

OPERATIONS AND PLACE SHAPING BOARD AGENDA

Membership: Councillor Lloyd (Chairman)

Councillors Carpenter, Guest, Howard, Jenner, Milne, Raines, Robinson, Satchwell and Francis

Meeting: Operations and Place Shaping Board

Date: Monday 28 October 2019

Time: 5.30 pm

Venue: Hollybank Room, Public Service Plaza, Civic Centre Road,
Havant, Hants PO9 2AX

The business to be transacted is set out below:

David Brown
Monitoring Officer

18 October 2019

Contact Officer: Holly Weaver 02392446233
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PART 1 (Items Open for public attendance)

1 Apologies

To receive and record apologies for absence.

2 Minutes

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To approve the minutes of the meeting of the Operations and Place Shaping Board held on 27 August 2019.

3 Matters Arising

4 Declarations of Interest

To receive and record any declarations of Interests from members present in respect of any of the various matters on the agenda for this meeting.

5 Nutrient Neutral Development

5 - 64

With regard to Questions 13 and 14 there may be a need to exclude the Press and Public under Paragraph 5 of Schedule 12A of the Local Government Act 1972 (legal advice).

GENERAL INFORMATION

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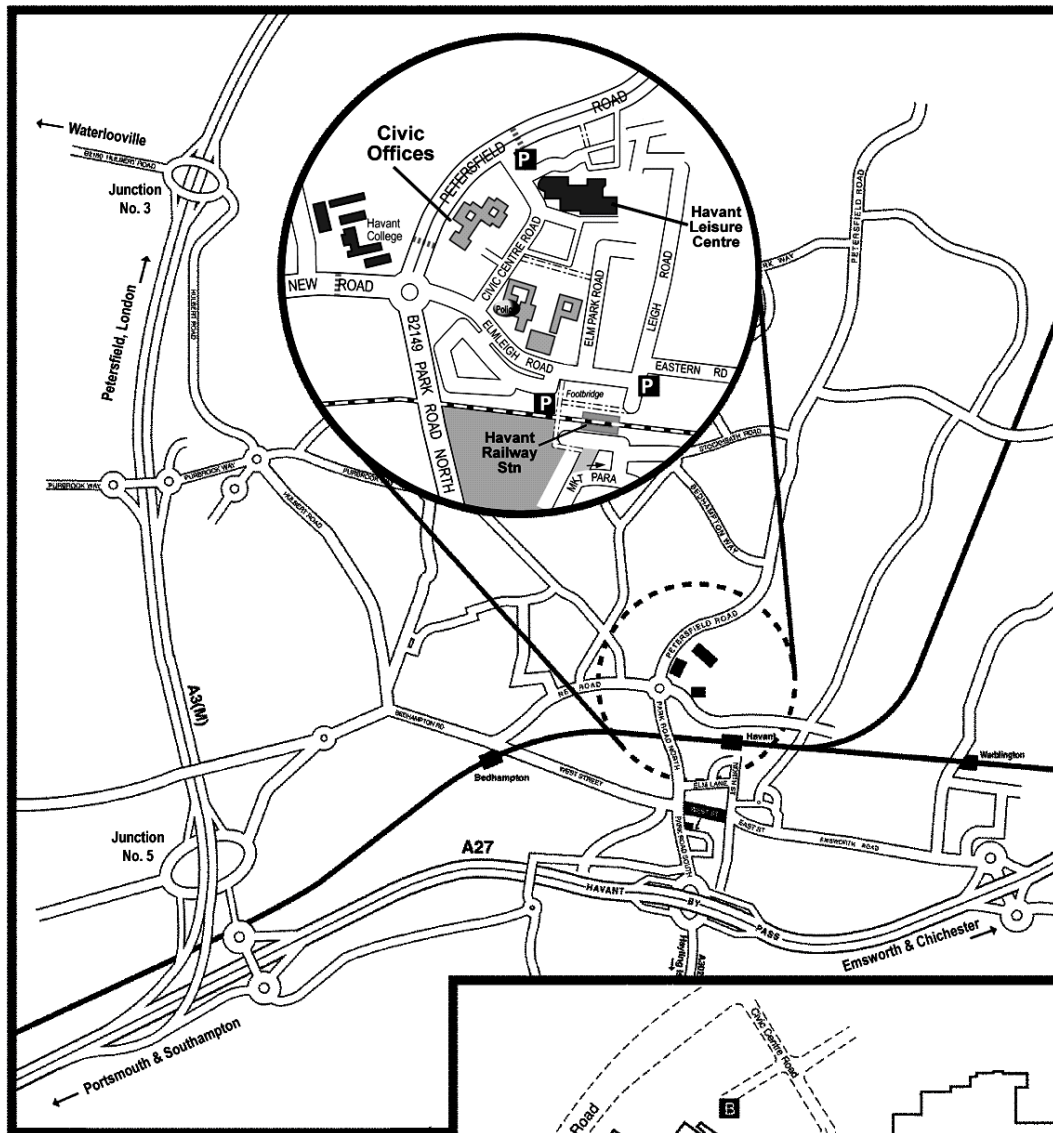
Rules of Debate

- Councillors must always address each other as “Councillor ...” and must always address the meeting through the Chairman
- Councillors may only take part in the debate if they are present at the meeting: video conferencing is not permissible
- A member of the Committee may not ask a standing deputy to take their place in the Committee for part of the meeting
- The report or matter submitted for discussion by the Committee may be debated prior to a motion being proposed and seconded. Recommendations included in a report **shall not** be regarded as a motion or amendment unless a motion or amendment to accept these recommendations has been moved and seconded by members of the Committee
- Motions and amendments must relate to items on the agenda or accepted by the meeting as urgent business
- Motions and amendments must be moved and seconded before they may be debated
- There may only be one motion on the table at any one time;
- There may only be one amendment on the table at any one time;
- Any amendment to the motion can be moved provided it is (in the opinion of the Chairman) relevant to the matter under discussion. The amendment can be a direct negative of the motion.
- The mover with the agreement of the seconder may withdraw or alter an amendment or motion at any time
- Once duly moved, an amendment shall be debated along with the original motion.
- If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the substantive motion on which any further amendment may be moved.
- If an amendment is rejected different amendments may be proposed on the original motion or substantive motion.
- If an amendment is lost, other amendments may be moved to the original motion or substantive motion
- If an amendment is lost and there are no further amendments, a vote will be taken on the original motion or the substantive motion
- If no amendments are moved to the original motion or substantive motion, a vote will be taken on the motion or substantive motion
- If a motion or substantive motion is lost, other motions may be moved

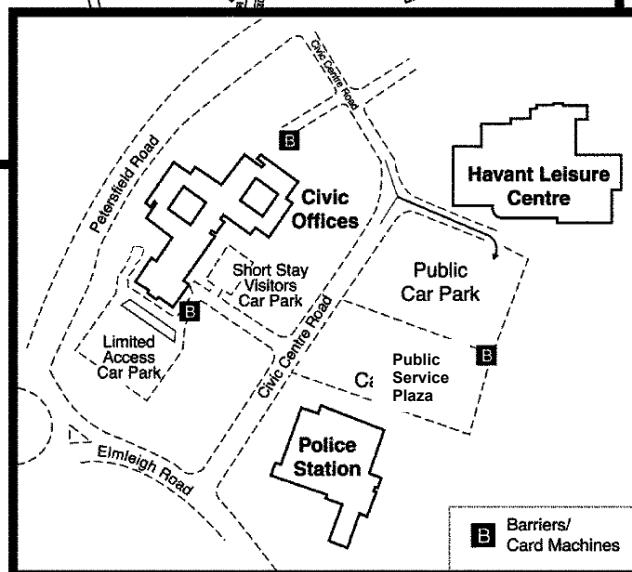
Voting

- Voting may be by a show of hands or by a ballot at the discretion of the Chairman;

- Councillors may not vote unless they are present for the full duration of the item;
- An amendment must be voted on before the motion
- Where there is an equality of votes, the Chairman may exercise a second (casting) vote;
- Two Councillors may request, before a vote is taken, that the names of those voting be recorded in the minutes
- A Councillor may request that his/her vote be recorded in the minutes



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HAVANT BOROUGH COUNCIL

At a meeting of the Operations and Place Shaping Board held on 27 August 2019

Present

Councillor Lloyd (Chairman)

Councillors Carpenter, Howard, Jenner, Raines, Robinson and Satchwell

Other Councillors Present:

Councillor(s): Pike

21 Apologies

Apologies for absence were received from Councillors Francis and Milne.

22 Declarations of Interest

There were no declarations of interests relating to matters on the agenda.

23 Review of Parking Issues in the Borough

The Board was given the opportunity to consider and comment upon the Review of Parking Issues Report prepared by the Parking Review Scrutiny Panel. The Director for Regeneration and Place and the Parking and Traffic Manager were invited to join the meeting and answer any questions in relation to the report.

In response to a question raised by the Chairman, the Parking and Traffic Manager advised that, subject to the Cabinet approving the recommendations set out in the report, Hampshire Council and the Police would be approached with a view to using their logos on the letter referred to in recommendation 2.1.2 after the wording of the letter had been finalised.

The Director for Regeneration and Place and Parking and Traffic Manager advised that they had no additional issues to add to the report.

The Report was considered by the Board in accordance with Standing Order 77.4. The Board concluded that:

- (a) the Panel had completed the review in accordance with the project plan;
- (b) the Panel had followed the correct scrutiny process; and
- (c) the Panel had addressed the issues raised in comments received since the report was published.

Therefore, the Board endorsed the recommendations set in the report and

RESOLVED that Cabinet be recommended to:

- (1) issue a borough-wide communique on the matter;
- (2) agree to a pilot scheme, whereby Councillors issue a letter similar to the HCC letter set out in Appendix B of the submitted report in areas where vehicles park on grass verges, footpaths, pavements and grassed areas, that form part of the highway in the following five roads
 - (a) Crookhorn Lane
 - (b) Fir Copse Road
 - (c) Parkhouse farm Way
 - (d) Dunsbury Way
 - (e) Sutton Road

The letters to be issued in response to a request from a member of the public or a Councillor and prioritised in accordance with Annex 1 of the Hampshire County Council's policy statement Parking On Grass Verges, Footpaths And Pavements (Appendix C of the submitted report). The letters for the pilot scheme to contain the telephone number of a nominated councillor for that road.

- (3) request that officers approach Hampshire County Council and the Police with a view to using their logos on the letter referred to in (B) above;
- (4) note that the results of the pilot scheme referred to (B) above will be considered by the Operations and Place Shaping Board in six months from the date of the start of the pilot;
- (5) request Hampshire County Council to conduct a repair programme to grass verges and grassed areas in named streets in each ward forming the pilot scheme, if (2) above has resulted in the cessation of the parking which caused the damage. In the long term this repair programme to include all roads where action taken by the Council has been successful in stopping vehicles parking on verges and grassed areas and pavements/footpaths; and
- (6) request Hampshire County Council to undertake any necessary consultation prior to trialling different wildlife friendly verge maintenance options as part of (5) above. This is in an effort to encourage pollinators, in line with the Council's commitment to the environment, enhance street scenes and reduce costs by only needing to cut wild flowers verges twice a year.

24 Minutes

The Minutes of the meetings of the Operations and Place Shaping Board held on 9, 15 and 17 July 2019 were agreed as a correct record and signed by the Chairman.

25 Matters Arising

Minute 20/7/2019 - Review of Old Bedhampton Conservation Area

The Chairman read out a prepared statement setting out the responsibilities and duties of being a member of the Council and in particular the responsibility of members of the Board to clearly demonstrate, through its meetings, that they gave due and full consideration to any and all matters on its agenda and to be accountable for the decisions the Board makes.

She advised members of the Board that whilst the minutes of the meeting held on 17 July 2019 were an accurate record of this meeting, these minutes gave no indication as to how the result to reject the recommendations was decided. This situation had left the officers in a position of not knowing why the recommendations were rejected, after a thorough, evidence-based review had been done and reported upon.

The Chairman requested all members of the Board, who were present at the meeting held on 17 July, to write to Democratic Services giving their reasons for voting the way they did regarding the nine recommendations, by Friday 30th August. The members of the Board raised no objections to undertaking this task.

The Chairman reported that the Cabinet was due to meet on 11 September when the Board needed to clarify the reasons for its actions and demonstrate that the recommendations put to the Board had been fully considered by scrutiny. The Chairman advised that she could not attend this meeting due to holiday commitments and asked for a member of this Board to represent the Board at that meeting, to read a statement prepared by her and answer any questions on the matter, that the Cabinet might pose. No volunteers were forthcoming.

The meeting commenced at 5.00 pm and concluded at 5.15 pm

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Chairman

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HAVANT BOROUGH COUNCIL

OPERATIONS AND PLACE SHAPING BOARD

28 OCTOBER 2019

THE NEED FOR NUTRIENT NEUTRAL DEVELOPMENT IN HAVANT BOROUGH

DAVID HAYWARD (PLANNING POLICY MANAGER)

INFORMATION

**Cabinet Lead (HBC): Cabinet Lead for Planning, Regeneration and
Communities**

Key Decision: N/A

1.0 Purpose of Report

- 1.1 To set out the ongoing work regarding the need for development in the Borough to be nutrient neutral in order to comply with regulations.

2.0 Recommendations

- 2.1 That the Operations and Place Shaping Scrutiny Board:
- a) Notes the Council's responsibilities under the Habitats Regulations¹, particularly in light of recent case law;
 - b) Notes the impact that the current situation is having on the development industry, including small and medium sized housebuilders;
 - c) Notes the potential impact on the progression of the Havant Borough Local Plan 2036;
 - d) Notes the potential implications in terms of the Borough's five year housing land supply and the housing delivery test;
 - e) Notes the positions of Natural England and the Environment Agency regarding the issue;
 - f) Notes the work currently underway to address the issue at a local level; and

¹ References to 'the Habitats Regulations' or 'The Regulations' in this report should be read as referring to the Conservation of Habitats and Species Regulations (2017 as amended), available at www.legislation.gov.uk/ukxi/2017/1012/contents/made.

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- g) Makes representation to the Cabinet if any further consideration of the matter takes place.

3.0 Summary

- 3.1 The Council has a significant development and regeneration agenda. This has been already subject to debate and the unanimous approvals at Full Council of both the Havant Borough Regeneration Strategy and the Havant Borough Local Plan 2036.
- 3.2 The Council takes its responsibility to provide for sustainable development in Havant Borough seriously. Sustainable development is that which respects equally the three pillars of sustainability: economy, environment and social. This is a key element of the National Planning Policy Framework.
- 3.3 Achieving these strategies is only possible if development complies with the Council's legal responsibilities under the Conservation of Habitats and Species Regulations (2017 as amended)² (hereafter referred to as The Regulations).
- 3.4 The Council is committed to new development only taking place if it is sustainable development that includes the relevant environmental protections and would create a net gain for biodiversity through the Havant Borough Local Plan 2036. Part of the consideration of this is whether there would be a detrimental impact on the water quality of the nearby European designated nature conservation sites in the Solent.

