

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: 28<sup>th</sup> 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 solutions<sup>1</sup>.

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 1<sup>st</sup> April 2019. This will bring an immediate halt to housebuilding in the area<sup>2</sup>.

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

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<sup>1</sup> 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](#).

<sup>2</sup> This has been reported in the [local media](#).

houses is not the correct response.

The reason for the response however is recent case law<sup>3</sup>. 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 levels<sup>4</sup>. 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 2018<sup>5</sup>. 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

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<sup>3</sup> 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>.

<sup>4</sup> 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.

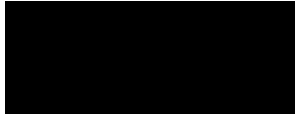
<sup>5</sup> This would likely be achieved through The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which is a draft item of legislation.

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

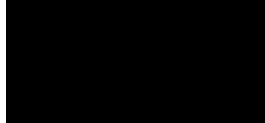
Our two Councils are already putting significant time and resources into addressing this issue. We would be happy to meet with Government in order to highlight our concerns further both in terms of the impact a stroke of the pen in Strasbourg has had on our economy and how, with Government support, we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

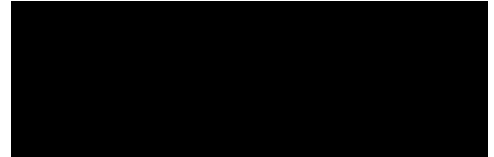
Yours faithfully



**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)



Ministry of Housing,  
Communities &  
Local Government

Cllr Michael Wilson  
Havant Borough Council  
Public Service Plaza  
Civic Centre Road  
Havant  
PO9 2AX

**Kit Malthouse MP**  
*Minister of State for Housing*

**Ministry of Housing, Communities and Local  
Government**

Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
Tel: 0303 444 3430  
Email: [kit.malthouse@communities.gov.uk](mailto:kit.malthouse@communities.gov.uk)

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

Our Ref: 4277131

25 June 2019

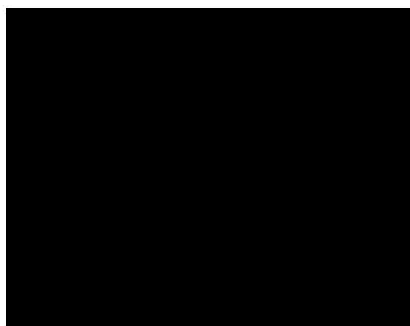
Dear Michael,

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,  
Communities &  
Local Government

Alan Mak MP  
House of Commons  
London  
SW1A 0AA

**Kit Malthouse MP**  
*Minister of State for Housing*

**Ministry of Housing, Communities and Local  
Government**

Fry Building  
2 Marsham Street  
London  
SW1P 4DF

Tel: 0303 444 3430  
Email: [kit.malthouse@communities.gov.uk](mailto:kit.malthouse@communities.gov.uk)

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

27 June 2019

Dear Alan,

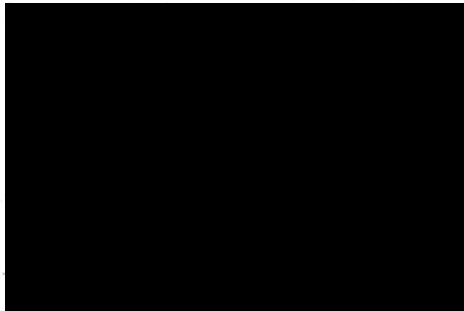
I am writing to address concerns raised in the South Hampshire region about delays to housing development due to the impact of nutrient deposition on designated environmental sites. This is an important issue and I am aware of the concern that it is causing. I understand that nutrient deposition affecting 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**