
NON EXEMPT

HAVANT BOROUGH COUNCIL

PLANNING POLICY COMMITTEE & FULL COUNCIL

27 OCTOBER 2022 & 16 NOVEMBER 2022

REVISED HAVANT POSITION STATEMENT AND MITIGATION PLAN FOR RECOMMENDATION TO FULL COUNCIL

Portfolio Holder: Cabinet Lead for Local Plan, Environment and Water Quality

Key Decision: No

Report Number: [EHDC/HBC/089/2022]

1. Purpose

- 1.1. This paper is submitted to the Planning Policy Committee for consideration and to Full Council for decision.
- 1.2. The report recommends several steps be taken to move forward the Council's approach to nutrient neutrality in new development. This includes a recommendation that the remainder of the Warblington Farm Phase 1 scheme is limited for use to developments of 15 dwellings (net) or are regeneration projects within regeneration areas. This will enable the Council's mitigation scheme to be used in the most appropriate way moving forward bearing in mind that through the work of the Partnership for South Hampshire further third party mitigation schemes are now available. The report also seeks delegated authority approval for future phases of Warblington Farm to be purchased and if necessary, the purchase of third party nutrient mitigation.

2. Recommendation

- 2.1. Members are requested to:
 - a. Note the current position regarding the availability of mitigation in the Solent and the progress being made to achieve a healthy market for mitigation
 - b. Approve the updated Position Statement and Mitigation Plan for Nutrient Neutral Development (appendix 1) for publication and use in development management decisions;

- c. Delegate authority to the Cabinet Lead for Local Plan, Environment and Water Quality¹ in consultation with the Monitoring Officer and Section 151 Officer to secure and purchase any future phases of the Council's mitigation scheme at Warblington Farm;
- d. Note the cash flow analysis which shows there would need to be an increase to the price of the mitigation in order for the scheme to be financially sustainable (Appendix C)
- e. Delegate authority to the Cabinet Lead for Local Plan, Environment and Water Quality¹, in consultation with the Monitoring Officer and Section 151 Officer to secure and purchase blocks of mitigation from third party providers;
- f. Delegate authority to the Planning Policy Manager, in consultation with the Cabinet Lead for Local Plan, Environment and Water Quality¹, to make any necessary amendments to the Position Statement and Mitigation Plan on Nutrient Neutral Development Plan after publication. These shall include any necessary factual updates (including inflation increases to the cost of mitigation), corrections of minor errors, and typographical errors. These shall also include any necessary changes to reflect emerging best practice, standing advice, policy or case law.

3. Executive Summary

- 3.1. Development within Havant Borough which provides overnight accommodation must be nutrient neutral in order for it to be lawfully granted planning permission. This must be shown through a Habitats Mitigation Assessment (HRA). It is required to secure mitigation for nutrient neutrality if it is concluded through the HRA process that the development will have a likely significant impact on the Solent European Sites.
- 3.2. Havant Borough Council launched its' own mitigation scheme for nutrient neutrality at Warblington Farm. However, this site has limited capacity. Therefore, this report seeks approval for the Council to limit the eligibility of the use of Warblington Farm to schemes which only propose 15 dwellings or less (net), or are regeneration projects within regeneration zones (Appendix A).
- 3.3. Even with such measures in place it is likely that phase one of Warblington Farm will reach capacity in the near future. As such, this report also asks for delegated authority for future phases of Warblington Farm to be secured and purchased.

¹ Or successors in similar or equivalent role

- 3.4. Alternatively, if a suitable transaction cannot be agreed for future phases of Warblington Farm, authority is sought to block purchase mitigation from third party providers in order to ensure a continuous and cost effective supply.
- 3.5. It should also be noted that further amendments to the Position Statement for Nutrient Neutral Development in Havant Borough have been proposed. These include guidance notes for development schemes which show an increase in net overnight accommodation but require a bespoke approach to nutrient budget calculations such as care homes. These proposed changes will help in determining applications and conditions which should be applied.

4. Additional Budgetary Implications

- 4.1. None.