Context and legal framework

- 3.1 Under The Habitats Regulations, there are significant responsibilities conferred on the Council as a 'competent authority'. Chiefly, it requires the Council to only approve plans or projects (such as planning applications or a Local Plan) if there is no likelihood of a significant effect on the internationally protected ecological sites along the Solent coast.
- 3.2 A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water pollution, increase in recreation, light pollution, and tall buildings.
- 3.3 A Habitats Regulations Assessment (HRA) is carried out in order to assess whether there is a 'likely significant effect'. This generally includes an Appropriate Assessment (AA), which is the second more detailed stage³ of an HRA. The two terms are often used interchangeably and essentially refer to the same process. Natural England must be consulted on the findings of an HRA and there is a duty to consider their response. An established principle under law is that appropriate assessments must use the 'precautionary principle' in undertaking appropriate assessments. This means that evidence must demonstrably show that there *would not* be a likely significant effect on the protected sites before planning permission can be granted or a local plan approved. If there is uncertainty or a lack of information, the planning application or plan should be refused. It is also necessary to consider not only the impact of a single plan or project in isolation but where there is a likelihood of a significant effect in combination with other plans and projects as well.

² Available at <http://www.legislation.gov.uk/ukxi/2017/1012/contents/made>

³ This is set out in Regulation 63 of The Regulations.

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- 3.4 It is also important to note that this is a legal requirement as opposed to a material planning consideration. Material planning considerations form part of a planning balance and permission can potentially be granted for something which has adverse impacts if the benefits outweigh those adverse impacts. This is not the case here. It must be shown that there would not be a likely significant effect in order for the Council to lawfully grant planning permission or approve a local plan. If the Council chose to grant planning permission contrary to advice on the matter from Natural England, there would be a significant risk of judicial review.
- 3.5 The need for HRA and AA has existed since 2004. It has been known for many years that new development does lead to an increase in recreation at the coast and that this has a disturbance impact on the birds as they use the coastal mud flats to feed and roost (this is a 'likely significant effect'). As a result, mitigation is required from all new development which is then used to fund the Bird Aware Partnership, of which the Council is a member. The Partnership implements the mitigation scheme, largely consisting of a ranger patrols along the coast.
- 3.6 Appendix A contains a number of examples of HRAs that have taken place on planning applications including a particularly recent complex and recent example, a simple conversion that did not lead to an impact due to nutrient neutrality and one that used a Grampian condition (see below).
- 3.7 Mitigation to address increased recreation has been in place since 2014 and works well, is fully accepted by the development industry and is a strategic solution that has been implemented across the Solent so is one of our key planks in the 'duty to cooperate' under the NPPF.
- 3.8 The Regulations transpose two EU Directives: The Habitats Directive and The Birds Directive. As such, the processes and legal requirements effectively cannot be changed at this time. Government have proposed that once the UK exits the EU, the regulations would remain effectively as they are now⁴ though that is not yet UK law of course. So no change in approach is envisaged as a result of the UK's exit from the European Union.

Recent case law

- 3.9 The European Court of Justice determined a case in 2018 related to considering water quality in Appropriate Assessments⁵. This is generally referred to as 'The Dutch Case'.
- 3.10 The judgement in this case clarifies the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture.
- 3.11 As a result, using this changed approach, it can only be concluded that new development, particularly that of a residential nature, could increase nitrogen deposition into the protected harbours above consented levels. This results in increased nutrients in the harbour which cause a dense growth in certain plants. This in turn leads to harm to the species which use them. This is the likely significant effect.

⁴ This is set out through The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which is a draft item of legislation.

⁵ Full reference is *Coöperatie Mobilisatie for the Environment UA and College van gedeputeerde staten van Noord-Brabant* (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>

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- 3.12 As a result, the only way to prevent a new housing scheme having this likely significant effect is for there to be no increase in nutrients into the harbour, ie for it to be 'nutrient neutral'.

Natural England's position

- 3.13 Natural England is the Government's statutory advisor on nature conservation. Under the Habitats Regulations, it is necessary to consult Natural England when undertaking an HRA.
- 3.14 The case law has resulted in a change of advice from Natural England regarding new development and whether there would be a likely significant effect on a European site due to water quality. The change in advice was that any development which could result in a decrease in water quality would cause a likely significant effect on the Solent's European sites.
- 3.15 Natural England highlight that the impact comes from population increase and the resultant increase in effluent. As a result, any development which increases population could be affected by this issue. Proposed developments for new housing are principally what will be affected by the issue as a result. However there are other development which could be considered to increases population such as hotels, camp sites and care homes.
- 3.16 The first such consultation response was received on 9 April 2019 at 16:38 and set out:

FAO –

Your ref – APP/19/00060 - 71 Forestside Avenue, Havant, PO9 5SJ

Our ref – 277372

Dear ,

Thank you for consulting Natural England on the above Habitats Regulations Assessment and Appropriate Assessment.

Increased impact from recreational disturbance

Natural England agrees with the conclusions of the HRA and AA with respect to recreational disturbance on the Solent SPAs. Natural England requires the Bird Aware Solent contribution to be secured with any planning permission.

Hydrological changes - foul water

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has screened the proposal to check for the likelihood of significant effects. Your assessment has not considered whether the increase in waste water from the new housing will have a likely significant effect on the European designated sites (SPA, SAC, pSPA).

As you know, there is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some designated sites. The PUSH water quality work has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. The proposal comprises new housing development and it is Natural England's advice that the existing uncertainty about the deterioration of the water environment must be appropriately addressed in order for the assessment to be legally compliant.

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Natural England advises that there is a likely significant effect on the European designated sites (SPA, SAC, pSPA) due to the increase in waste water from the new housing. Natural England advises that the assessment currently does not provide enough information and/or certainty to justify the assessment conclusion and that your authority should not grant planning permission at this stage. Where there is a likelihood of significant effects (excluding any measures intended to avoid or reduce harmful effects on the European site), or there are uncertainties, a competent authority should fully assess the implications of the proposal in view of the conservation objectives for the European site(s) in question within the appropriate assessment.

Natural England therefore advises that this issue is examined within the appropriate assessment and we recommend that the proposals achieve nutrient neutrality. It is appreciated that this may be difficult for smaller developments. Therefore, we strongly advise that an interim approach is set up for the Borough that developments can contribute to thereby ensuring that this uncertainty is fully addressed by all applications. Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Please note we advise that the competent authorities to whom Natural England gives its statutory advice on the environment will need to seek and rely upon their own legal advice on the interpretation of the Habitats Regulations and case law.

Please let me know if you have any queries or would like to discuss the above further.

Kind regards

- 3.17 Natural England has revised the terminology regarding the position since that time. However the overall conclusion of the advice remains the same. Natural England helpfully worked with officers to provide updated advice to inform the Council's Position Statement (see below).
- 3.18 Natural England's current position and the recommended methodology for calculating the nitrogen budget of a planning application or local plan is available at www.havant.gov.uk/nitrogen.

The Environment Agency's position

- 3.19 The Environment Agency has a key role in considering this issue that is complementary to, but different from Natural England's. The Agency play no formal part in the HRA process for a planning application. They are the body responsible for the marine environment, water quality and the licensing of wastewater. They also monitor nutrient (generally nitrogen) levels in Langstone Harbour and other locations.
- 3.20 The Environment Agency's public position is that as long as there is the capacity to take the extra wastewater flows from new development whilst still treating it to the same standard, then development would be acceptable.
- 3.21 It should be highlighted that both organisations agree that there would be a need to address this issue in the longer term.
- 3.22 The disagreement between two arms of DEFRA is extremely unhelpful in assessing this issue. It leaves the Council in the position whereby it is impossible to reach a position that addresses all viewpoints. As such, there is a risk of challenge from at least one set

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of stakeholders however we proceed. Thus, it is important to make sure that the issue is appropriately scrutinised, considered and any necessary legal advice sought.

- 3.23 The Environment Agency's current position is set out in a Technical Note available at www.push.gov.uk/wp-content/uploads/2019/07/Environment-Agency-Technical-Guidance-Note-on-Wastewater-Treatment-Capacity-in-the-Solent.pdf.

The development industry's position

- 3.24 The development industry contain a variety of parties from large national housebuilders to small and medium sized builders operating only in the local area.
- 3.25 There has been reporting in the media of the concern that several housebuilders, planning agents and architects have regarding the issue. A deputation was also made to the Cabinet meeting on 26th June 2019 (see below) which sets out a number of concerns. [This is available on the Council's website.](#)

The Planning Inspectorate's Position

- 3.26 When a planning application is determined by appeal, the Planning Inspectorate become the competent authority under the Habitats Regulations.
- 3.27 Once the issue came to light, and again following the approval of the Position Statement, the Council notified the Planning Inspectorate of this change in material circumstances surrounding the determination of planning applications in the Borough.
- 3.28 Since then, the Planning Inspectorate has, particularly in the absence of any information to the contrary, concluded that there would be a significant effect a European Site due to new development and dismissed the appeal. This is true in Havant but also other nearby local authorities.
- 3.29 In one appeal case (Land adjacent to Mandai PINS reference APP/X1735/W/18/3214079), the Planning Inspectorate commented on the use of Grampian conditions (see below re Position Statement). This suggested that they may not be the most appropriate way forward. The appeal was still dismissed.
- 3.30 It should be noted that since 9th April 2019, no applicant including national housebuilders (who dispute the issue), has sought to push through an application to determination. This would have the effect of taking a likely refusal of planning permission for determination by the Planning Inspectorate.
- 3.31 Examples of appeal decisions, including Land adjacent to Mandai, that have considered the matter are at Appendix B.

The impact of the case law at the local level

- 3.32 Some developments are already nutrient neutral. Using land for agriculture emits nitrogen into the environment. As such, development on agricultural land can often be nutrient neutral in its own right. As an example, the Development Management Committee recently resolved to grant planning permission for the Forty Acres planning application (reference APP/18/00450) which is nitrogen positive (ie more nitrogen will be taken out of the system than will be put in). Moving forward, development on other urban extension sites considered by the local planning authority are likely to be nutrient neutral.

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These are generally developments that are lower in terms of their gross development⁶ and/or are on land being used for higher nitrogen emitting forms of agriculture⁷.

- 3.33 However for development schemes on non-agricultural (particularly brownfield) land, it is generally not possible to provide mitigation as part of the proposed development. As a result, applicants are completely dependent on the Council to provide a strategic mitigation solution. This threatens the ability to provide development in the most sustainable places, including the sites identified in the Council's Regeneration Strategy.
- 3.34 This of course means that considering this issue makes development on the more sustainable sites in the Borough more difficult to permit and, once any mitigation cost is added, less viable.
- 3.35 At this point in time, there is no strategic mitigation solution in place. As such, the Council has been able to permit only a very small number of planning permission for new residential dwellings or other development representing an increase in overnight accommodation in exceptional circumstances since 9th April 2019.
- 3.36 This is an issue that affects all of Havant Borough. However it also extends far beyond the Borough Boundary. Other local authorities are also assessing the impacts to their area and what solutions can be put in place⁸. Further engagement and collaboration is needed, particularly through the Partnership for Urban South Hampshire (PfSH). Please note that an update is being provided to the Partnership for South Hampshire's Joint Committee on 14th October⁹.

The implications of not resolving the issue

- 3.37 As such, left unresolved, this issue would have a significant impact at the local level. First and foremost, it makes the delivery of the Council's development and regeneration agendas impossible. Linked to this, Government have a national target of building 300,000 new homes per year¹⁰. The Council's ability to meaningfully contribute to this target, indeed the ability for the Solent area as a whole to do so is significantly inhibited by this issue.
- 3.38 If left unresolved, the issue would have far reaching economic consequences. A large number of small housebuilding firms rely on the continuous movement of small development sites through the planning system and operate on shorter turnaround times than larger development sites operated by the national housebuilders. These smaller schemes have been particularly affected by this issue and this begins to threaten the viability of such businesses and the income of builders in the area.
- 3.39 The Council prides itself on its open for business reputation and its approach towards development, economic growth and boosting the prosperity of residents. Being in a

⁶ As an example, the Forty Acres scheme included a Brent Goose refuge and extensive open space due to a larger proportion of the site being affected by a high pressure gas main and being in a flood zone. This meant a low density of development was proposed compared to the gross site area.

⁷ The nitrogen load of different types of agriculture is set out in Natural England's methodology. In Havant Borough dairy farming and arable are more common higher nitrogen farming types.

⁸ See report to Portsmouth City Council's Cabinet on 11th June 2019 at <https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=126&MId=4256>.

⁹ The agenda for the meeting is available at www.push.gov.uk/work/our-meetings/joint-committee/.

¹⁰ See Autumn 2017 budget at www.gov.uk/government/publications/autumn-budget-2017-documents

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position where it is impossible to grant most residential planning applications will threaten that reputation.

- 3.40 The Council is also assessed on various measures related to its development management performance. If left unresolved, the fact that planning permissions for residential development generally cannot be granted and will threaten the ability to meet these targets. In time, this could result in the Council being placed in special measures. It would also render it impossible for the Borough to have a five year supply of housing land and to be able to meet the requirements of the Housing Delivery Test.
- 3.41 Finally and perhaps most significantly, a sharp downturn in new housebuilding, particularly if it takes place across the Solent region, would start to further hurt the affordability of housing in the area. There are currently 1,671 families on the Council's waiting list for affordable housing¹¹, waiting between 10 months and 5.5 years for a suitable property to become available through Hampshire Home Choice¹². A sharp decrease in new affordable housing products coming to market will only increase these measures, having a tangible impact on families across the Borough who are in housing need.
- 3.42 The Leader and Chief Executive have written to Government and other stakeholders to highlight the importance of the issue (Appendix C).

The Council's Position Statement on Nutrient Neutral Development

- 3.43 The Council recognised the importance of this issue very quickly. It was concluded that during the inevitable period of uncertainty, it was necessary to be clear what the Council's position is. It was also considered necessary to provide housebuilders with as much flexibility as was possible whilst complying with the legal requirements of the Habitats Regulations.
- 3.44 As such, on 26th June 2019, the Council's Cabinet considered the Position Statement on Nutrient Neutral Development. This statement acknowledged the change in case law, the current advice from Natural England and that the Council would work to resolve the overall situation as swiftly as possible.
- 3.45 In the interim, the Position Statement also authorises the use of Grampian conditions until an implementation plan is in place. This ensures that the Council can continue to grant planning permissions. However they are subject to a requirement that the development cannot be occupied until an avoidance and mitigation strategy is provided to the Council and the strategy implemented.
- 3.46 It is envisaged that this would be similar to the Bird Aware Solent Strategy. A financial contribution to this strategy is provided by all new residential development in the vast majority of the Borough.
- 3.47 However it has always been known that the use of Grampian conditions only represent a potential route forward for some developments. It is unlikely that any lenders would allow borrowing against a planning permission that included the condition. This is due to the fact that it is not possible to cost the likely planning obligation. As a result, the impact on the viability of the scheme in question cannot be calculated.

