has been drafted to this effect with input from solicitors from HIOWWT, Fareham Borough Council and the Isle of Wight Council. Natural England has advised on elements of the legal agreement including the uses that should be prohibited from the site, and the period of time for which the mitigation should be secured. The monitoring of the legal agreement, ensuring that HIOWWT complies with its requirements, will be undertaken by the Isle of Wight Council.

RISK ASSESSMENT

15. This Council's Solicitors are satisfied that the legal agreement as drafted provides an appropriate mechanism for securing nitrate mitigation for residential development being undertaken within Fareham Borough.
16. The Council's Solicitors are further satisfied that the construction of the legal agreement, including the monitoring of its provisions by the Isle of Wight Council, would ensure that it meets the requirements of the Habitat Regulations as emphasised through recent European Court Judgments.

FINANCIAL IMPLICATIONS

17. The Council's costs associated with preparing the legal agreement will be paid by the HIOWWT.
18. Any mitigation 'credits' will involve a financial transaction between the applicant/developer and the HIOWWT. This Council will not be involved in these financial transactions.
19. The monitoring work undertaken by the Isle of Wight Council will be paid for by the HIOWWT.

CONCLUSION

20. There is an urgent and pressing need to grant planning permissions for housing development within the Borough so that the Council can ensure that it identifies deliverable sites sufficient to provide a minimum of five years' worth of housing. Further delays in the granting of planning permissions and in turn the delivery of residential units on the ground, are likely to lead to the Council being required to make provision for even larger numbers of housing in the future.
21. The recent restrictions put in place to tackle the spread of Covid-19 has had a considerable impact upon the housing market and construction industry. The granting of planning permissions at the earliest possible date would assist in stimulating the construction industry and housing market.
22. Authority should be given by the Director of Planning and Regeneration for the Council to enter into the legal agreement with the HIOWWT and Isle of Wight Council, to secure nitrate mitigation at Little Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham. This in turn will enable a large number of stalled residential schemes within the Borough to proceed.

Enquiries:

For further information on this report please contact Lee Smith (Ext 4427) Head of Development Management.

FAREHAM

BOROUGH COUNCIL

2020/21
Decision No.
2195

Record of Officer Delegated Decision

Friday, 17 July 2020

Portfolio:	Planning and Development
Subject:	Nitrate Mitigation - Legal Agreement with Hampshire and Isle of Wight Wildlife Trust & Isle of Wight Council
Report of:	Director of Planning and Regeneration
Corporate Priority:	Protect and enhance the environment

Purpose:

This report seeks authority from the Director of Planning and Regeneration for the Council to enter into a legal agreement with Hampshire and Isle of Wight Wildlife Trust (HLOWWT) and the Isle of Wight Council (IOWC) in respect of land at Little Duxmore Farm on the Isle of Wight.

In February last year, Natural England updated its advice to local councils to reflect recent European case law and now recommends an Appropriate Assessment is undertaken within the Borough of Fareham for every application for new dwellings.

Natural England has highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) is likely to have a significant effect upon European Protected Sites (EPS).

Where developers are not able to demonstrate that their proposals maintain or reduce the levels of nitrates leaving their site, mitigation measures need to be identified. The majority of residential planning applications will need to mitigate for increased levels of nitrates entering The Solent; in most instances' developers are unable to provide this mitigation on their development site.

HLOWWT are bringing forward land at Little Duxmore Farm on the Isle of Wight for the purposes of wildlife enhancements. The opportunity also exists to use the same land as mitigation for nitrates arising from new residential development within the catchment area.

Authority is sought from the Director of Planning and Regeneration for the Council to enter into a legal agreement with HLOWWT and IOWC, to secure nitrate mitigation at Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.

Options Considered:

The Director of Planning and Regeneration considered the report and was advised of 16 emails of representation that were received by the Head of Democratic Services. The content of the emails was to register their opposition to an Officer making the decision under delegated powers rather than being considered by Members via a Committee. Verbal representations from Councillors, R Price and S Cunningham were also received in support of the view that the decision be made by Members rather under delegated Officer powers.

The Head of Democratic Services confirmed that the Scheme of Delegation to Officers as set out in the Council's Constitution, permitted the Director of Regeneration to make the decision under delegated powers.

Decision:

RESOLVED that the Director of Planning and Regeneration enter the Council into a legal agreement with Hampshire and Isle of Wight Wildlife Trust and Isle of Wight Council to secure nitrate mitigation at Little Duxmore Farm in connection with residential planning permissions granted within the Borough of Fareham.