5. Background and relationship to Corporate Strategy, Climate & Environment Strategy and/or Business Plans

- 5.1. The Dutch Case has had profound implications for the Council in terms of the ability to grant planning permission for new development which provides overnight accommodation. This is principally residential development but also applies to care homes, hotels and water intensive commercial development.
- 5.2. The origins and implications of the issue are well known and not repeated here. However, the Council has undertaken a number of workstreams to date to ensure that nutrient mitigation is available to development in order to ensure planning permissions can be granted and will not be stalled in the future.
- 5.3. The Council launched its own mitigation scheme at Warblington Farm in August 2020 alongside the current Position Statement and Mitigation Plan for Nutrient Neutral development. The Council was able to secure the first phase of Warblington Farm (25 hectares) to do this following authorisation from the Cabinet on 3 June 2020.
- 5.4. Since the scheme's launch it has been a success. Over half the mitigation available from the phase one scheme has been used by development and the scheme has received two national awards for its innovative approach to ensuring that the impact of development in the Borough could be mitigated.
- 5.5. The Council has also worked with the Partnership for South Hampshire, and since the issue arose back in 2019 a Strategic Environmental Planning Officer (SEPO) was appointed in December 2020 with the primary purpose of assessing options to allow sustainable development to be undertaken. The SEPO has also been involved in the working groups for the DEFRA Solent Trading Platform and

ensures there is a joined up approach to the issue to ensure sustainable development can be achieved in the short, medium and long term.

- 5.6. PfSH undertook a supply and demand assessment² of nutrient mitigation schemes within the Solent. The study found that overall, within the East Hampshire catchment there is sufficient supply of mitigation to meet the needs of development in the medium to long term (over 5 years of supply) and within the Chichester catchment there is sufficient supply of mitigation to meet the short to medium term need (1-5 years of supply).

Position Statement and Mitigation Plan for Nutrient Neutral Development

- 5.7. As of August 2020, the first phase of Warblington Farm Mitigation Scheme has been available for development to use within Havant Borough which has limited capacity. The first phase provided 805kg/N and as of 17 October 2022 there is around 280kg/N remaining available for development.
- 5.8. There is now a sufficient supply of 'strategic' nutrient mitigation options available. These are listed on the PfSH website. Currently for development which drains to Budds Farm WwTWs, there are three mitigation schemes available. For development that drains to Thornham WwTWs, there is one strategic mitigation option available. Alternatively, applicants can also propose on-site mitigation measures to offset the impact on the Solent European Sites.
- 5.9. It is increasingly difficult for small brownfield sites being promoted by SMEs (small and medium sized enterprises) in particular to pay for mitigation if it is accessed on the open market. This is due to the legal fees that are associated with the purchase of the mitigation. These are a fixed price per development, regardless of its size. As such, it means that a larger development pays less per unit for its mitigation. For single home schemes, the legal fees can sometimes be as much as the mitigation itself.
- 5.10. As such, the updated Position Statement on Nutrient Neutral Development (Appendix B) proposes that the remaining nutrient credits available at Warblington Farm are made available only to schemes of 15 dwellings or less, or regeneration projects within regeneration zones (Appendix A) to ensure that these types of development can be permitted.
- 5.11. A change in eligibility for the use of Warblington Farm will ensure that development can still be permitted. Planning applications of more than 15 dwellings (net) can secure third party mitigation.

² <https://www.push.gov.uk/wp-content/uploads/2022/02/Item-11-PfSH-Nutrient-Mitigation-Supply-and-Demand-Analysis-14.02.22..pdf>

- 5.12. There is a financial impact due to the proposed change in eligibility. The change means that the income profile of phase 1 is inevitably extended, i.e., that it will take longer to sell the remaining mitigation. However, this can be mitigated through an increase in the per kilo cost of mitigation from £1,308 per kilo to £3,000 per kilo (to be updated annually in line with the Cost Price Index), and would broadly represent the average cost of mitigation in the East Hampshire catchment. Developers with current planning applications have already been made aware of the cost increase which would come into effect for planning applications granted on or after 18 November 2022 following any Full Council decision. It would remain financially attractive relative to competitors, particularly given the legal cost to the developer in accessing a third party mitigation scheme.
- 5.13. The updated position statement also contains a number of other changes to help provide clarity to schemes which are not just an increase in dwellings but for example an increase in bedroom capacity at care homes and establishes condition wording to be used in planning development decisions. These are largely a result of lessons learnt in the implementation of the Position Statement thus far.