¹¹ As at 7 June 2019.

¹² Average taken for the period 1 April 2018 to 31 March 2019

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The impact on the Havant Borough Local Plan 2036, the Council's five year supply and the housing delivery test

- 3.48 The issue of nutrient neutrality has slowed preparation of the Havant Borough Local Plan 2036. The matter has obviously taken a great deal of officer time within the Planning Policy Team. In the absence of this issue, this resource would have been focused largely on progressing the Local Plan. As a result, there will be an inevitable slippage in the timetable to submit the plan to Government.
- 3.49 If left unresolved, the issue of nutrient neutrality could lead to an impact on the Borough's five year housing land supply and its ability to pass the requirements of the Housing Delivery Test.
- 3.50 A reasonable proportion of the sites proposed for allocation in the Havant Borough Local Plan 2036 are likely to be nutrient neutral. However a larger proportion are not.
- 3.51 The Borough's current housing land supply is 5.1 years. This does not result in a large surplus. As such, it is important to pursue a solution to this issue as soon as possible so that there is not an impact on the Borough's five year supply.
- 3.52 Equally, the Borough is now assessed on the delivery of housing on an annual basis. This is the Housing Delivery Test. If it is not possible to build and complete a large amount of new housing in the Borough over a prolonged period, this would start to impact on our ability to pass the Housing Delivery Test.

Proposed approach to mitigation

- 3.53 An initial nitrogen budget for the Havant Borough Local Plan 2036 was prepared to support the Position Statement. This concludes that the impact arising from all development planned within the Borough to 2036 can be quantified as 2,924 kg/nitrogen/year. However this budget was prepared under version 1 of Natural England's methodology. Version 2 amended the calculations. However the addition of a 20% buffer on the amount of mitigation needed has increased the amount of mitigation needed to offset the impact of the Local Plan's proposed development.
- 3.54 The Position Statement sets out that it is suggested that the most appropriate solution to the situation would be for Government to intervene and address the issue holistically. This could be achieved through a national review of consents of wastewater treatment works to increase the standard for nitrogen emissions. Government could also provide 'mitigation banking' whilst a centrally considered review of the most appropriate mitigation takes place.
- 3.55 It should also be noted that the contribution of new development to wastewater in Chichester and Langstone Harbours SPA is incredibly small. The vast majority of nutrients in the harbours come from agriculture or general coastal background.
- 3.56 As such, the Leader of the Council and the Chief Executive wrote to Government on 28th May to request intervention to address the current issue strategically. A copy of the letter and replies is at Appendix B. It is recommended that the lobbying of Government and relevant agencies and other bodies continues in order to find the most sensible solution to enable development to take place across the Solent area without causing a decrease in water quality.

NON EXEMPT

- 3.57 To provide mitigation for this issue will require, in all likelihood, a number of measures to be enacted. These could include a mix of some of the following:
- Taking land out of agricultural production
 - Implementation of the Havant Thicket Reservoir
 - Implementation of the proposed Brent Goose and Wader refuges
 - Limits on the water efficiency of new developments
 - On-site measures, particularly through sustainable drainage systems
 - Improvements to the Budds Farm and Thornham Wastewater Treatment Works
 - Introduction of habitat management of river corridors
- 3.58 The impact of development is still being considered. A significant issue in Havant Borough is that land prices are comparatively lower than most nearby areas. To get a development off the ground, the income to a landowner has to be proportionally greater than the existing land use would provide them. As such, There has to be a reasonable return to a willing landowner in order for development to come forward. It is considered that the costs of some recreation based mitigation schemes elsewhere in more prosperous parts of the country would not be possible for new development in Havant Borough.
- 3.59 Any mitigation would need to be accommodated within development cash flows. In such scenarios, there are only two areas where it can effectively come from: affordable housing or the Community Infrastructure Levy. As such, the viability study that accompanies the Local Plan will need to be revisited when any mitigation costs are known. It should be highlighted that there cannot be changes to the current CIL charging schedule or the adopted Local Plan's policy towards affordable housing. However, the costs of the mitigation costs will need to be reflected in the Local Plan and CIL Viability Study to reaffirm that the Plan is deliverable as a whole. We will also need to ensure that the charging rates in the revised CIL charging schedule are set at a level which will not undermine the viability of development.
- 3.60 Further detail regarding the current approach towards short term mitigation could be provided in an exempt session.

Work going on at the Partnership for South Hampshire and national level

- 3.61 The Council has been working with neighbouring authorities through the Partnership for South Hampshire (PfSH) on this issue. Through officer working groups (the Planning Officers Group and the Water Quality Working Group), the matter is discussed on a regular basis. The Partnership's Joint Committee has also had extensive discussion on the matter.
- 3.62 In the longer term, a review of the Integrated Water Management Strategy (IWMS) is needed. This is the evidence base document that sets out how the wastewater treatment system will be able to accommodate new development. An IWMS was adopted by the Partnership in 2018. However this contained uncertainty about the capacity of the wastewater treatment system to accommodate new development at some wastewater treatment works in the latter points in the Local Plan period.
- 3.63 However the IWMS approached this in terms of physical capacity of wastewater treatment works as opposed to looking at the ability of the environment to accommodate

NON EXEMPT

any increases in nutrients. It was also completed before the Dutch Case was issued. As such, it will need to be reviewed.

- 3.64 Nationally, the issue is of particular interest to the Ministry of Housing Communities and Local Government (MHCLG). A meeting took place with MHCLG officials together with representatives of the Local Government Association, Homes England and the two DEFRA agencies on 20th July. Particularly since then, MHCLG has been prioritising this issue. Further updates are expected in the coming weeks.
- 3.65 In the longer term, it is perfectly possible that the issue of nutrient neutrality will be addressed in exactly the same way as Bird Aware Solent currently is. That way, it could become a simple and straightforward part of the development process in the Solent. However it is considered that the implementation of such a strategy would be more complicated than the Bird Aware Solent strategy is.
- 3.66 In the short term however, every local authority in the Partnership is focused on being able to lawfully grant planning permissions. As such, most are having to look at the matter in a more insular nature rather than as a partnership. Some are using short term strategies to be able to continue to grant planning permissions.

Ongoing work and analysis

- 3.67 The issue is also still evolving. As it has arisen due to case law, the interpretation of that case law is not fully formed and it could be subject to further case law before it is. As such, Counsel Opinion has been sought on the proposed approach which has confirmed its validity. Nonetheless, it is likely that advice, policy and best practice regarding the matter will emerge moving forwards. As such, it is necessary to maintain a flexible approach and so a recommendation was included to allow the Position Statement to be updated should there be a change in case law, policy, best practice or standing advice.
- 3.68 Officers will continue to look at all the available information in order to assess the scale and the scope of the issue as it affects the Borough. Further detail can be provided through the discussion at the Board meeting.

4.0 Conclusions

- 4.1 The issue regarding nutrient neutral development is complex and evolving. New information is coming to light on a regular basis. As a result, it is necessary to keep re-evaluating the conclusions of that evidence and the appropriate way forward.
- 4.2 In determining this, a number of factors need to be born in mind. First and foremost, it is the Council's decision as a competent authority. This ensures that all risk, legal and otherwise, of these decisions rests with the Council. Whilst other stakeholders play a significant part in this process, it is the Council that must make the ultimate decisions.

5.0 Implications

- 5.1 **Financial implications:** please see main body of the report. In addition, staff resources to address this issue have had to be made available at short notice from across various teams in the Council including Planning (Development Management), Planning (Planning Policy), Property and Legal. This has extended the timescales for the delivery of other projects and resulted in a strain on stretched officer resources. The Planning Policy Team do not undertake time recording.

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- 5.2 Moving forward, the matter will continue to require extensive staff resources to address as the Council continues to re-evaluate the position. Significant resource will be needed to pull together an Implementation Plan and put it into action. This will require input from all the officer teams noted above and a particular necessity to engage with the Council's Finance Team. Any emerging budgetary implications will be brought back to Members in due course if necessary.
- 5.3 The level of resource input that is necessary is considered to constitute a 'new burden', for which Government can, and should, provide additional funding to cover the costs of¹³. This has been done in the past for work required as a result of the Habitats Regulations.
- 5.4 There are also direct costs that are unbudgeted that the Council is having to bear at least in the short term. This includes the cost of legal advice and consultancy support regarding an implementation plan, particularly around impact on development viability. Most of these costs can be passed on to developers through the Implementation Plan. However legal advice in particular cannot.
- 5.5 **Legal:** please see main body of the report.
- 5.6 **Strategy:** The Council has an ambitious regeneration and development agenda moving forward. Ensuring that these can be implemented in a nutrient neutral manner is essential to their delivery.
- 5.7 **Risks:** please see main body of the report.
- 5.8 **Communications:** please see the main body of the report.
- 5.9 **For the Community:** please see the main body of the report.
- 5.10 **Consultation:** no public consultation has taken place. Extensive engagement with Natural England, nearby local authorities and other stakeholders has taken place and should continue to do.

Appendix A: Examples of Appropriate Assessments:

- APP/18/00450 - Forty Acres – a complex HRA involving multiple issues
- APP/19/00041 – a simple HRA addressing only nutrients and recreation – one of the few the Council was able to progress since approving the Position Statement as there was no net increase in population
- APP/19/00341 – an application which is choosing to use the Grampian condition route

Appendix B: Examples of Planning Inspectorate decisions:

- APP/X1735/W/19/3222417 – 1 Northney Cottages – water quality not considered as appeal being dismissed on other grounds
- APP/X1735/W/18/3202960 – 50 Silvester Road – water quality considered in detail
- APP/X1735/W/18/3214079 – Land adjacent to Mandai – criticism of the potential to use a Grampian condition
- APP/Z1775/W/18/3217420 – 32 Norman Road Southsea (Portsmouth City LPA) – water quality considered in detail
- **Appendix C:** Correspondence

¹³ See HM Land Registry for more information at www.gov.uk/government/publications/hm-land-registry-local-land-charges-programme/new-burdens-information#local-authority-funding.

NON EXEMPT

- Letter to Government from the Leader and Chief Executive
- Replies from Kit Malthouse MP.

Background Papers: There are a number of background papers which set out various parties positions and background information (in no particular order):

- [Position Statement on Nutrient Neutral Development \(Havant Borough Council\)](#)
- [Advice on achieving nutrient neutrality for new development in the Solent Region – for Local Planning Authorities \(Natural England\)](#)
- [Deputation on behalf of the South Coast Development Consortium on the Position Statement on Nutrient Neutral Development \(South Coast Development Consortium\)¹⁴](#)
- [Technical Note – Solent and South Downs – Wastewater treatment capacity for new development in the Solent Area \(Environment Agency\)](#)
- [Report to the Partnership for South Hampshire's Joint Committee – PFSH nutrient neutrality update \(Partnership for South Hampshire\)](#)
- [Paper considered by the Partnership for South Hampshire's Joint Committee on 14th October](#)

Agreed and signed off by:

Monitoring Officer: David Brown – 10 October 2019

For S151 Officer: Janette Gill – 8 October 2019

For Head of Legal: Razana Begum – 1 October 2019

Head of Service: Simon Jenkins – 4 October 2019

Cabinet Lead: Cllr Tim Pike – 1 October 2019

Contact Officer: David Hayward

Job Title: Planning Policy Manager

Telephone: 023 9244 6174

E-Mail: david.hayward@havant.gov.uk

¹⁴ The Consortium comprises a number of local, regional and national house builders in the region including: Bargate Homes, Barratt David Wilson Homes, Bellway Homes, Bryan Jezeph Consultancy, CBRS Estates Limited, Foreman Homes, Hampshire Homes, Homes England, Paul Airy Planning Associates Limited, Persimmon Homes, Reside Developments and Taylor Wimpey

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Habitats Regulations Assessment (HRA) Screening and Appropriate Assessment (AA)

PLEASE NOTE: Undertaking the HRA process is the responsibility of Havant Borough Council as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.

HRA drafting date:	12/8/19
HRA completion date:	
Application reference:	APP/18/00450
Application address:	Land at Forty Acres Farm, Havant Road, Havant
Application description:	Erection of 320 dwellings (including a 30% provision of affordable homes), 66 bed care home, provision of public open space, habitat mitigation zone, allotments, closure of existing access and creation of 2 new access points and associated infrastructure following demolition of existing buildings.
Lead Planning Officer:	Lewis Oliver
Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017 (as amended).	

Stage 1 - details of the plan or project	
European site potentially impacted by planning application, plan or project:	<ul style="list-style-type: none"> Chichester & Langstone Harbours Special Protection Area (SPA) Chichester & Langstone Harbours Ramsar site Solent Maritime Special Area of Conservation (SAC) Solent and Dorset Coast Potential Special Protection Area (pSPA)
Is the planning application directly connected with or necessary to the management of the site (if yes, Applicant should have provided details)?	No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.
Are there any other projects or plans that together with the planning application being assessed could affect the site?	<p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity in combination with other development in the Solent area due to the following impacts:</p> <ul style="list-style-type: none"> Increase in recreational pressure Increase in nitrogen deposition leading to a reduction in water quality. <p>The PUSH Spatial Position Statement https://www.push.gov.uk/work/planning-and-</p>

Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

Recreational Pressure

The proposed development is within 5.6km of Chichester & Langstone Harbours SPA/Ramsar. In accordance with advice from Natural England and as detailed in Policy DM24 of the adopted Havant Borough Local Plan (Allocations), Policy E16 of the Pre-Submission Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the Chichester and Langstone Harbour SPA and Ramsar sites.

The proposed development represents a net increase in residential dwellings. Paragraph 6.4 of the Solent Recreation Mitigation Strategy sets out that the “developer contribution will be required for every net additional dwelling within 5.6 kilometres of the boundaries of the Solent Special Protection Areas” (see para 6.3).

As a result, there would be a likely significant effect to the Chichester & Langstone Harbours SPA due to recreation.

Water Quality

The proposed development is within the catchment of a wastewater treatment works that would drain into the Chichester and Langstone Harbours SPA.