Reason:

Securing nitrate mitigation at Little Duxmore Farm will enable Fareham Borough Council to grant planning permission for a number of residential schemes within the Borough, many of which have been stalled for a considerable period of time following the European Court rulings and Natural England's advice. This in turn will ensure that residential planning permissions are granted and housing can be built which will contribute towards meeting the Council's housing need.

Confirmed as a true record:

Richard Jolley (Director of Planning and Regeneration)
Friday, 17 July 2020

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 02 September 2019

Portfolio:	Planning and Development
Subject:	Interim Nitrogen Mitigation Solution
Report of:	Director of Planning and Regeneration
Corporate Priorities:	Protect and Enhance the Environment

Purpose:

To consider the Interim Nitrate Mitigation Solution for Fareham Borough Council.

Executive summary:

This report details the present situation in the Planning Service in relation to advice from Natural England, the statutory advisor on protected sites, that developments in the Borough must be nitrogen neutral in order to mitigate a likely significant effect on internationally important protected sites in the Solent. As a result, planning permissions have been curtailed for a number of months. The report details a package of measures which together form an interim mitigation solution which would move the Council towards a position of issuing planning permissions.

Recommendation:

It is recommended that the Executive:

- (a) approves the approach to mitigation as set out in paragraph 16 of the report; and;
- (b) notes that the Planning Committee will be advised of the mitigation approach agreed by the Executive, as a material planning consideration in their determination of planning applications.

Reason:

To ensure sufficient options for mitigation to address any adverse effect of wastewater upon European Sites from new residential and overnight accommodation.

Cost of proposals:

The cost of the proposal will be at no overall cost to the Council in the medium term, however there may be some up-front costs to initiate some of the proposals which can be met from within existing budgets.

Background papers: None

Reference papers: None

FAREHAM

BOROUGH COUNCIL

Executive Briefing Paper

Date:	02 September 2019
Subject:	Interim Nitrogen Mitigation Solution
Briefing by:	Director of Planning and Regeneration
Portfolio:	Planning and Development

INTRODUCTION

1. This report outlines the issue surrounding nitrates in the Solent, the advice from Natural England as statutory advisors on European Sites, and the interim nitrogen mitigation solution. This report seeks Executive approval for the mitigation solution set out in the report, which will be a material consideration in the determination of planning applications.

BACKGROUND

Legal framework

2. The Conservation of Habitats and Species Regulations (2017 as amended), hereafter referred to as the Habitats Regulations is the UK's transposition of the European Union Directive 92/43/EEC Conservation of Natural Habitats and of Wild Fauna and Flora. The Regulations place significant responsibilities on the Council as competent authority for the protection of ecology. Regulation 63 requires competent authorities to undertake an 'Appropriate Assessment' of the implications of the permission, if it is likely to have a significant effect on a European site.
3. The Appropriate Assessment considers potential impacts against the conservation objectives of any European sites designated for their nature conservation importance. If a likely significant effect is predicted, it is only if the competent authority can determine no adverse effect on the integrity of the site having regard to any proposed mitigation measures that permission may be granted. Therefore, if mitigation measures are not available or sufficient to avoid the adverse effect, then the competent authority would not be able to conclude that the plan or project would not have an adverse effect.
4. Such European sites include Special Protection Areas (SPA) designated to conserve important or threatened bird species and Special Areas of Conservation (SAC) designated to conserve important and rare habitats. Significant effects on European designated sites can be caused through a number of impact pathways such as direct/indirect habitat loss, increase of recreational disturbance, construction activities, air and water pollution.

5. It is also necessary for the competent authority to consider not only the impact of a single plan or project in isolation but the likelihood of a significant effect occurring in combination with other plans and projects.

Recent case law

6. An established approach is that the Appropriate Assessment must use the 'precautionary principle' when determining likely significant effects. If it is not possible to rule out a likely significant effect, the competent authority must work on the basis that one exists and undertake an Appropriate Assessment. The precautionary principle also dictates that there must be certainty over the effectiveness of the mitigation measures in order to rule out any adverse effect. This precautionary principle has been reinforced by a recent case determination from the European Court of Justice commonly referred to as the 'Dutch Case'.
7. The Dutch Case also clarified the requirement that mitigation is to be secured at the time of carrying out an Appropriate Assessment in order for the competent authority to conclude with certainty that any mitigation proposed would sufficiently mitigate any adverse effects arising from the plan or project in question.