Ensuring a continuous supply of mitigation

- 5.14. There is a need to ensure that the supply of mitigation continues to be readily available. This is essential in meeting the 'Corporate Strategy 2022-2026, and in particular the 'Pride in Place' and 'Growth' themes.
- 5.15. There are options available however in terms of making sure that this can be met.
- Future phases of Warblington Farm
- 5.16. Due to the limited capacity of phase one at Warblington Farm there is a need to secure further phases at Warblington Farm if the project is to continue.
- 5.17. By securing further phases of Warblington Farm, Havant Borough Council will be able to continue to provide mitigation to planned development to address nutrient neutrality impacts.
- 5.18. The project has been nationally recognised through two awards, demonstrating the quality of the scheme and the work that the Council has done thus far.
- 5.19. Warblington Farm offers the opportunity to layer up multiple benefits on top of the ability to make developments nutrient neutral. These principally include:
- Providing a refuge for Brent Geese and Waders
 - Providing the potential for biodiversity net gain projects which will be required as a result of the Environment Act
- 5.20. Delegated authority is sought to agree terms for future phases of the project would be subject to a separate delegated decision(s). This is critical in order to

ensure that land transactions take place in a way that ensures financial sustainability for the Council.

- 5.21. Phase 1 of Warblington Farm has provided a plentiful supply of mitigation for the Borough, at a competitive price and provides environmental gain. If negotiations are able to secure a favourable transaction, it is recommended that this option is pursued. Whether mitigation is available to all development schemes or if a size threshold is retained would depend on the specific transaction that can be achieved, principally the level of mitigation which is available.

Third Party Mitigation Schemes

- 5.22. There are currently other third party mitigation schemes available through the work of the Partnership for South Hampshire for development within Havant Borough to use. In the event that future phases of Warblington Farm cannot be secured or there is a need for more mitigation to be secured within the Borough, this offers a way of development continuing to be able to secure mitigation.
- 5.23. In a scenario where phase 1 of Warblington Farm is depleted and transaction(s) for future phases are not agreed, the issue whereby it is disproportionately expensive to secure mitigation for smaller schemes it is proposed that a bulk purchase of third party mitigation is made. This will address the issue highlighted above whereby it is disproportionately more expensive for SME schemes to access mitigation.
- 5.24. A block purchase by the Council would allow SME schemes access to the mitigation through a simple unilateral undertaking (in the same way that Warblington Farm is accessed) with much lower administrative charges applied.
- 5.25. Nonetheless, any block purchase which takes place must only be in a way which is sustainable to the Council in terms of cost. As such, delegated authority is sought to agree terms for any block purchase be subject to a separate delegated decision(s). This is critical in order to ensure that the transaction(s) take place in a way that ensures financial sustainability for the Council.

6. Options considered

Do Nothing Option

- 6.1. If the Council were to continue to provide phase 1 mitigation to all development planned for, then it would be likely that capacity of nutrient credits for phase one will be reached within the year.
- 6.2. As previously mentioned, third party mitigation schemes are available, but they come with high legal costs especially for minor development schemes which are provided for by SMEs and regeneration schemes.

- 6.3. High legal costs combined with the cost of the mitigation itself could make smaller development schemes unviable.
- 6.4. It is therefore advised that the option of doing nothing could reduce the supply of housing within the Borough which could have a knock on effect to housing supply.

Proposed Changes Option

- 6.5. If the Council were to limit the use of Warblington Farm for development proposing 15 dwellings or less (net) and regeneration schemes it would be a far more cost effective option in the short term solution.
- 6.6. It would provide much needed mitigation for small developments is available at an affordable price. However, future phases of Warblington Farm are still needed to be secured to ensure the continued success and use of the scheme by development in Havant Borough.
- 6.7. In the event that future phases of Warblington Farm cannot be secured in the short term the Council may wish to secure third party mitigation to then distribute to development within the Borough with the same threshold limit.
- 6.8. In order to achieve this in the short term delegated authority would be required to purchase third party mitigation and approve the threshold levels for the use of such credits this will ensure that the Council can provide mitigation for development within the local plan.

Warblington Farm versus block purchases

- 6.9. There is an inherent choice in providing for future mitigation – to continue the Warblington Farm project or to use third party schemes. When the Council launched Warblington Farm, the private sector mitigation market was in its infancy. It has now flourished to the point where there is sufficient supply in South East Hampshire for at least five years.
- 6.10. As such, the Council could rely on this market to meet the mitigation needs of development in full and pull back any direct involvement. This would have the benefit of eliminating any future risk in having the Council's own mitigation scheme.
- 6.11. Nonetheless, the success of Warblington Farm has been substantial, winning two national awards and held up as a trailblazer. As such, it is proposed to continue this positive work and to continue to achieve the positive environmental outcomes that this project presents.