Natural England advises that there is a likely significant effect on the Chichester and Langstone Harbour SPA, Chichester and Langstone Harbours Ramsar site, the Solent Maritime SAC and the Solent and Dorset Coast pSPA (the Solent’s European Sites) due to the increase in waste water from the new housing as a result of the Havant Borough Local Plan 2036. Natural England also advises that any development proposed through any planning application providing overnight accommodation which would discharge into the Solent would be likely to cause a significant effect as there is uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the Solent’s European Sites.

Natural England advise that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. This causes eutrophication, which affects vegetation growth and food resources for qualifying species

such that it affects the status and distribution of those species and therefore act against the stated conservation objectives of the Chichester and Langstone Harbour SPA and Ramsar sites. The Partnership for Urban South Hampshire (PUSH), Natural England (NE), and Environment Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment. A Water Quality Working Group has been set up to identify and analyse the existing evidence gaps and evaluate the need for strategic mitigation measures. However, there is currently uncertainty as to whether there is sufficient capacity to accommodate the new housing growth.

Natural England recommends that any new proposals which include overnight accommodation have inevitable waste water implications. These implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Habitats Regulations.

Natural England recommends that the waste water issue is examined within the appropriate assessment and that the existing nutrient and conservation status of the receiving waters be taken into account. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient burdens.

As a result, there would be a likely significant effect to the following European Sites due to water quality:

- Chichester and Langstone Harbours SPA
- Chichester and Langstone Harbours Ramsar site
- Solent Maritime SAC
- Solent and Dorset Coast pSPA

Loss / degradation of supporting habitats

The site has been monitored as part of the Solent Waders and Brent Goose Strategy and is identified as Fields H04B and H04C for the purposes of the study. Using the latest data from winter bird surveys across the Solent (which incorporates spatial considerations such as movements rather than just numbers), H04B has been listed as 'low use' and H04C as a 'secondary support site'.

Wintering bird surveys were undertaken at the site by Havant Borough Council between the years 2012-2015. The survey time was three hours around high tide for three days every month from November to March and consisted of 11 visits to Forty Acre Farm.

No brent geese were recorded utilising the survey area during this period. Two lapwing were observed in the western extent of Forty Acre Farm. These were observed in January so this does not confirm breeding at the site.

A total of 35 species were recorded within the survey area during the WYG wintering bird surveys undertaken between October 2015 and March 2016. Brent geese were noted feeding on the southern extent of the site, west of the industrial area. Red listed curlew were noted along the south eastern extent of the site in the clover ley field, as well as two noted west of the industrial area in the clover ley. Red listed herring gulls were noted flying low over the site. Amber listed oystercatcher were noted on two occasions feeding along the southern boundary of the site, west of the industrial area, as well as seen feeding east of the industrial area in the clover ley field. Amber listed black-headed gull were noted feeding along the southern boundary west of the industrial area.

The proposed development will result in a loss of foraging habitat in the form of H04B (approximately 12.6ha) and the loss of a small part of H04C (approximately 2.4ha). This loss of supporting habitat could result in LSE, and therefore these would require Appropriate Assessment within Stage 2 of an HRA.

As a result, there would be a likely significant effect to the following European Sites due to Loss / degradation of supporting habitats:

- **Chichester and Langstone Harbours SPA**
- **Chichester and Langstone Harbours Ramsar site**
- **Solent Maritime SAC**
- **Butser Hill SAC**
- **Solent and Dorset Coast pSPA**

Construction noise / activity / pollution

Fugitive dust

During construction activity, there is the potential for releases of fugitive dust to result in deleterious impacts on plant growth in habitats up to 50m from the source. This distance is based on guidance from the Institute of Air Quality Management (IAQM, 2014). Given the distance from the designated sites, it is considered to be no potential for construction to result in LSEs, and as such, air pollution during construction will not be carried forward to Appropriate Assessment.

Construction noise /activity

There is potential for construction noise and activity to cause disturbance of SPA qualifying bird species present on site, either using existing habitats or those created as mitigation.

As a result, there would be a likely significant effect to the following European Sites due to construction noise and activity:

- **Chichester and Langstone Harbours SPA**
- **Chichester and Langstone Harbours Ramsar site**
- **Solent Maritime SAC**
- **Butser Hill SAC**
- **Solent and Dorset Coast pSPA**

Would the proposal lead to a likely significant effect on European site integrity? Yes, due to recreational pressure, water quality, Loss / degradation of supporting habitats and Construction noise /activity.

(If yes, continue to Stage 3).

Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

Recreational Pressure

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs. In line with Policy DM24 of adopted Havant Borough Local Plan (Allocations), Policy E16 of the Draft Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a

result of the new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Havant Borough Council formally adopted the Solent Recreation Mitigation Strategy in February 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Size of units	Scale of mitigation per unit	Amount proposed in this scheme	Cost
1 bedroom	£346.00	20	£6,920.00
2 bedroom	£500.00	103	£51,500.00
3 bedroom	£653.00	163	£106,439.00
4 bedroom	£768.00	34	£26,112.00
5 bedroom	£902.00	0	£0.00

Monitoring fee ¹ for this scheme:	£9,548.55
Administration fee ² for this scheme:	£20.00
TOTAL AVOIDANCE AND MITIGATION PACKAGE:	£200,539.55

¹Monitoring fee is 5% of total mitigation cost

²Administration fee is £20 per application

Policy E16 of the Pre-Submission Havant Borough Draft Local Plan 2036 and sets out HBC's approach to securing the appropriate mitigation measures to address the in-combination impact of increased recreational disturbance arising from increased housing development. It states:

"Planning permission will be granted for residential development resulting in a net increase in population that mitigates a likely significant effect on the Solent SPAs"

A legal agreement will be necessary to secure the mitigation package. The applicant has confirmed through a European Site Avoidance and Mitigation Checklist that they commit to providing a mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore the development will not act against the stated conservation objectives of the European sites.

Water Quality

The project being assessed would result in an increase in population in the catchment of several European Sites as set out in stage 2. As advised by Natural England, a permanent significant effect on the Solent SPAs due to the decrease in water quality as a result of new development, is likely. As such, in order to lawfully be permitted, further assessment is needed as to the net nutrient emissions from the site, including any avoidance or mitigation measures proposed.

Havant Borough Council's Cabinet approved the Position Statement on Nutrient Neutral Development on 26 June 2019. This sets out how mitigation can be provided to enable development to take place within Havant Borough whilst avoiding any likelihood of a significant effect on the European Sites identified in stage 2.

The Position Statement sets out that for development on agricultural sites, such as this one, that it would be expected that on-site avoidance and mitigation measures would be used to achieve nutrient neutrality.

Natural England have produced 'Advice on achieving nutrient neutrality for new development in the Solent region'. This sets out a methodology to calculate the nutrient emissions from a development site. The applicant has used this methodology to calculate the nutrient emissions from the site. This calculation has confirmed that the site will not emit a nutrient load into any European Sites. The calculations for this development site are appended to this assessment.

Achieving a position where there are no net nutrient emissions into European Sites from this development involves the use of specific on-site avoidance and mitigation measures.

A legal agreement will be necessary to secure this avoidance and mitigation package in perpetuity. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore the development will not act against the stated conservation objectives of the European sites.

Loss / degradation of supporting habitats

The project being assessed would result in the loss / degradation of existing supporting habitats.

Policy E17 of the Pre-Submission Havant Borough Draft Local Plan 2036 sets out HBC's approach to securing the appropriate mitigation measures to address the in-combination impact, this policy states that:

Development proposals on, or adjacent to, sites which are used by Solent waders and/or Brent Geese will be assessed in line with the appropriate regulations. These proposals will, therefore, require a project level Habitats Regulations Assessment and, if necessary, an Appropriate Assessment. The Council will consider the Solent Waders and Brent Goose (SWBG) Strategy and the latest survey data when making such an assessment.

it states for Secondary Support Areas and low use sites that:

Secondary Support Areas

Development proposals on Secondary Support Areas will only be permitted where either:

*g. A suitable replacement habitat is provided on a like for like basis on or within the locality of the site which is agreed and secured through a costed Habitat Management and Monitoring Plan; or
h. Where it can be demonstrated that criteria g) is not practicable, a smaller suitable replacement area is agreed and secured through a costed Habitat Management and Monitoring Plan and a financial contribution is provided consistent with the SWBG Strategy.*

Low Use

Development proposals on Low Use Sites will only be permitted where:

*i. On site mitigation is provided which is based upon appropriate ecological assessments to the satisfaction of the Council and Natural England; or
j. A financial contribution is provided consistent with the SWBG Strategy.*

In order to maintain and improve the quality of foraging habitat within the mitigation area it is proposed that a suitable improved grassland is established to provide an optimal food source for brent geese. This will comprise a mix of predominantly perennial rye grass and clover and will be

sown as part of the preparation of the site. This has been chosen to provide suitable habitat every year.

In order to further improve the suitability of the site for brent geese, the existing tree line within the site will be removed to improve visibility (brent geese prefer larger field compartments). QUESTION for RJ NE – In consultation want to keep these trees, therefore was going to remove this element?

To improve the habitat suitability for other wading birds (either qualifying species for the SPA or part of the qualifying assemblage) it is proposed that wader scrapes are created within the open space area south of the development site. These will be of irregular shape and depth (up to 0.5m) to create a range of conditions and support different species. The primary objective is to hold water during the winter, but it is anticipated that deeper areas will also hold water for part of the summer and provide an enhancement for breeding birds.

The scrapes will be located to the south of the development site, adjacent to the proposed Sustainable Urban Drainage Systems (SuDS) for the Site. This location provides a number of advantages, primarily the possibility of allowing treated surface water from the SuDS basin to top up the water level in the scrapes. Secondly, it is recommended that the scrapes are irregular in shape to maximise the length of edge habitat (more valuable than the central area). They will also collect coastal flood water in this area of the site.

Management of the main mitigation area will predominately comprise grass cutting. The key objective is to provide forage for brent geese and other waders during the winter, therefore the following timings are recommended:

- Summer cut – July/August leaving arisings to allow nutrients to re-enter soil
 - Autumn cut – Late September removing arisings to leave a short sward for foraging geese
- Any additional sowing if required should take place in August – September (Spring if including clovers).

Other management activities to be completed will include:

- Hedgerows – to be cut in early October (to avoid nesting birds) on three year rotation (each year to be one side or the top)
- Fences and footpaths – management anticipated to be minimal however fence integrity should be monitored annually and repaired as necessary.
- Interpretation boards – no management anticipated however boards should be replaced if necessary
- Scrapes – management to prevent dense vegetation from establishing in margins to comprise of strimming to ground level every two years in late September – early October.

Monitoring will be required to make sure that the management activities are proceeding and to identify any necessary changes to management to continue achieving the management objective (maintain the mitigation area as a 'Primary Support Area' for brent geese). Furthermore, three years of winter bird monitoring will take place followed by annual site visits to monitor management actions.

A legal agreement will be necessary to secure this avoidance and mitigation package in perpetuity. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore the development will not act against the stated conservation objectives of the European sites.

Construction impacts

During the construction phase, noise has the potential to impact on the designated sites. A worst-case scenario of 67.5dB has been modelled at the boundary of the SPA and Ramsar. This falls to 45.2dB during occupation, and would be comparable to occasional impulse events such as car doors slamming. Both levels fall below the 69dB level which is typically considered to cause disturbance to wintering bird species.

However, control measures will be included in the Construction Environment Management Plan (CEMP) e.g. minimising idling by machinery, locating construction compounds and maintaining machinery to further reduce these noise levels. These measures will include:

- An on-site speed limit of 10mph will be enforced for all traffic. Drivers of vehicles will be advised of the speed limits through the erection of signs;
- Mechanical plant used on site will be fitted with effective exhaust silencers. White noise' type reversing warnings should be used on mobile plant in preference to 'bleepers', in order to minimise intrusion;
- All plant will be maintained in good working order and will be shut down when not in use;
- Generators and compressors will be of the "noise reduced" variety and fitted with properly lined and sealed acoustic covers;
- In all cases, engine and/or machinery covers will be closed whenever the machines or engines are in use; and
- All pneumatic percussive tools will be fitted with mufflers or silencers as recommended by the equipment manufactures. All mechanical static plant will be enclosed by acoustic sheds or screens.

Subject to the imposition of the condition set out above, it is considered that the significant effect due to noise, disturbance and construction related pollutants which would have been likely, has been suitably avoided and mitigated. As such, no likelihood of a significant effect remains.

Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England

This assessment represents Havant Borough Council's Appropriate Assessment as a Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2018.

This assessment concludes that the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European sites.

The authority has concluded that the adverse effects arising from the proposal are wholly consistent with the effects detailed in the Solent Recreation Mitigation Strategy with regards recreational disturbance. The adverse effects are also consistent with the effects detailed in the Position Statement on Nutrient Neutral Development with regards water quality. The authority has concluded that the adverse effects arising from the proposal are wholly consistent with the effects and mitigation proposals detailed in the Solent Waders and Brent Goose (SWBG) Strategy. There are likely significant effects in the absence of avoidance and mitigation measures from construction impacts and noise, disturbance and construction related pollutants. Avoidance and mitigation packages have been proposed.

The authority's assessment is that the application complies with these strategies and the potential to provide mitigation to remove the significant effects that otherwise would have been likely. It can

therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

Natural England Officer:

Summary of Natural England's comments:

Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement

PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.

HRA drafting date:	26 th April 2019
HRA completion date:	21 May 2019
Application reference:	APP/19/00041
Application address:	24 Sultan Road, Emsworth, PO10 7PP
Application description:	First floor extension and conversion of house into 2No.1bed flats.
Lead Planning Officer:	Bee Crawford & David Hayward
Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017.	

Stage 1 - details of the plan or project

European site potentially impacted by planning application, plan or project:	<ul style="list-style-type: none"> ▪ Chichester & Langstone Harbours Special Protection Area (SPA) ▪ Chichester & Langstone Harbours Ramsar site ▪ Solent Maritime Special Area of Conservation (SAC) ▪ Solent and Dorset Coast Potential Special Protection Area (pSPA)
Is the planning application directly connected with or necessary to the management of the site (if yes, Applicant should have provided details)?	No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.
Are there any other projects or plans that together with the planning application being assessed could affect the site?	<p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity in combination with other development in the Solent area due to the following impacts:</p> <ul style="list-style-type: none"> ▪ Increase in recreational pressure ▪ Increase in nitrogen deposition leading to a reduction in water quality. <p>The PUSH Spatial Position Statement (https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire.</p>

Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

Recreational Pressure

The proposed development is within 5.6km of Chichester & Langstone Harbours SPA/Ramsar. In accordance with advice from Natural England and as detailed in Policy DM24 of the adopted Havant Borough Local Plan (Allocations), Policy E16 of the Pre-Submission Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the Chichester and Langstone Harbour SPA and Ramsar sites.

Water Quality

There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some designated sites. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent.