Water Quality in the Solent and Natural England's subsequent advice

8. The Partnership for South Hampshire (PfSH) authorities commissioned an Integrated Water Management Study (IWMS) looking into the effects of planned future development on water quality and water resources. The IWMS noted that the majority of the Solent water bodies had in most cases, less than good ecological status for elements such as dissolved inorganic nitrogen (made up of nitrates, nitrites and ammonium). The IWMS also identified that some Wastewater Treatment Works (WwTW) would reach capacity in the early to mid-2020s and that by this point, action would have to be taken to ensure that these issues are satisfactorily mitigated. Therefore, at present, the impact on the Solent SPA and SACs from development is uncertain and the effectiveness of any proposed mitigation is unknown.
9. One of the causes of a deterioration in water quality is new developments creating additional wastewater which is treated at WwTWs and discharged into the Solent. The percentage of nitrate coming from this source varies depending on the location in the Solent but is small (3-18%) in comparison to run-off from agriculture (20-77%) and background levels already in the waterbody (12-67%).
10. Based on the existing condition of the Solent water bodies and taking into account the implications of the more recent Dutch case ruling, Natural England's advice to competent authorities is that any new development which would result in an increase in 'overnight' stays¹, should achieve nitrate neutrality in order to not have any likely significant effects. The Council as competent authority under the Habitats Regulations, must have regard to Natural England's advice as a statutory consultee, and national body responsible for the natural environment. The Council should only depart from the advice of Natural England for good and justified reasons.

Calculating nitrate neutrality

¹ This includes all new residential dwellings, Gypsy Traveller accommodation, hotels and other tourist accommodation

11. Natural England have produced guidance on how to calculate nitrogen budgets for developments. The calculations compare the existing land use to the proposed land use in terms of nitrate loading and use assumptions on water use and occupancy rates to help planning applicants determine whether more or less nitrate will come from the site (either through run off or via the sewerage system) if permission were granted. Natural England suggest that larger sites, particularly those on agricultural land may achieve neutrality by providing a sufficient amount of open space. Achieving neutrality on smaller sites and brownfield developments is likely to require off-site mitigation.
12. As a result, the Council has not been able to issue planning decisions for a number of planning applications until they can demonstrate neutrality either on-site or via suitable off-site mitigation. At present, Fareham Borough Council has in excess of 50 undetermined planning applications (excluding Welborne) for new residential development under formal consideration. In total these applications propose over 3,000 dwellings. An Appropriate Assessment will need to be carried out on all applications that the Council decide to permit. Twelve of the planning applications, comprising 916 dwellings, have a resolution to grant planning permission from the Council's Planning Committee, pre-dating Natural England's current advice.
13. In addition, the Local Plan will need to consider the ability of developments coming forward to 2036 to be nitrate neutral through its own Habitats Regulations Assessment. Without certainty on the impact of this development and any required mitigation, Natural England would most likely lodge an objection to the plan.

Proposed approach to mitigation

14. In order to provide mitigation for current planning applications and for the Local Plan, particularly where developments cannot provide on-site mitigation, it is necessary to find a solution that allows the Council to meet its obligations both in terms of housing need and as a competent authority for the Habitats Regulations.
15. Given the complexity of the issue and the ability for some solutions to come forward more quickly than others, it is likely that a suite of measures will be needed to deliver nitrate neutrality in the Borough. These measures could include a mix of the following:

- a) Management of existing agricultural land

This solution involves altering the management of agricultural land to manage it in a way that involves the use of less nitrogen fertiliser. This result would be less nitrogen entering the European sites. Mitigation land could be publicly or privately owned and would be used to offset development via a legal agreement.

- b) Wetland creation

Wetlands are a good way of stripping nitrogen from water and so by creating wetlands on land adjacent to watercourses or wastewater treatment works, there would be a reduction in the nitrogen entering the European sites. Developer contributions could be secured for the creation and maintenance of such sites.