Deputy Monitoring Officer comments

Date: 2 August 2022

This report proposes updates made necessary by the latest guidance to the Council's Position Statement and Mitigation Plan for Nutrient Neutrality Development. Additional measures are proposed to address capacity issues at Warblington Farm. Appropriate delegated powers are also sought in order that future changes to law and practice can be implemented quickly and effectively. In accordance with the allocation of functions in the Constitution (Part 2 Section E1A) Planning Policy Committee will make recommendations to Full Council.

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on Havant BC revenue budgets arising from this report.

7. Resource Implications

- 7.1. Financial Implications – there would need to be an increase to the cost of the mitigation from £1,308 per kilo to £3,000 per kilo (to be updated annually in line with the Cost Price Index) as set out in Appendix C.
- 7.2. Human Resources Implications – there are no human resource implications arising from the options.
- 7.3. Information Governance Implications – there are no information governance implications arising from the options.
- 7.4. Other resource implications – none.

8. Legal Implications

- 8.1. Do Nothing – in this scenario there are no legal implications for the Council, but there would be inherently higher legal costs for SMEs to access third party mitigation schemes which would be likely to make schemes unviable.
- 8.2. Proposed Changes option – there would be no tangible changes to how the scheme currently operates, with mitigation continuing to be secured via a simple unilateral undertaking.
- 8.3. Warblington Farm versus block purchases – any block purchase which the Council undertakes from a third party scheme will need to be procured in accordance with the Council's contract standing orders and secured via a legal agreement to set aside the required amount of nutrient mitigation land available in the mitigation site for development schemes coming forward in Havant Borough. Mitigation for use by developers would continue to be secured via a simple unilateral undertaking in this case as well.

9. Risks

- 9.1. The proposed solution to restrict use of the Warblington Farm mitigation scheme is recommended, however no approach to this major issue is without risk.
- 9.2. The necessary note of caution is that the future for this issue is not certain. Particularly now that the UK has left the EU, the Government can amend the Habitats Regulations if it desires to. Furthermore, Government's approach to this issue could change, for example an end of pipe solution at affected wastewater treatment works could be enacted through Southern Water's Business Planning process. This could remove the need for the mitigation scheme. Lastly, particularly relevant for Warblington is that other mitigation schemes are likely to be put in place. As such, an element of commercial competition is likely to arise.
- 9.3. However, given the experience to date with this issue, this risk is considered low. The recent passage of the Environment Act represents an increased focus by the UK Government on ensuring gains in biodiversity and an increased focus on the country's environment.

10. Climate & Environment Implications

- 10.1. None.

11. Consultation

- 11.1. No public consultation is proposed on the Position Statement and Mitigation Plan. This is not required under the regulations pertaining to Local Plan preparation³ nor under the Council's Statement of Community Involvement⁴.

12. Communication

- 12.1. A great deal of communication material has been provided to support this topic and the Council's approach. This includes a detailed booklet setting out the issue and the Council's response. This is supported by a simple cartoon strip and video. This has been supplemented since August 2020 with other promotional activities such as participation in webinars and joint authoring of an article on nutrient neutrality. This all helps to raise the profile of the Council's response to this important issue.
- 12.2. In the future, it is proposed that this communication material is kept up to date to reflect the changed stance that the Council is taking and any future phases of Warblington Farm.

³ The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), available at <http://www.legislation.gov.uk/uksi/2012/767/contents/made>.

⁴ <https://www.havant.gov.uk/statement-of-community-involvement>

13. Appendices

- 13.1. Appendix A: Map of regeneration areas
- 13.2. Appendix B: Revised Position Statement and Mitigation Plan for Nutrient Neutral Development
- 13.3. Appendix C: Revised cashflow analysis of the Warblington Nutrient Neutrality Mitigation Scheme

14. Background papers

- 14.1. None.

Agreed and signed off by:

Portfolio Holder: Councillor Elizabeth Lloyd 3 August 2022

Director: Neeru Kareer 12 October 2022

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