In terms of calculating the net increase in population for the purposes of assessing the impact on water quality, it is appropriate to use the conversion in Policy E9 of the Pre-Submission Havant Borough Local Plan 2036. This is:

Number of Bedrooms per Dwelling	Number of Persons per Dwelling
1 bedroom	1
2 bedrooms	2
3 bedrooms	2.5
4 bedrooms or more	3

Table 5: Applying the Open Space Standard

The existing two bedroom dwelling would have 2 people occupying the property. If sub-divided into 2 x 1 bedroom dwellings, there would be 2 people occupying the development. As such, there is no population increase.

As a result there is no likely significant effect on the Chichester and Langstone Harbours SPA, Solent Maritime SAC and Solent and Dorset Coast pSPA due to change in water quality.

This represents a different conclusion to the screening regarding disturbance as a result of recreation. However it is considered that for recreation, the change in households as opposed to population is most crucial. Recreational habits are likely to often take place on a household basis

as opposed to person by person. For example, all members of the household walking a dog along the coast. However with water quality, this is a measure simply of population. As there would not be an increase in population, there is thus no decrease in water quality.

Would the proposal lead to a likely significant effect on European site integrity? YES

(If yes, continue to Stage 3).

Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs. In line with Policy DM24 of adopted Havant Borough Local Plan (Allocations), Policy E16 of the Draft Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Havant Borough Council formally adopted the Solent Recreation Mitigation Strategy in February 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Size of units	Scale of mitigation per unit	Amount proposed in this scheme	Cost
1 bedroom	£337.00	1	£337.00

Monitoring fee ¹ for this scheme:	£16.85
Administration fee ² for this scheme:	£20.00
TOTAL AVOIDANCE AND MITIGATION PACKAGE:	£373.85

¹Monitoring fee is 5% of total mitigation cost

²Administration fee is £20 per application

Policy E16 of the Havant Borough Draft Local Plan 2016 sets out HBC's approach to securing the appropriate mitigation measures to address the in-combination impact of increased recreational disturbance arising from increased housing development. It states:

"Planning permission will be granted for residential development resulting in a net increase in population that mitigates a likely significant effect on the Solent SPAs"

A legal agreement will be necessary to secure the mitigation package. Without the security of the mitigation being provide through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed

development will not affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England

Having concluded that the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European and Internationally protected sites, this represents the authorities Appropriate Assessment as Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

The authority has concluded that the adverse effects arising from the proposal are wholly consistent with and inclusive of the effects detailed in the Solent Recreation Mitigation Strategy. The authority's assessment is that the application complies with this strategy and that it can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

Natural England Officer: Rebecca Berry

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

Habitats Regulations Assessment (HRA) Screening and Appropriate Assessment (AA)

PLEASE NOTE: Undertaking the HRA process is the responsibility of Havant Borough Council as the Competent Authority for the purpose of the Habitats Regulations. However, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.

HRA drafting date:	21 August 2019
HRA completion date:	
Application reference:	APP/19/00341
Application address:	24-26 Park Parade, Havant
Application description:	Conversion of loft into one bedroom self-contained flat, installation of three front roof lights and four rear dormer windows.
Lead Planning Officer:	Bee Crawford
Please note that all references in this assessment to the 'Habitats Regulations' refer to The Conservation of Habitats and Species Regulations 2017 (as amended).	

Stage 1 - details of the plan or project	
European site potentially impacted by planning application, plan or project:	<ul style="list-style-type: none"> ▪ Chichester & Langstone Harbours Special Protection Area (SPA) ▪ Chichester & Langstone Harbours Ramsar site ▪ Solent Maritime Special Area of Conservation (SAC) ▪ Solent and Dorset Coast Potential Special Protection Area (pSPA)
Is the planning application directly connected with or necessary to the management of the site (if yes, Applicant should have provided details)?	No. The development consists of an increase in residential dwellings, which is neither connected to nor necessary to the management of any European site.
Are there any other projects or plans that together with the planning application being assessed could affect the site?	<p>Yes. All new housing development within 5.6km of the Solent SPAs is considered to contribute towards an impact on site integrity in combination with other development in the Solent area due to the following impacts:</p> <ul style="list-style-type: none"> ▪ Increase in recreational pressure ▪ Increase in nitrogen deposition leading to a reduction in water quality. <p>The PUSH Spatial Position Statement (https://www.push.gov.uk/work/planning-and-infrastructure/push-position-statement/) sets out the scale and distribution of housebuilding which is being planned for across South Hampshire.</p>

Stage 2 - HRA screening assessment

Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.

Recreational Pressure

The proposed development is within 5.6km of Chichester & Langstone Harbours SPA/Ramsar. In accordance with advice from Natural England and as detailed in Policy DM24 of the adopted Havant Borough Local Plan (Allocations), Policy E16 of the Pre-Submission Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a net increase in housing development within 5.6km of the Solent SPAs is likely to result in impacts to the integrity of those sites through a consequent increase in recreational disturbance.

Development within the 5.6km zone will increase the human population at the coast and thus increase the level of recreation and disturbance of bird species. The impacts of recreational disturbance (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as recreation can cause important habitat to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by human recreational activities (terrestrial and water-based) and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the Chichester and Langstone Harbour SPA and Ramsar sites.

The proposed development represents a net increase in residential dwellings. Paragraph 6.4 of the Solent Recreation Mitigation Strategy sets out that the “developer contribution will be required for every net additional dwelling within 5.6 kilometres of the boundaries of the Solent Special Protection Areas” (see para 6.3).

As a result, there would be a likely significant effect to the Chichester & Langstone Harbours SPA due to recreation.

Water Quality

The proposed development is within the catchment of a wastewater treatment works that would drain into the Chichester and Langstone Harbours SPA.

Natural England advises that there is a likely significant effect on the Chichester and Langstone Harbour SPA, Chichester and Langstone Harbours Ramsar site, the Solent Maritime SAC and the Solent and Dorset Coast pSPA (the Solent's European Sites) due to the increase in waste water from the new housing as a result of the Havant Borough Local Plan 2036. Natural England also advises that any development proposed through any planning application providing overnight accommodation which would discharge into the Solent would be likely to cause a significant effect as there is uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the Solent's European Sites.

Natural England advise that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. This causes eutrophication, which affects vegetation growth and food resources for qualifying species such that it affects the status and distribution of those species and therefore act against the stated conservation objectives of the Chichester and Langstone Harbour SPA and Ramsar sites. The Partnership for Urban South Hampshire (PUSH), Natural England (NE), and Environment

Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment. A Water Quality Working Group has been set up to identify and analyse the existing evidence gaps and evaluate the need for strategic mitigation measures. However, there is currently uncertainty as to whether there is sufficient capacity to accommodate the new housing growth.

Natural England recommends that any new proposals which include overnight accommodation have inevitable waste water implications. These implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Habitats Regulations.

Natural England recommends that the waste water issue is examined within the appropriate assessment and that the existing nutrient and conservation status of the receiving waters be taken into account. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient burdens.

As a result, there would be a likely significant effect to the following European Sites due to water quality:

- Chichester and Langstone Harbours SPA
- Chichester and Langstone Harbours Ramsar site
- Solent Maritime SAC
- Solent and Dorset Coast pSPA

Would the proposal lead to a likely significant effect on European site integrity? Yes, due to recreational pressure and water quality.

(If yes, continue to Stage 3).

Stage 3 - Appropriate Assessment

Appropriate Assessment under Regulation 63(1) - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

Recreational Pressure

The project being assessed would result in a net increase of dwellings within 5.6km of the Solent SPAs. In line with Policy DM24 of adopted Havant Borough Local Plan (Allocations), Policy E16 of the Draft Havant Borough Local Plan 2036 and the Solent Recreation Mitigation Strategy, a permanent significant effect on the Solent SPAs due to increase in recreational disturbance as a result of the new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures.

Havant Borough Council formally adopted the Solent Recreation Mitigation Strategy in February 2018. The SRMP provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. This strategy represents a partnership approach to the issue which has been endorsed by Natural England.

As set out in the Solent Recreation Mitigation Strategy, an appropriate scale of mitigation for this scheme would be:

Size of units	Scale of mitigation per unit	Amount proposed in this scheme	Cost
1 bedroom	£346.00	1	£346.00

Monitoring fee ¹ for this scheme:	£17.30
Administration fee ² for this scheme:	£20.00
TOTAL AVOIDANCE AND MITIGATION PACKAGE:	£383.30

¹Monitoring fee is 5% of total mitigation cost

²Administration fee is £20 per application

Policy E16 of the Pre-Submission Havant Borough Draft Local Plan 2036 and sets out HBC's approach to securing the appropriate mitigation measures to address the in-combination impact of increased recreational disturbance arising from increased housing development. It states:

"Planning permission will be granted for residential development resulting in a net increase in population that mitigates a likely significant effect on the Solent SPAs"

A legal agreement will be necessary to secure the mitigation package. The applicant has confirmed through a European Site Avoidance and Mitigation Checklist that they commit to providing a mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore the development will not act against the stated conservation objectives of the European sites.

Water Quality

The project being assessed would result in an increase in population in the catchment of several European Sites as set out in stage 2. As advised by Natural England, a permanent significant effect on the Solent SPAs due to the decrease in water quality as a result of new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and mitigation measures to address the likely significant effect on water quality.

Havant Borough Council's Cabinet approved the Position Statement on Nutrient Neutral Development on 26 June 2019. This sets out how mitigation can be provided to enable development to take place within Havant Borough whilst avoiding any likelihood of a significant effect on the European Sites identified in stage 2.

The Position Statement sets out that mitigation would be secured through a Grampian condition, requiring the mitigation package to be agreed, provided to the Council and implemented prior to the occupation of the development.

A legal agreement will be necessary to secure the mitigation package. The applicant has confirmed through a European Site Avoidance and Mitigation Checklist that they commit to providing a mitigation package. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured through the planning process, the proposed development will not affect the status and distribution of key bird species and therefore the development will not act against the stated conservation objectives of the European sites.

Stage 4 – Summary of the Appropriate Assessment (To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England)

This assessment represents Havant Borough council's Appropriate Assessment as a Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2012.

This assessment concludes that the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European sites.

The authority has concluded that the adverse effects arising from the proposal are wholly consistent with the effects detailed in the Solent Recreation Mitigation Strategy with regards recreational disturbance. The adverse effects are also consistent with the effects detailed in the Position Statement on Nutrient Neutral Development with regards water quality.

The authority's assessment is that the application complies with these strategies and the potential to provide mitigation to remove the significant effects that otherwise would have been likely. It can therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

Natural England Officer:

Nutrient Neutrality

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

Natural England is aware that your authority has adopted an interim strategy using Grampian conditions to address nutrient impacts from developments currently in the planning system and we have been working with the Council to develop this approach. It is noted that the mitigation would be secured through a Grampian condition, requiring the mitigation package to be agreed, provided to the Council and implemented prior to the occupation of the development.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. With regard to deterioration of the water environment, it is noted that the approach to address the positive nitrogen budget for this development is to offset against the interim strategy, with measures to ensure this approach can be adequately secured and accounted for.

It is Natural England's view that in this case, provided the Council as competent authority, is satisfied that the approach will ensure the proposal is nutrient neutral and the necessary measures can be fully secured; Natural England raises no further concerns.

Please consult Natural England on the discharge of the Grampian condition.

Solent Recreation Mitigation Strategy

This application is within 5.6km of Chichester and Langstone Harbours SPA and will lead to a net increase in residential accommodation. Natural England is aware that Havant Borough Council has adopted a planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP).

The Appropriate Assessment has taken this into consideration, therefore, providing the appropriate mitigation is secured by any approval, Natural England are satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European site, and has no objection to this aspect of the application.

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Appeal Decision

Site visit made on 11 June 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2019

Appeal Ref: APP/X1735/W/19/3222417

1 Northney Cottages, Northney Road, Hayling Island PO11 0ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Wilson against the decision of Havant Borough Council.
 - The application Ref APP/18/00593, dated 6 June 2018, was refused by notice dated 13 August 2018.
 - The development proposed is erection of a pair of semi-detached houses on former garden of number 1 Northney Cottages, Northney Road with new access and parking (Resubmission of APP/17/00304).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development provided in the application form has been amended in subsequent documents. In the interests of clarity, and having regard to the comments provided by the main parties, I have amended the description of development to refer to 1 Northney Cottages, Northney Road.
3. The National Planning Policy Framework (the Framework), which was revised in July 2018, was subsequently updated on 19 February 2019. References to the Framework within this decision relate to the latest version published in 2019.
4. The main parties have referred to the Council's Draft Havant Borough Local Plan 2036. However, this Draft Borough Local Plan has yet to be found sound, and therefore very limited weight can be ascribed to it at this point.

Main Issues

5. The main issues are:
 - Whether the appeal site constitutes an appropriate location for additional residential development;
 - The effect of the proposal on the character and appearance of the area, including the adjacent Chichester Harbour Area of Outstanding Natural Beauty (AONB); and
 - The effect of the proposal on the Solent Special Protection Areas (SPAs).

Reasons

Location

6. Policy CS17 of the Havant Borough Core Strategy - March 2011 (CS) sets out the settlement strategy for the area administered by the Council, explaining where development proposals are considered acceptable in principle. The strategy seeks to concentrate new development within the five urban areas of Havant, Leigh Park, Waterlooville, Emsworth and Hayling Island. Policy AL2 of the Havant Borough Local Plan (Allocations) – July 2014 (LP) further emphasises the Council's settlement strategy, by seeking to concentrate development proposals within Urban Area Boundaries and Undeveloped Gaps between Settlements, and makes clear that land outside the defined urban area of Hayling Island is 'non-urban' rather than undeveloped gap.
7. As shown on the Proposals Map, the appeal site lies within the village of Northney, outside the urban areas of Hayling Island. It is therefore located in a non-urban area where, in accordance with Policy CS17, development will only be permitted if it is consistent with the policies for the countryside set out in national policy.
8. The proposed pair of semi-detached dwellings would be constructed between existing residential properties, within the village of Northney, and would therefore not be considered as the development of isolated homes in the countryside for the purposes of paragraph 79 of the Framework.
9. Paragraph 78 of the Framework makes clear that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. St Peter's Church and the North Hayling Recreation Hall lie within relative proximity to the appeal site, as well as Northney Farm Tearooms. The appellant suggests that the site also lies within walking distance of a service station and a public house, which can be accessed using footpaths, but these are located further away.
10. Whilst frequent and regular bus services are available to travel to Eaststoke and Havant, these are located at some distance away from the appeal site, making these services less attractive as an alternative mode of transport to the private car. Furthermore, in the absence of evidence to demonstrate the service frequency, this is a consideration which I can only attach limited weight to. Equally, the Hayling Island Carshare scheme would require future occupiers to plan their journeys in advance and would lack the degree of flexibility required to deter people from using private motor vehicles.
11. By reason of the limited range of services available within the village, and for convenience purposes, there is a greater likelihood that for the large majority of trips, residents would rely on private motor vehicles to travel further afield, to access most everyday facilities (e.g. cultural, recreational, employment, retail, etc).
12. The appeal site forms part of an existing side garden area, which currently serves 1 Northney Cottages. My attention has been drawn to the *Dartford*¹ judgement, which confirmed that the definition of 'previously developed land' in the Framework cannot be read to exclude private residential gardens not located in built-up areas. Whilst, as shown on the proposals map, the site clearly sits outside the urban area, it nevertheless forms part of the village of Northney and thus part of its built-up envelope. With this in mind, the appeal

¹ Dartford Borough Council v Secretary of State for Communities and Local Government [2016] EWHC 635 (Admin).

site is considered as a residential garden within a built-up area, which is excluded from the definition of previously developed land contained within the Framework. Even if I were to treat the appeal site as previously developed land, this would not overcome the significant harm which I have identified in respect of the site's accessibility to local facilities and services.

