

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.

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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.