
NON EXEMPT

HAVANT BOROUGH COUNCIL

Meeting: PLANNING POLICY COMMITTEE

9 November 2022

**Proposed Consultancy Review Of Southern Water Data And Information
Provided For Planning Purposes**

For Recommendation to Full Council

Portfolio Holder: Cllr Elizabeth Lloyd

Key Decision: No

Report number: HBC/95/2022

1. Purpose

1.1 This paper is submitted to the Planning Policy Committee for consideration and to Full Council for decision.

1.2 This paper follows a resolution of the Full Council on 21 September 2022:

‘That Full Council note the consideration for further work to be undertaken on the data provided by Southern Water to go to Planning Policy Committee for their consideration prior to coming back to Full Council and that this is done separately to the Reg 18 consultation.’

1.3 The paper provides further information on the context, scope and potential cost of the work

2 Recommendation

2.1 Members are requested to recommend to Full Council that it:

- a Approves the procurement of consultancy advice to review the data and information provided by Southern Water for planning purposes;
- b Notes that costs will be met from the planning policy budget and will feed into the 2023/24 budget setting process; and
- c Delegates authority to the Cabinet Lead for Local Plan, Environment and Water Quality, Cabinet Lead for Finance and Section 151 officer to approve the commissioning of the consultants if the final procurement represents value for money for the authority.

3 Executive Summary

- 3.1 The Council has a statutory duty to produce a local plan setting out the policies for where and how development will take place. The Council has to prepare an Infrastructure Delivery Plan (IDP) to support the contents of the new local plan. Southern Water is the statutory undertaker for the conveyance and treatment of foul wastewater from new development.
- 3.2 Whilst it is not the Council's responsibility to regulate Southern Water, the current lack of trust and confidence in data and information provided by Southern Water presents a risk to the process of producing a new local plan. It is therefore proposed that the Council commissions independent expert consultancy advice to review the data and information supplied by Southern Water for planning purposes.

4 Additional Budgetary Implications

- 4.1 None in relation to the 2022/23 budget. See section 7 for further information.

5 Background and relationship to Corporate Strategy and supporting strategies and policies

- 5.1 At the last meeting of the Full Council, approval was given to commence consultation on the Building a Better Future Plan – the new local plan for Havant Borough. As part of the debate on this item, a motion was raised to include an additional recommendation, authorising the commissioning of consultants to review information and data provided by Southern Water, with respect to the new local plan. Whilst this issue had been discussed at the Planning Policy Committee meeting on 6 September 2022, the proposed amendment was not part of the recommendations from the Planning Policy Committee.
- 5.2 Following initial debate and discussion a further motion was raised to amend the proposed amendment to refer the matter back to Planning Policy Committee before it was reconsidered by Full Council. It was clarified that this was to be considered separately from the recommendations relating to consultation on the local plan and would not delay the consultation. This motion was passed, and the resolution is at para 1b above.

Context

- 5.3 Experience of poor customer service and engagement and the large fine (c£90m) imposed last year for unpermitted sewage discharge has led to a lack of confidence and trust in Southern Water amongst the Boroughs residents and councillors. The recent decision to restrict the way storm discharges are reported has not helped.
- 5.4 Much of the Borough's wastewater conveyance is through combined sewers that contain foul and surface water and that when there is significant rainfall

there is insufficient capacity at the treatment works to treat the wastewater. To prevent the system backing up and flooding homes and streets untreated wastewater is discharged directly into the sea, Langstone Harbour or Chichester Harbour. Whilst the Council acknowledges that this is a necessary component of the combined sewer system, the fine imposed last year was exceptional in its nature.

- 5.5 The judge commented, 'These offences show a shocking and wholesale disregard for the environment, for precious and delicate ecosystems and coastlines, for human health, and for fisheries and other legitimate businesses that operate in the coastal waters,'. He said the company had a history of criminal activity for its 'previous and persistent pollution of the environment'. It had 168 previous offences and cautions but had ignored these and not altered its behaviour. 'There is no evidence the company took any notice of the penalties imposed or the remarks of the courts. Its offending simply continued,' he said.
- 5.6 Southern Water is the statutory undertaker for wastewater treatment and it employs professional staff to provide technical advice. The Council has a statutory duty to engage with Southern Water as the statutory undertaker for wastewater infrastructure and will need to rely on information and data provided by Southern Water for the purpose of developing our IDP, which is being prepared to demonstrate how the provision of infrastructure to support the development proposed in the local plan will take place.
- 5.7 Chichester District Council has prepared a Statement of Common Ground in relation to the capacity of the Thornham Wastewater Treatment Works to accommodate additional development. The more general Statement of Common Ground between Havant Borough Council and Chichester District Council will need to be updated in readiness for both authorities' new local plans and the issue of wastewater capacity will need to be addressed. As such, external advice confirming the capacity of Thornham Wastewater Treatment Works will be helpful.
- 5.8 It is critical that members and residents have confidence in the process of preparing a local plan in order for it to be effective. Given the public lack of trust in Southern Water there is a considerable risk that there could be delays to the local plan process through objections to the Council's reliance on information provided by Southern Water, which could also remain unresolved and take up valuable examination hearing time.
- 5.9 Whilst there is no suggestion that Southern Water technical staff are not objective and professional, decisions about the way the company is run, leading to the fine, have affected confidence in the company. It is therefore suggested that to minimise the risks to the local plan process, the Council engages independent consultants to review the data and information provided by Southern Water.