13. The appellant has referred to a scheme for the erection of a dwellinghouse outside of any settlement boundary policy, which was granted by Basingstoke and Deane Borough Council². However, I am not convinced that the circumstances that applied to this particular scheme constitute a direct parallel to the appeal before me, notably in respect of location and development plan policy. In any event, I am required to determine the proposal on its individual merits.
14. I therefore conclude that the appeal site would not constitute an appropriate location for new residential development, and would therefore conflict with CS Policy CS17 and LP Policy AL2, which seek to primarily focus new developments within existing urban areas. It would also not accord with the aims of the Framework relating to development in the countryside.

Character and appearance

15. Located immediately adjacent to the Chichester Harbour AONB, the appeal site forms part of a village characterised by agricultural buildings and residential properties of various types and sizes, including bungalows, detached and semi-detached dwellings which follow a linear pattern of development along the main road. This, together with the mature hedges, surrounding landscape and open fields, give the area a pleasant semi-rural character. The appeal site comprises a semi-detached dwelling, which benefits from a large garden area to the side and rear of the property.
16. The proposal would result in a significant intensification of development on the plot, and close the visual gap which currently makes an important contribution to the character and appearance of this area. The resulting scheme would consolidate development along this stretch of Northney Road, contrasting with the open fields opposite. The appeal scheme would also include extensive areas of hardstanding required to provide the car parking spaces and associated vehicular access.
17. Cumulatively, these elements would significantly erode the spacious nature of the site, and lead to an urbanisation of the plot, which would appear at odds with the semi-rural character which defines this area. The harm would be compounded by the removal of the mature hedge to the front and side boundaries of the site. Whilst the proposal includes the planting of a new hedge it would inevitably take time to become established and provide effective screening.
18. The appeal site may not benefit from the statutory protection afforded to AONBs, but its contribution to the setting of the Chichester Harbour AONB must nevertheless be considered and, as set out in the Framework, great weight should be given to conserving the landscape and scenic beauty of this sensitive area. The proposed development would result in the loss of an important visual gap, which currently provides views to the Chichester Harbour AONB. Whilst

² Local Planning Authority Reference 17/01418/FUL.

the detrimental effect to the setting of the AONB would only be limited, this adds to the harm identified above, and great weight should be given to that harm.

19. The proposal would unacceptably harm the semi-rural character and appearance of the area, including the setting of the Chichester Harbour AONB. Consequently, it would be contrary to CS Policies CS11, CS16, CS17 and DM9 and LP Policy AL2. Amongst other things, these policies seek to protect and enhance the Borough's special environment (including the AONB and its setting), and require development proposals to identify and respond positively to existing features of local character. For similar reasons, the proposal would be contrary to the Framework and the advice contained within Northney and Tye Village Design Statement, notably because it seeks to preserve the characteristics of this rural settlement.

Solent SPAs

20. The appeal site lies within proximity to the Solent SPAs. There is a need to contribute towards mitigation measures due to the potential adverse impact that residential development may cause to these sensitive areas, in the form of financial contributions which are normally secured through planning obligations.
21. As I am dismissing this appeal on other substantive grounds, this is not a matter which needs to be considered further here. However, had the development been considered acceptable in all other respects, I would have had to be satisfied that an Appropriate Assessment had been undertaken, and of the effectiveness of the suggested mitigation measures, to ensure the proposal's compliance with Habitats Regulations, in light of the *People over Wind*³ decision by the Court of Justice of the European Union.

Conclusion

22. For the reasons detailed above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR

³ People over Wind, Peter Sweetman v Coillte Teoranta, Case C-323/17.



Appeal Decision

Site visit made on 12 March 2019

by Robert Mellor BSc (EstMan) DipTRP Dip DesBEnv DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2019

Appeal Ref: APP/X1735/W/18/3202960

50 Silvester Road, Waterlooville, Hampshire PO8 8TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr P Rex against the decision of Havant Borough Council.
 - The application Ref APP/17/01121, dated 7 February 2018, was refused by notice dated 29 March 2018.
 - The description of the proposed development was revised during the application and appeared in the decision notice and appeal form as: *'Demolition of existing outbuildings and conservatory, construction of 1 No. 3 bed detached bungalow with associated car port, revised drive and landscaping'*.
-

DECISION

1. The appeal is dismissed.

PROCEDURAL MATTERS

2. The appeal has been determined on the basis of the above revised description and the revised red line defining the application site which excluded the ditch along the northern boundary.

MAIN ISSUES

3. Planning permission was refused because of a claimed adverse effect on the amenity of neighbouring occupiers.
4. Following the decision and having regard to the provisions of the Habitat Regulations¹, the Council has also pointed to a failure to secure mitigation for an adverse effect on coastal Special Protection Areas (SPA) from additional recreational pressure created by residential development.
5. During consultation on a draft Appropriate Assessment of the effect on the SPAs and proposed mitigation of recreational pressures, Natural England (the Statutory Nature Conservation Body) raised a further issue concerning a likely significant effect of additional residential development on water quality.
6. I therefore now consider the main issues to be: the effect of the development on the living conditions of neighbouring occupiers with particular regard to privacy and to noise and disturbance from vehicle movements; and the effect on ecology and bio-diversity.

¹ Conservation of Habitats and Species Regulations (England and Wales) 2017 (as amended)

REASONS

Living Conditions

7. The proposal would include the demolition of an existing single garage serving No 50 Silvester Road and the extension of the existing driveway beyond that garage to provide vehicular and pedestrian access to the proposed bungalow on a backland site within the present rear garden of No 50.
8. Policy CS16 of the Havant Borough Core strategy 2011 provides, amongst other things, that development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.
9. Following the demolition of the existing garage the extended driveway would pass close to the boundary with the neighbouring semi-detached house at 48a Silvester Road. The two-storey flank elevation of that house stands about 1m from the boundary which is marked by a wooden fence. There is a half-glazed door at ground floor level which appears to be unused as there is shelving across it. The window has obscure glazing. There is a further obscure glazed window at first floor level which may serve a bathroom. Attached at the rear of the house is a fully-glazed full-width conservatory. The conservatory has clear glazing to all sides. The side facing the appeal property had drawn blinds at the time of my visit.
10. As the appeal proposal is for a low-set bungalow, sited well to the rear of the frontage properties in Silvester Road, I do not consider that there would be significant overlooking between windows or unacceptable standards of privacy. Suitable privacy between gardens can be provided by fencing, including in relation to the Kings Road properties at the rear.
11. The submitted drawing indicates an opportunity for screen planting adjacent to part of the boundary with No 48a which could provide enhanced mutual privacy. That would include tree planting. The trees would need to be at least 3m from the edge of the sewer that crosses the site. That may limit the northern extent of the planting but would not prevent screen planting where it would have the most effect. The precise location of that planting could be determined by condition were the appeal to be allowed.
12. In 1990 an appeal (ref T/APP/X1735/A/89/143949) was dismissed in respect of a proposal to erect a dwelling house and 2 double garages on approximately the same site as the current appeal site and with a shared driveway in a similar position. One of those double garages would have served the appeal dwelling and the other would have served the retained dwelling at No 50. Thus, the driveway would have carried the traffic for two properties. The disturbance created by those movements was one of the reasons for the dismissal of that appeal.
13. In the current proposal the driveway would again pass between the flank elevations and rear gardens of Nos 50 and 48a to reach the proposed car port near to the long rear garden at No 52a. However, the driveway would thus only carry the traffic for the single new dwelling. There would be parking for the retained dwelling at No 50 at the front of that property adjacent to the street where there are already many vehicle movements. That would result in

materially reduced movements along the driveway adjacent to the boundary by comparison with the dismissed 1990 appeal scheme.

14. It is not unusual in a suburban road for a driveway to a single dwelling to pass close to a neighbouring dwelling or its garden. Whilst there would be some additional brief noise from vehicle movements and possible fleeting disturbance by headlights at night, I do not consider that this would here result in unacceptable harm to the amenity of neighbouring occupiers at Nos 48a, 50 or 52a. The latter property has a long rear garden and the car port would only adjoin a short length of the boundary. Neither would there be unacceptable harm to the privacy of the neighbours. The proposal therefore accords with CS Policy CS16.

Consistency

15. The Appellant points out that the Council has recently granted permission nearby for a backland development of two dwellings with a shared access drive passing between (and close to) between Nos 78 and 80 Silvester Road (Council ref. APP/17/00530). In that case both of those existing dwellings have main windows directly facing that access. There would be more traffic movements along that drive than in the present case.
16. That arrangement was considered acceptable by the Council on the basis that the two frontage dwellings were controlled by the same developer and were included in the application site. Nevertheless, the Council must have concluded that the public interest would be served in that acceptable living conditions would be created for future occupiers of those frontage dwellings, notwithstanding the greater number of movements and the proximity of the facing windows to vehicle movements. It follows that a lesser degree of movement in the present case would also result in acceptable living conditions and that the development would be consistent with that recent decision by the Council in that regard.

Ecology and Biodiversity (including Appropriate Assessment)

17. A previous Appropriate Assessment of the Council's Allocations Plan had concluded that any net increase in residential development in the area would have a likely significant effect on the Solent SPAs that would require mitigation.
18. Since the subject planning permission was refused in March 2018, a ruling of the European Court of Justice in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta* concluded that an Appropriate Assessment is required when a proposal would result (alone or in combination with other development) in a likely significant effect on a European Site such as a Special Protection Area before taking account of any proposed mitigation.
19. Whilst there are several international nature conservation designations around the Solent, the most proximate to the appeal site is the Chichester and Langstone Harbours SPA. The site conservation objectives of the SPA are to maintain or restore the populations of the qualifying features (over-wintering birds) and to maintain or restore the distribution of the qualifying features within the site.

Recreational Pressures

20. CS Policy DM24 provides in summary that planning permission will be granted for development that avoids or mitigates a likely significant effect on Special Protection Areas (SPA) caused by recreational disturbance and that necessary mitigation can be provided by measures which may include a financial contribution.
21. Because the proposed development would, in combination with others, accommodate significantly more people in the area, there is likely to be increased demand for recreational activities. The Chichester and Langstone Harbours SPA in particular would be an attractive destination for activities such as dog-walking with the potential to disturb the over-wintering birds and their habitat which are qualifying features of the SPA. In the terms of the Habitats Regulations there is thus an identifiable pathway of effect and a likely significant effect on the qualifying features, as also recognised by Policy DM24.
22. Mitigation is nevertheless available for these recreational impacts in the form of the Solent Mitigation Strategy which aims to prevent disturbance from recreational activities by measures which include: the employment of coastal rangers; education initiatives; measures to encourage responsible dog-walking; codes of conduct for coastal activities; site-specific projects to better manage visitors and provide secure habitats for birds; the provision of new or enhanced greenspaces as an alternative to visiting the coast; and coordination of the above activities. Implementation is to be funded by contributions based on the number of bedrooms in new properties.
23. The Appellant has already paid the requested financial contribution to Havant Borough Council which is part of a partnership supporting this strategy and I have no reason to doubt that it will be used for the stated mitigation purposes. On that basis I conclude that the recreation mitigation would prevent associated harm from recreational pressures generated by the development to the integrity of the qualifying features of the Chichester and Langstone Harbours SPA (and also avoid any harm to the other protected areas covered by the same strategy that are more remote from the site). The development would therefore accord with Policy DM24 in that regard.

Water Quality

24. Natural England advises that there are high levels of nitrogen and phosphorus input to the water environment of the Solent region caused by wastewater from existing housing and from agricultural sources and that these nutrients are causing eutrophication at the designated nature conservation sites which include the Chichester and Langstone Harbours SPA. This results in dense mats of green algae that are impacting on the Solent's protected habitats and bird species.
25. Natural England further advises that there is uncertainty as to whether new housing growth will further deteriorate designated sites. Work on this issue is on-going with the local planning authorities, the Environment Agency and the water companies. That may lead to identified mitigation measures in the future. However, no mitigation strategy has yet been developed and no interim approach has yet been set up by Havant Borough Council, although it is being progressed. In the meantime, Natural England advises that one way to

address the uncertainty is to achieve nutrient neutrality whereby an individual scheme would not add to nutrient burdens.

26. In the present case, Havant Borough Council has calculated that the wastewater total nitrogen load arising from the planned development of a single dwelling within the existing garden would be 0.99576563 Kg/TN/year.
27. As a redevelopment of existing urban land there would be none of the mitigation that might be expected from a reduction in the nitrogen local from developing agricultural land. The proposed development would not be nutrient neutral. Natural England concludes that it is not possible to ascertain that the proposal will not result in adverse effects on the site's integrity and that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.
28. In these circumstances the Regulations provide that planning permission can only be granted if the proposal meets the following tests:
- there are no alternative solutions to the proposed development;
 - there are imperative reasons of overriding public interest; and
 - there are suitable compensatory measures secured (for example a replacement habitat).
29. On the evidence before me I conclude that none of these tests are satisfied and that the appeal must therefore be dismissed on the grounds of the uncertain but likely adverse effects of waste water from this development, in combination with other developments, on the site integrity of the Chichester and Langstone Harbours SPA and other similarly protected areas around the Solent.
30. I understand that the position is similar in respect of numerous other current development proposals in South Hampshire. It possible that an appropriate mitigation strategy may be developed at a future date, but that possibility would not be an adequate basis to support the granting of planning permission at the present time.

Conclusions

31. I have taken account of all other representations. In particular I acknowledge that the proposal would have the social and economic benefits of providing an additional dwelling. However, having regard to the provisions of the Regulations, that is not sufficient to override the likely environmental harm of the development in combination with other residential development in the wider area.

