

# 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)