- c) Water efficiency measures in existing FBC housing stock

As the wastewater treatment works operate on a permissible amount of nitrogen per

litre of water, reducing the number of litres discharged from the works also reduces the amount of nitrogen going into the Solent. Installing water efficiency measures in existing housing stock, such as Council owned housing stock, could provide sufficient reductions in water use to offset some new development. Developer contributions could be used to fund the provision and installation of water efficiency kits.

d) Improvements to Peel Common wastewater treatment works

There is a need to understand the possible additional technology that could be employed at wastewater treatment works to strip out the maximum amount of nitrogen from wastewater. Developer contributions could be secured to fund additional measures which are required over and above existing regulatory practices.

e) Additional mitigation land secured through the Regional Habitat Creation Scheme

Through the Eastern Solent Coastal Partnership, there is a need to create additional habitats along the coastline. Additional land could be brought into this scheme, funded by developer contributions to create additional coastal habitats and offset development in the borough.

f) Catchment Sensitive Farming Advisors and advice

Developer contributions could be used to fund a Catchment Sensitive Farming Advice scheme whereby advisors would work with agricultural landowners on ways to minimise nitrogen input to their land.

16. Further discussions are required with third parties to advance many of these options. Early work suggests that a combination of measures would be sufficient to provide a solution for housing development going forward. The package of mitigation measures would be further developed as the nitrate mitigation solution available to those developers that cannot find their own mitigation solutions or demonstrate nutrient neutrality. The Executive would be further updated on the development of these package of measures and any upfront costs that may need to be borne by the Council. As the mitigation measures are being worked up, the Council would be able to issue permissions with Grampian conditions, subject to agreement with applicants, which would prevent occupation of the dwellings until such a time as the Council can be satisfied that sufficient mitigation is secured to be able to conclude that there would be no adverse effect on the European sites. For those developments that will depend upon the Council's mitigation solution, there will be a financial charge to the developer secured through a legal agreement or similar.
17. However, it is important to note that not all planning applications would need to utilise the Council's mitigation solution and each case will be dealt with on its merits and different mitigation may be proposed or secured by applicants depending on the circumstances. For example, if the development can provide sufficient mitigation on or off-site to demonstrate nitrate neutrality, the planning application can be determined on that basis and Grampian conditions need not apply. The Council may be able to conclude no adverse effect on integrity of designated sites in a number of ways.

Agreeing the solution with Natural England

18. Importantly, early discussions with Natural England suggest that this approach would be acceptable. In practice, this means that when consulted on the Appropriate Assessment for a planning application, they would raise the issue of water quality and

the need for nitrate neutrality on developments and note that mitigation is not secured at the present time, but will be secured via a Grampian condition. They would therefore not object to the granting of planning permission. Before discharging that condition, the Council would re-consult Natural England on a revised Appropriate Assessment demonstrating how the proposed mitigation would be secured so as to ensure no adverse effect on the European sites.

Legal and Financial Implications

19. This report sets out a suite of mitigation measures which officers consider, in conjunction with the Grampian condition, will allow the LPA to conclude in any appropriate assessment that a development will not cause an adverse effect on the integrity of the relevant designated site allowing the LPA to grant planning permission. Each application must be treated on its merits and determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004. Any particular mitigation measure identified for a particular application will need to be considered as part of the appropriate assessment for that particular application.
20. It is anticipated that the mitigation solution will be cost neutral to the Council in overall terms as developments that need to utilise the Council's solution will be required to make a financial contribution equivalent to the cost of mitigation and any interim costs of implementing the arrangements.
21. The financial implications will be set out in greater detail as the package of measures is being developed, in a further report(s) to the Executive.

Other considerations

22. Officers are continuing to work with the Environment Agency to understand their role in relation to regulating permits for the wastewater network and the environmental assessments that they and Southern Water have undertaken. In addition, through PfSH, the Council is responding to OFWAT consultations on appropriate levels of infrastructure investment and environmental mitigation funding within the Southern Water region.
23. PfSH members are working collaboratively on this issue and have an ongoing dialogue with the Ministry for Housing, Communities and Local Government (MHCLG) and the Department for the Environment, Food and Rural Affairs (DEFRA) in finding a solution. The PfSH Joint Committee recently tasked the Water Quality Working Group with reviewing the IWMS with more up to date population figures and occupancy rates. The Joint Committee will receive a further update on the situation in October.
24. In addition to water quality, there is an ongoing study into the potential for increased nitrogen deposition from traffic on European Sites. This air quality study will be important in assisting the Council to understand whether there is a likely significant effect from new development.

Enquiries:

For further information on this report please contact Lee Smith or Gayle Wootton (Ext 4427 or 4328)