Robert Mellor

INSPECTOR



Appeal Decision

Site visit made on 11 June 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/X1735/W/18/3214079

Land adjacent to Mandai, St Peters Road, Hayling Island PO11 0RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Laurence Stanley against the decision of Havant Borough Council.
 - The application Ref APP/18/00207, dated 15 February 2018, was refused by notice dated 21 September 2018.
 - The development proposed is use of land for touring caravan site.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Laurence Stanley against Havant Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The National Planning Policy Framework (the Framework), which was revised in July 2018, was subsequently updated on 19 February 2019. References to the Framework within this decision relate to the latest version published in 2019.
4. The main parties have referred to the Council's Draft Havant Borough Local Plan 2036. However, this Draft Borough Local Plan has yet to be found sound, and therefore very limited weight can be ascribed to it at this point.
5. Within the decision notice, the Council's reason for refusal refers to Policy CS9 of the Havant Borough Core Strategy – March 2011 (CS). As part of their submissions, the Council has however clarified that CS Policy CS9 (Housing) was quoted in error, and that CS Policies CS5 (Tourism) and CS16 (High Quality Design) should have instead been referred to within the reason for refusal. I shall proceed on this basis.

Main Issues

6. Following the publication of a Position statement on nutrient neutral development¹, the Council has submitted further information in respect of the effect of the proposal on the Solent Special Protection Areas. This notably concerns the likely effects from proposals providing overnight accommodation on water quality. Both main parties were provided the opportunity to comment on the information submitted by the Council.

¹ Adopted by Havant Borough Council's Cabinet on 26 June 2019.

7. I therefore now consider the main issues to be:

- The effect of the proposal on the Solent Special Protection Areas (SPAs); and
- The effect on the character and appearance of the area, having particular regard to the site's location within the open countryside.

Reasons

Solent SPAs

8. The appeal site lies within proximity to the Solent SPAs, which are protected sites designated under the Birds European Directive, as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), setting out a strict system of protection for European Sites and European Protected Species. Natural England has recently issued revised advice in respect of increased levels of nitrogen and phosphorous input to the water environment in the Solent, causing a dense growth of certain plants, otherwise known as eutrophication which affects the species using the Solent.
9. The Council's position statement, which reflects Natural England's advice, clearly states that forms of development providing overnight accommodation, such as the appeal proposal, are considered to increase nitrogen and thus cause likely significant effects on European Sites. In such circumstances, the Habitats Regulations state that an Appropriate Assessment (AA) is carried out.
10. Having regard to the nature of the proposed development and the increased risk which would stem from the additional waste water as a result of the proposed use, I consider that in the absence of mitigation measures, the appeal scheme would present likely significant effects on the Solent SPAs which, either alone or in combination with other plans and projects, could adversely affect the integrity of these protected sites.
11. The Council's position statement advises that an avoidance and mitigation package will be necessary for almost all proposals which, it is suggested, can be addressed by way of Grampian conditions. The suggested condition would notably require a mitigation package addressing the additional nutrient input arising from the development to be agreed with the Local Planning Authority, and a financial contribution to facilitate the delivery of the strategic mitigation package.
12. However, I note that there is currently no agreed strategy for collecting contributions for that particular purpose. It is also unclear how the contribution required as part of the mitigation package would be secured, other than through a planning obligation. As no planning obligation has been submitted as part of this appeal, the measures suggested as part of the condition would not be adequately secured, and would not bind the Council to spend the contribution towards the delivery of the mitigation package.
13. Additionally, the Planning Practice Guidance² (PPG) advises that negatively worded conditions limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be

² Paragraph: 010 Reference ID: 21a-010-20190723.

appropriate in the majority of cases. The relative proximity of the site to a SPA would not amount to the exceptional circumstances as envisaged by the PPG.

14. I have had regard to the appellant's suggestion that the existing septic tank could be used, but no substantive information has been submitted to demonstrate that this would constitute a suitable and effective alternative to prevent additional nitrogen and phosphorous entering the water environment of the Solent. Whilst there is a possibility that visitors may not use the facilities provided on-site, it is highly likely that they would seek to dispose of the wastewater contained within the cassette of the caravan prior to leaving the site. Additionally, on the basis of the evidence before me, I am unable to conclude that the proposed use of the site would be as or less intensive than the existing lawful use as a garden detached from a dwelling.
15. In the absence of evidence to the contrary, I conclude that the appeal scheme must be dismissed on the grounds of the likely adverse effects on the integrity of the Solent SPAs, either alone or in combination with other plans and projects, as a result of additional nitrogen and phosphorous from additional waste water generated by the proposed use. The proposal would therefore conflict with Habitats Regulations and Policy CS11 of the Havant Borough Core Strategy – March 2011 (CS) which, amongst other things, seek to protect habitats through appropriate adaptation and mitigation measures.

Character and appearance

16. The appeal site comprises a parcel of land located at the entrance of the small village of Northney, and lies immediately to the south of a residential property known as Mandai, which it was severed from a number of years ago. As part of my site visit, I was able to observe that the plot is clearly separated from Mandai and is largely screened on all sides by mature landscaping. The site is otherwise surrounded by open fields.
17. CS Policy CS17 sets out the settlement strategy for the area administered by the Council, which seeks to concentrate new development within the five urban areas of Havant, Leigh Park, Waterlooville, Emsworth and Hayling Island. Policy AL2 of the Havant Borough Local Plan (Allocations) – July 2014 (LP) further emphasises the Council's settlement strategy, whilst making clear that land outside the defined urban area of Hayling Island is 'non-urban' rather than undeveloped gap. As shown on the Proposals Map, the appeal site lies outside the defined urban areas of Hayling Island. It is therefore located in a non-urban area where, in accordance with CS Policy CS17, development will only be permitted if it is consistent with the policies for the countryside set out in national policy.
18. CS Policy CS5 supports development proposals that provide hotels and other types of tourist accommodation, which are not restricted to urban areas. Camping facilities are not generally associated with the urban environment and are more commonly found in countryside locations. The proposed caravan site would be located outside an urban area, but would support small scale rural tourism. Paragraph 83 of the Framework advises that planning decisions should enable sustainable rural tourism and leisure development which respect the character of the countryside. Additionally, paragraph 84 of the Framework recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

19. As noted above, the site lies just outside the village of Northney and within proximity to residential properties. Whilst the caravan site would include some permanent features such as a site cabin, it would have a limited effect on the character and appearance of the area due to the transient nature of the use, the screening provided by the mature trees and landscaping, and the limited scale and massing of the caravans and other structures on the site. Equally, any additional paraphernalia associated with the proposed use would to a large extent be screened by the existing landscaping, fencing and gate to the front of the site.
20. For the foregoing reasons, I consider that the effect of the proposal on the character and appearance of the countryside would be acceptable, and therefore find no conflict with the design aims of CS Policy CS16. Furthermore, the appeal scheme would accord with the policies for the countryside as detailed within the Framework, and there would subsequently be no conflict with CS Policies CS5 and CS17, as well as LP Policy AL2.

Conclusion

21. For the reasons detailed above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR



Appeal Decision

Site visit made on 7 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2019

Appeal Ref: APP/Z1775/W/18/3217420

32 Norman Road, Southsea PO4 0LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Leatherland against the decision of Portsmouth City Council.
 - The application Ref 18/01429/FUL, dated 20 August 2018, was refused by notice dated 30 October 2018.
 - The development proposed is change of use from C4 (house in multiple occupation) to 7 person, seven bedroom, Sui Generis (house in multiple occupation for more than 6 persons).
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Robert Leatherland against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (a) the effect on the Solent Special Protection Areas (SPAs);
 - (b) whether there would be an imbalance of houses in multiple occupation (HMOs) in the surrounding community; and
 - (c) the effect of the proposal on the living conditions of future residents of the HMO, having regard to communal internal space provision.

Reasons

SPAs

4. The site lies within the 5.6 kilometre zone around the Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and Solent and Southampton Water SPA (hereafter collectively referred to as the SPAs) which are designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations). The SPAs comprise a coastline that has a network of mudflats, shingle and saltmarshes which support internationally important numbers of bird species: Dark-bellied brent goose, Mediterranean gull, Eurasian wigeon, Ringed plover, Bar-tailed godwit, Grey plover, Sandwich tern, Roseate tern, Common tern and Little tern. These birds feed and roost on or near the ground and as a result

they are very susceptible to disturbance from informal recreational use, especially walking and dog walking. Any proposal which by reason of its proximity of the SPAs, within this "Zone of Influence", that may result in additional recreational disturbance is likely to have an adverse effect on the integrity of the SPA. Natural England has also advised that high levels of nitrogen and phosphorus input to the water environment in the Solent is causing eutrophication. All types of development that would result in a net increase in population served by a wastewater system, including new homes, student accommodation, tourism attractions and tourist accommodation would create additional levels of nitrogen and phosphorus.

5. The conservation objectives for the SPAs are to "Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population of each of the qualifying features, and, the distribution of the qualifying features within the site." I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.
6. Where the determining authority decides that a proposed development is likely to have a significant effect on the SPA it must make an Appropriate Assessment (AA) of the implications for the site in view of that site's conservation objectives. Consequently, it is necessary for me to undertake an AA.
7. The characteristics of the proposed development coupled with its proximity to the SPA within its 'Zone of Influence' present an increased risk of harm and disturbance to its qualifying features. This risk is due to the potential for increased visitor pressure and recreational activities undertaken at the SPAs by the additional resident at the appeal site. The risk also stems from the additional waste water created by additional residents at the site. There are not considered to be any other likely significant effects on the SPA from the appeal proposal. It is acknowledged that without mitigation the proposals present a likely significant effect, particularly when the impacts are considered in combination with other residential developments located within the SPA's 5km Buffer Zone to the SPA.
8. In 2017 the Council adopted the Solent Recreation Mitigation Strategy (Mitigation Strategy) which provides for the payment of a mitigation contribution to offset the effects of an increased population on the SPAs. Contributions made under the Mitigation Strategy are put towards the Strategic Access Management and Monitoring (SAMM) of the SPAs and towards its maintenance, the employment of rangers to reduce disturbance levels and initiate specific measures at the sites, a delivery officer to oversee the mitigation scheme as a whole and a coastal dogs project.
9. The appellant has provided evidence to show that the mitigation payment of £337 has been made to offset those effects and therefore, the proposal would not harm the integrity of the SPAs in this regard. This level of contribution is acceptable in accordance with the Mitigation Strategy and Natural England has

agreed that proof of payment is sufficient to secure the appropriate mitigation measures for the proposed development relative to its recreational effects.

10. I am satisfied that the contribution is not towards the provision of infrastructure, as defined in the CiL Regulations, and is therefore not affected by the pooling restrictions in the CiL regulations. The contribution is necessary, directly related to the development and fair and reasonable in scale and kind to the development proposed. I am therefore satisfied that it meets the appropriate tests and is therefore a contribution I can take into account.
11. However, Natural England have highlighted that the increase in occupation and the associated waste water implications from the proposal would be likely to have an in-combination effect on the SPAs in association with other projects and plans. The 'Methodology to calculate the nitrogen budget for development in the Solent and achieve nitrogen neutrality' (Working Draft August 2018) has been provided to me. However, whilst the appellant has provided comments in respect of the potential effects on the SPA in this regard, there is currently no agreed strategy for collecting contributions using this approach and nor has any mitigation been paid or secured by legal obligation.
12. As such, whilst I have had due regard to the contribution paid to the Council for mitigation of recreation effects on the SPA, in the absence of evidence to the contrary, the proposed development would adversely affect the integrity of the SPAs, either alone or in combination with other development, as a result of additional nitrogen and phosphorous from additional waste water generated by the increased population. The proposal would therefore conflict with the Habitats Regulations and PP Policy PCS13, which, amongst other things, seeks to ensure that any unavoidable negative impacts on biodiversity are appropriately mitigated. For similar reasons, the proposal would also conflict with paragraph 175 of the National Planning Policy Framework.

Imbalance of HMOs

13. The appeal property is a mid-terraced dwelling that benefits from a flexible permission which allows it to be used as either a dwellinghouse (Use Class C3) or a house in multiple occupation (HMO) for up to six residents (Use Class C4). The proposal seeks to change the use of the property to a Sui Generis HMO for up to seven residents through provision of another bedroom created by relocating the combined living/kitchen space.
14. Policy PCS20 of the Portsmouth Plan¹ (PP) sets out that the city has a higher percentage of HMOs than the national average. The Policy itself states that in order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated, changes of use to a HMO will only be permitted where the community is not already imbalanced by a concentration of such uses.
15. The Council state that 22 of the 66 properties within a 50 metre radius of the site are in use as a HMO, equating to 33.33%. This level far exceeds the 10% figure set out in the Houses in Multiple Occupation Supplementary Planning Document (updated 2018) (HMO SPD); above which there is considered to be an imbalance. It is however accepted by the Council that the appeal property is already in lawful use as a HMO.

¹ The Portsmouth Plan – Portsmouth's Core Strategy (adopted April 2014)

16. Whilst the increase in concentration of HMOs may otherwise affect the quantity of family housing in the area and alter the demand and price of rented or market housing and local services, including leisure services, schools and other community infrastructure, the proposed change of use to a larger HMO would not result in a change to the balance of uses in the context of the surrounding area.
17. In terms of the point in contention in relation to the addition of one resident at the appeal building, whilst I accept that there could in the future be an issue with cumulative impacts, I have not been provided with evidence to substantiate that such intensification has occurred in the vicinity of the appeal site to conclude that there would be harm from allowing the proposal. As such, I have attached significant weight to the numerous decisions and appeal decisions to which my attention has been drawn relating to very similar proposals across a broad geographic area of the city. Whilst this may not be the total number of such similar proposals having been given permission, it is a small number relative to the number of HMOs in the city and the anticipated future need for HMO accommodation as set out in the SPD.
18. I note the comments relating to the potential for the creation of a precedent that may result in the potential doubling of the population in Norman Road. Whilst I am unconvinced that there is presently an issue with HMO intensification issue in the vicinity of the appeal site, this is a more general concern of the Council that could be illustrated through the compilation of data on the number and location of HMOs that have been intensified and any associated problems therewith. Until such time, this does not alter the general principle that each application is to be treated on its own merits and there is no evidence that allowing this appeal would result in a significant number of other similar proposals coming forward in Norman Road in particular.
19. As such, I find that any increase in occupancy at the property derived from such a small increase in bedroom accommodation would not be materially discernible when considered in the context of the surrounding area. Consequently, in view of this main issue, the appeal proposal would not result in any further imbalance in the community and therefore, I find no conflict with PP Policy PCS20 or any other consideration of sufficient weight to lead me to refuse the proposal on this basis.

