

HAVANT BOROUGH COUNCIL: CABINET 26th June 2019

POSITION STATEMENT ON NUTRIENT NEUTRAL DEVELOPMENT

Deputation on behalf of South Coast Development Consortium

Introduction

Members of the Cabinet, thank you for your time.

My name is Daniel Ramirez. I am a Senior Planner at Turley and I am speaking today on behalf of the South Coast Developers Consortium.

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.

Havant Borough Council is well known for its positive approach to sustainable growth and development, and the Council's proactivity in respect of addressing Nitrogen impacts on the Solent European sites is to be applauded. However, there are a number of shortcomings within the Position Statement, which are of concern to the Consortium.

Havant are leading the way in terms of developing a solution to the Nitrogen issue in South Hampshire, it is important that issues with approach set out in the Position Statement are ironed out now to reduce the potential for them being transferred to other Authorities' emerging mitigation strategies.

Given the significance of the Nitrogen issue in the sub-region, the Consortium has sought legal advice and appointed a number of technical consultants to undertake further investigations in this regard. The evidence and advice compiled to date has informed these representations. You have been given a hard copy of this deputation, alongside more detailed commentary on the issues, as well as the Legal Opinion which has been produced by Christopher Boyle on behalf of the Consortium.

Principle of Issue

Firstly, the Consortium asserts that there is no certainty that the development industry is contributing towards increased harmful Nitrogen loading on the Solent area or, at the very least, the impact of Nitrogen from new development has been over-estimated resulting in disproportionate costs being borne by the development industry.

The Consortium has a number of underlying concerns with the premise of the position taken by Natural England. Little evidence has actually been provided by Natural England in relation to this issue, and we have yet to see the Legal Opinions from Natural England or any Local Authority in relation to the issue.

The position of the consortium in this regard is set out in more detail in the Appendix A attached to my written statement, which is backed up by our Legal Opinion in Appendix B.

Havant Solution

Notwithstanding the above and without prejudice to the Consortium's position on likely impact (or lack thereof), a number of potential concerns have been identified with the Position Statement.

As a starting point, it is unclear how the Local Plan Nitrogen Budget contained in the Position Statement has been calculated. Further detail on how the inputs have been arrived at would be beneficial for transparency and to enable proper scrutiny.

It is also unclear whether the Position Statement has been drafted in accordance with Version 2 of the Natural England Methodology which was very recently updated.

In terms of the mitigation solutions, the Consortium reserves judgement on the efficacy of longer-term national and regional solutions, but has a number of concerns regarding the effectiveness of the short term (interim) solutions being put forward by the Council. Given the current hiatus on granting planning permission, the Consortium's objections focus on the identified short term solutions.

For new development on agricultural land, the Position Statement requires development to prepare a site-specific Nitrogen budget using Natural England's Nitrogen Budget Methodology. The Consortium objects to the blanket adoption of Natural England's methodology, as it has not been the subject of any consultation with the development industry, Local Authorities or other experts. We feel acceptance of this methodology is, for that reason, extremely premature.

The Consortium has already raised, and continues to raise, issues with a number of the assumptions in the NE methodology with Natural England and individual Authorities. I have summarised some of the key flaws, as we see them, in Appendix A of my written statement, most of which has again been informed by our legal Opinion. The Consortium remains extremely keen to discuss these points and to agree a more informed strategy with all parties moving forward.

Mitigation Options

Turning to the mitigation options put before members today the Consortium has significant concerns about their effectiveness and practical implementation.

Firstly, the Position Statement suggests that where a likely impact is shown under the NE Methodology, on-site measures will be used in order to achieve nitrogen neutrality (para 62).

Increased water efficiency of at least 110 l/pp/d will be required by all developments. Whilst the Statement allows for water efficiency over and above 110 l/pp/d, the Consortium is conscious of

recent Natural England objections to proposal that include higher standards. The Position Statement should make clear that the Council will accept higher standards.

The second solution requires the management of on-site open space in a low nitrogen manner. This mitigation option firstly assumes that a development will need to provide on-site open space, which is not always the case. It also assumes that open space management hasn't been agreed. There will inevitably be instances, where the management practices for open spaces have already been agreed and secured to make a development acceptable in planning terms (for example at outline planning stage). Altering land management practices may require considerable changes to proposals to incorporate such changes. This may delay some development, or at worse render proposals undeliverable.

The third solution is to create wetland environments in SUDS systems that act as a nitrogen sink and remove nitrogen from surface water. Similar issues regarding amendment to existing scheme would likely arise for the open space management solution set out above. Notwithstanding this, for an applicant to understand the effectiveness of this solution, it will be necessary to understand the amount of Nitrogen that could be extracted through this means and subtracted from a proposals budget. However, this figure is not included in the Position Statement or within the Natural England Methodology.

The Position Statement then moves on to rightly recognise the significant challenges associated with providing on site mitigation to achieving Nitrogen neutrality for developments on non-agricultural land. However, members should also be made aware that by using the NE methodology as written, it is also extremely difficult to achieve Nitrogen neutrality on land used for low intensity grazing, which would cover a large amount of draft allocations in the emerging Plan.

In situations where nitrogen neutrality cannot be achieved, the Council has suggested that a Grampian Condition could be imposed that restricts occupation of new houses until such time as mitigation package have been approved and provided to the Council. Developers will have the option of paying a financial contribution to secure a mitigation package from the Council but, as recognised in the Position Statement, applicants doing so will be required to take on an unknown cost and risk when implementing planning permissions.

The Consortium has a number of concerns regarding the lawfulness of imposing such a condition. In order for planning conditions to be imposed, they need to meet six tests and be:

- necessary;
- relevant to planning and;
- to the development to be permitted;
- enforceable;
- precise and;
- reasonable in all other respects.

It is the Consortium's position that the proposed condition would not meet these tests and, therefore, should not be used. Moreover, the proposed condition, in the view of the Consortium, would also fail to meet with the requirements of EU caselaw, as the effectiveness of the mitigation remains uncertain.

In practical terms, the proposed Grampian Condition would not resolve the current impasse nor would it bring forward the much needed housing in the Borough or the wider region. The Council needs to strongly consider the fact that development costs are largely front loaded with significant investment and start-up costs needed to provide site access, services, drainage infrastructure etc. This outlay is accepted in usual circumstances as there is surety that the houses will be sold and occupied as the development progresses. These costs, for a major development, are comfortably within the millions of pounds.

A developer is not going to commit to buying land for housing or commencing work on site, without knowing they can recoup costs through house sales. By applying a Grampian condition the Council will be applying a restriction on the developer which would be outside of that developer's control to resolve. For that reason, developers will be forced to wait for the Grampian condition to be satisfied before committing to purchase or build, which in turn will have a significant impact on housing delivery in the Borough. The Grampian condition solution will, therefore, not have the desired effect of unlocking development, but will simply lead to permissions that are not implementable.

Given the uncertainties surrounding the costs and implementation timeframe of a mitigation package, many land deals and development projects have stalled already. Over time, should the proposed approach be adopted, this uncertainty in the market will impact on quantum of land coming forward, the number of applications submitted and ultimately, and inevitably, result in a significant slow-down in the delivery of housing.

In conclusion, the Consortium recommends that members fully consider the views of the development industry. The Consortium members remain extremely keen to work with Local Authorities, Natural England and Southern Water to find a suitable solution. That said, we have significant concerns that the proposals put forward in this position statement will not result in the Council's desired outcomes, and suggest that they be reconsidered.