Living conditions of future residents

20. The proposal seeks to provide a seventh bedroom measuring 10.22 sqm, which would exceed the minimum space standards set out in the HMO SPD. Each of the other existing bedrooms exceeds the minimum bedroom size requirements. The combined living space to serve all of the residents would be 25.78 sqm which would fall marginally short of the HMO SPD standard of 27sqm for seven or more people. The kitchen/dining component of this space would be marginally undersized, whereas the lounge space is considered to meet the HMO SPD guidance.
21. Whilst there may be a demand for the kitchen cooking space that could not always be satisfied, this would appear to be the case with the six people who can already lawfully live in the property. I am unconvinced from the submitted evidence that not meeting the HMO SPD guidance in this particular respect would make a critical difference to the quality of living environment with one additional resident. As such, in my judgement, given that the proposal relates

to only one additional resident, the marginal under provision of the combined living/kitchen space would not create a harmful living environment for future residents and is partly mitigated by the suitability of the bedroom sizes.

22. I have had regard to another appeal decision for a similar proposal which was dismissed on the basis of the harm to the living conditions of future residents from the provision of under-sized rooms². In that case, there were a higher proportion of rooms, including bedrooms, which failed to accord with the guidance. In this case, there is just one undersized room and the degree of shortfall in its floorspace is more limited when considered against the guidance.
23. Taking into account the proposed increase of one occupant and the living environment of the house as a whole therefore, I conclude that the proposal would not harm the living conditions of future residents with regard to the communal living space provision. As such, I find no conflict with PP Policy PCS23 which, amongst other things, requires that new development provides a good standard of living environment for neighbouring and future occupiers. PP Policy PCS20 does not refer to living standards in HMOs and is not therefore relevant to this issue.

Other Matters

24. Notwithstanding my conclusion in respect of the integrity of the SPAs, there is little evidence in relation to waste water services so as to suggest that there is insufficient capacity in the system to deal with one additional resident. Similarly, the issue of recycling and waste disposal is unlikely to be materially altered from the addition of one resident within an existing HMO.
25. Whilst I accept that some neighbouring residents will experience noisy behaviour from comings and goings and use of the gardens by tenants from time to time, this type of behaviour is not limited to occupiers of HMOs and is unlikely to be exacerbated by the increase of one tenant in an existing HMO.
26. The issue of parking can understandably be problematic in tight-knit terraces where dwellings do not have any dedicated parking. I am mindful from the comments that a parking scheme has been implemented locally which should ease some parking pressures. I also note that the Council highlights that the parking standards would not require any more provision as a result of the change of use. The issue of cycle parking is also addressed in the conditions below in order to reduce the reliance on private vehicle.

Conclusion

27. Whilst the proposal would not lead to an imbalance in the HMOs in the surrounding community and would not harmfully affect the living conditions of future residents with regard to communal internal space provision, the proposal would be likely to harmfully affect the integrity of the SPAs considered in combination with other projects and plans.
28. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

² APP/Z1775/W/17/3188485

By Email to:

The Rt Hon James Brokenshire MP
(Secretary of State for Housing, Communities and Local Government)

Kit Malthouse MP
(Minister of State for Housing)

The Rt Hon Michael Gove MP
(Secretary of State for Environment, Food and Rural Affairs)

Dr Thérèse Coffey MP
(Parliamentary Under Secretary of State for the Environment)

Enquires to: David Hayward

Email: david.hayward@havant.gov.uk

Date: 28th May 2019

Dear Sirs and Madam

RE: Nutrient neutrality and the impact on housebuilding Havant Borough and across South Hampshire

We would like to bring to your attention a matter which has brought a halt to housebuilding in the Solent area and the need for Government to step in to provide a solution. We are writing to you independently so that the matter can be raised in Government swiftly. However this is an issue that affects a far larger area than just our two authorities and so our two Councils are also working collaboratively with our partners, through the Partnership for Urban South Hampshire (PUSH), to understand the issue and provide solutions¹.

Both Councils take extremely seriously the requirement under the National Planning Policy Framework *“to support the Government’s objective of significantly boosting the supply of homes”*. Both Councils are in the process of updating their Local Plan with a view to not only meeting but exceeding the Government’s identified housing need for the authority. However no planning consents have been issued for new housing across Havant Borough Council and the southern three parishes of East Hampshire since 1st April 2019. This will bring an immediate halt to housebuilding in the area².

Both of our Councils are committed to development only taking place if it is sustainable development that includes relevant environmental protections and would create a net gain for biodiversity. Part of the consideration of this is whether there would be a detrimental impact on the water quality of the nearby Special Protection Areas in the Solent and the Solent Maritime Special Area of Conservation. However the contribution from urban areas to this is relatively small and from new development extremely small. The majority of nitrogen deposition into the harbour is from agricultural practices or background nitrogen, the source of which is not known. However it is new housebuilding that is being immediately and disproportionately affected by the issue. It is suggested that different participants should contribute to the solution, proportionately to the extent to which they are causing it. At a time of high housing need, curtailing the ability to build new

¹ Of particular pertinence is the preparation of the PUSH Integrated Water Management Strategy which was produced collaboratively with Natural England, the Environment Agency, Southern Water and Portsmouth Water. Please see the papers for the [PUSH Overview and Scrutiny Committee on 27 June 2018](#).

² This has been reported in the [local media](#).

houses is not the correct response.

The reason for the response however is recent case law³. The European Court of Justice recently determined a case related to how water quality and nutrient loading is considered. The judgement in this case refines the definition of what constitutes a 'plans or project' – on the face of it a relatively simple change. Natural England are now reflecting the relevant case law in their advice to local authorities on planning applications and local plans. However the result is that it is only possible for Councils to conclude that new development would decrease water quality over consented levels⁴. Only 'nutrient neutral' development is permissible, which is an impossible target for all but a handful of schemes. It is essential to consider that neither Council is proposing to change the level of housebuilding or weaken environmental safeguards, there is no new impact on the environment that is proposed.

Natural England have stated that their advice is simply a recommendation and that local authorities can choose to disregard it. In reality under the regulations, this is not the case and local authorities are duty bound to consider Natural England's advice or any planning permission could be judicially reviewed, further delaying housebuilding.

The matter is already having an immediate impact, particularly for small and medium sized builders that operate in the area. With no planning permissions, work for such builders is starting to dry up and threatens the viability of these businesses. The issue also makes it drastically more difficult for either authority to show a five-year supply of housing land or pass the Housing Delivery Test. This could result in unsustainable development being permitted, including development which has a demonstrable impact on biodiversity and the natural environment. This situation cannot continue.

Each local authority in the Solent area is, at this point in time, hurriedly looking for ways to produce a 'mitigation plan' so that we can get back to permitting residential development. This will largely consist of taking land out of agricultural use. This is counter intuitive at a time when we need to consider food security and is not an environmentally holistic approach given the rush to find such land to address an immediate issue rather than considering the matter in the round.

What is needed to solve this issue quickly is one of two things, both of which only Government can provide. A change in regulation could remove the need to consider this issue as per recent case law and revert the UK to considering water as it had been up to November 2018⁵. It will be necessary to ensure that any solution ensures that the UK continues to correctly implement the UK Habitats and Birds Directives. As highlighted above, there is no change in what is proposed in terms of housebuilding or a weakening of environmental safeguards through local plans, simply a change in how this is assessed since November 2018.

Alternatively, Government can step in and provide 'mitigation banking' in the short term, potentially through a delivery arm such as Homes England, with whom both Councils have a successful working relationship already. Such an approach would enable mitigation to be taken from development through legal agreement and allow both Councils to start permitting schemes. Such funds, together with any further Government funding found to be necessary, could then fund improvement to the infrastructure at the relevant Southern Water Wastewater Treatment Works and/or other measures that provide holistic environmental benefits once a more thorough approach

³ Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>.

⁴ Due to the presence of Special Protection Areas and Ramsar sites together with a Special Area of Conservation in the Solent, all proposals for residential development are subject to Appropriate Assessment Under Regulation 63(1) of The Conservation of Habitats and Species Regulations 2017.

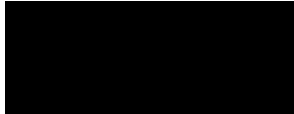
⁵ This would likely be achieved through The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which is a draft item of legislation.

has been taken by all the affected local authorities. Government support would provide financial certainty that the issue could be resolved.

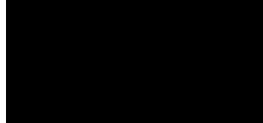
Our two Councils are already putting significant time and resources into addressing this issue. We would be happy to meet with Government in order to highlight our concerns further both in terms of the impact a stroke of the pen in Strasbourg has had on our economy and how, with Government support, we can solve the issue and get back to providing much needed housing.

We hope that you give this urgent attention so that housebuilding can recommence and look forward to hearing shortly how Government wishes to address this matter.

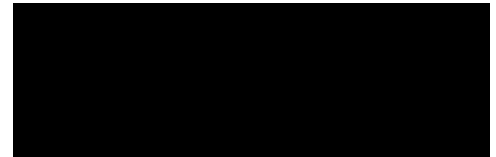
Yours faithfully



**Cllr Michael Wilson
Leader, Havant Borough
Council**



**Cllr Richard Millard
Leader, East Hampshire
District Council**



**Gill Kneller
Chief Executive, Havant
Borough Council & East
Hampshire District Council**

Copied to:

- The Rt Hon Damian Hinds MP
- George Hollingbery MP
- Alan Mak MP
- Emma Howard Boyd (Chair of the Environment Agency)
- Marian Spain (Interim Chief Executive Natural England)
- John Stobart (Planning and Conservation Senior Advisor, Natural England)
- Sir Edward Lister (Chairman of Homes England)
- Paul Flatt (Senior Development Manager – Land, Homes England)
- Cllr Seán Woodward (Chair of the Partnership for Urban South Hampshire)
- Ian McAulay (Chief Executive Officer of Southern Water)
- Philip James (Interim Growth Planning Manager - Southern Water)



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Our Ref: 4277131

25 June 2019

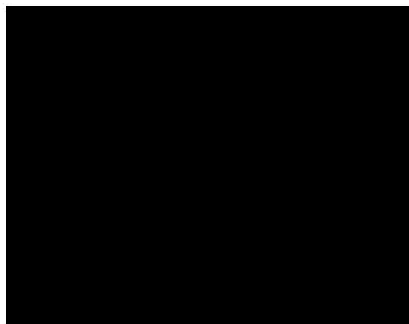
Dear Michael,

Thank you for your letter of 28 May about the impact of nitrogen deposition on housing development in your area, following a recent European Court of Justice case. I appreciate the importance of this issue and the impact which it must be having, and I am grateful to you for bringing the details to my attention.

I agree that we need to find a swift resolution, and my officials are having urgent discussions with their Defra and Natural England counterparts. I understand that Natural England's area team are also engaging with local councils in the PUSH area to try and find a strategic solution. I am hopeful that we will be able to find a pragmatic way forward through these discussions.

Should you wish to discuss the matter further with my officials, they will be happy to meet with you at a mutually convenient time.

Thank you again for your letter.



KIT MALTHOUSE MP



Ministry of Housing,
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Alan Mak MP
House of Commons
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SW1A 0AA

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27 June 2019

Dear Alan,

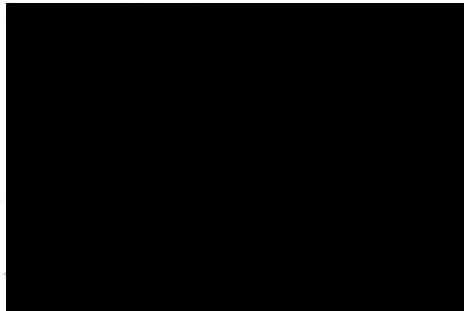
I am writing to address concerns raised in the South Hampshire region about delays to housing development due to the impact of nutrient deposition on designated environmental sites. This is an important issue and I am aware of the concern that it is causing. I understand that nutrient deposition affecting the Solent has been an issue for many years, but that the current situation follows recent European Court of Justice cases that have effectively 'raised the bar' for new development in terms of showing it will not cause additional harm. As a result, Natural England have been advising a cautionary approach to granting permission for new housing so that this case law can be complied with, in effect meaning that new development has to show that it will be 'nutrient neutral'. I can see the practical difficulties that this must be posing, especially for small builders.

My officials have had urgent discussions with Natural England, and I was pleased to hear that they issued an updated version of their methodology to local planning authorities and developers on 24 June. Their method for demonstrating 'nutrient neutrality', coupled with the work being undertaken locally on strategic habitat enhancement and the use of 'Grampian conditions' to allow building to start even where full offsetting is still being secured, provide important tools to allow development to continue.

I appreciate the considerable effort that your own councils are putting into this work, but agree that we need to find effective medium-term solutions. I also agree that new development appears to be suffering a disproportionate impact as a result of this problem, so we need to take a strategic approach to solving it. Natural England will continue to work with the agricultural sector to reduce loss of nutrients through their Catchment Sensitive Farming programme and my officials will have further discussions with both Natural England and Defra. Unfortunately there is no 'quick fix' in amending regulations, but we do need to look at all the sources of nutrients and what can be done. There are potential synergies with the Government's work on a new system of environmental land management and the promotion of biodiversity net gain, so we must look at this in the round.

I am aware that there have been similar environments in England affected by nutrient deposits where mitigation has been put in place to allow development to proceed. I am confident that with Natural England's support, local authorities will be able to find a

pragmatic way forward in the short term, while we work on wider solutions. In the meantime, my officials would be happy to meet you to discuss the issues raised in my letter.



KIT MALTHOUSE MP

Nutrient Neutral Development – OPS Board Challenge Session

Questions/Comments from the Board

1. Concern that the Position Statement has made building on green field sites the default position.
2. Has the council received any response to the lobbying letters that have been sent to Government?
3. Have any cases of a development refused due to the applicant not being able to demonstrate nutrient neutrality been considered by the Planning Inspectorate? If so, what was the outcome?
4. Could HBC's housing targets be reduced due to the issue?
5. Is nutrient neutrality based upon the current or historic use of the land – eg, farmland that hasn't been farmed for many years. If current use, how can a development be neutral when judged against a site that has no detrimental nutrient impact?
6. How long will the Position Statement be in effect for?
7. What is Natural England's advice in respect of developing brownfield sites?
8. In percentage terms, how much of HBC's five-year land supply brownfield and how much is greenfield?
9. In respect of mitigation, is the criteria listed in point 40 on page 7 of the Position Statement the complete list to be met in order for a development to be considered nutrient neutral?
10. What opinion does PfSH have on HBC's Position Statement?
11. Have any other authorities adopted a similar position statement?
12. What are other local councils, such as Portsmouth and Fareham doing to permit development?
13. Page 11, point 67 of the Position Statement makes reference to HBC part funding the delivery of development. Could this be explained further, such as the circumstances where this might happen?
14. When is it anticipated that the next step, the Management Plan will be written/adopted?

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