- 5.10 Southern Water has a statutory duty to treat the foul wastewater generated by new development and it is not the Council's role to monitor or regulate Southern Water. Regulation of Southern water is mainly undertaken by the Environment Agency and Ofwat¹ and their respective roles are summarised in the table below.

Organisation	Role
Environment Agency	Environmental regulator responsible for impacts on the environment – assessing quality of wastewater discharges against set compliance limits through granting, monitoring and enforcing permits.
Ofwat	Economic regulator responsible for impact on customers' bills – assesses and agrees the amount of money water companies can recover from customers to meet their legal obligations through the 5 yearly business planning process. Investment needed to comply with environmental obligations and accommodate the wastewater treatment needs of new development needs to be agreed by Ofwat.
Drinking Water Inspectorate	Responsible for drinking water quality – not applicable to Southern Water in Havant Borough as water supply responsibility of Portsmouth Water
Consumer Council for Water	Responsible for domestic customer relationship.

- 5.11 The proposal to commission consultancy advice would be a pragmatic and proactive response by the Council to the current circumstances and should provide some reassurance to decision makers that the information provided by Southern Water has been robustly critiqued and that any proposals before the Full Council regarding the Local Plan are based on accurate information.
- 5.12 The initial scope of the work would be the preparation of the IDP and it is anticipated that this would be covered from the 2022/23 planning policy budget where provision is made for consultancy advice.
- 5.13 Officers are aware that the lack of trust in Southern Water and the information it provides may also extend to consideration of planning applications. Public concerns over wastewater treatment and potential objections to proposals for development on these grounds will need to be considered by the Planning Committee or other relevant decision maker. It is suggested that the brief for this consultancy work will also seek a quote for support on a per application basis.

¹ Regulator for the water sector in England and Wales.

- 5.14 It would not be appropriate to undertake this work for applications where the principle of development is already established, either through policies (e.g. within the built up area) and allocations in the adopted Local Plan or through an existing planning permission. In these cases, Southern Water would already be taking into account the need for it to provide sufficient wastewater treatment as part of its business planning process and statutory connection requirements. Also, the relevant planning history is a material consideration in the determination of applications and where the principle of development has already been established, it is very unlikely that there would be defensible reasons for refusal based on wastewater treatment capacity.
- 5.15 The advice would be sought where the sites are not allocated or within the built up area in the adopted Local Plan and there is no established principle for development through a planning permission. These would be unallocated greenfield sites, being considered through the Housing Delivery Position Statement. Such schemes would not therefore have been considered through the IDP supporting the adopted Local Plan nor the Southern Water business planning process.
- 5.16 Officers will need to follow the Council's procurement process to secure an appropriate consultant and it would not be appropriate to reference potential cost prior to procurement.
- 5.17 The brief will seek a quote for:
- Work to support the production of the Infrastructure Delivery Plan.
 - Work to review the information provided in relation to the planning applications on sites where the principle for development is not established in the Development Plan or through an existing planning permission, on a per application basis.
 - Work to review the Wastewater Position Statement produced by Chichester District Council.
- 5.18 Whilst not forming part of the initial quote, the brief will require consultants to provide costs for attendance at the local plan examination hearings and further support in relation to planning applications.
- 5.19 The preparation of an up to date local plan for the borough is a project that is specifically identified to achieve the Pride in Place and Growth aspirations in the Corporate Strategy.

6 Options considered

- 6.1 The main alternative would be a 'do nothing' approach. The Council could decide to not commission consultancy advice to review the data and information provided by Southern Water in relation to planning applications and the local plan.

- 6.2 This would essentially revert to a 'standard' approach to the preparation of a local plan and its IDP. There are a number of studies that need to be prepared to support the new Local Plan and are required by the National Planning Policy Framework or the Planning Practice Guidance. This is not one of those studies and would not normally be needed. It is proposed due to the exceptional circumstances regarding the statutory undertaker in this instance.
- 6.3 A do nothing approach is not proposed, as set out above, as it would reduce confidence in the local plan's preparation process and potentially lead to delays.

7 Resource implications

7.1 Financial implications

- 7.1.1 The cost of this work will be covered from the 2022/23 planning policy budget where provision is made for consultancy advice.

Section 151 Officer comments

The Section 151 Officer will ensure that the commissioning of this work is (a) affordable within the current revenue budget provision and (b) represents value for money for the council.

7.2 Human resources implications

- 7.2.1 There are no additional staffing requirements.

7.3 Information governance implications

- 7.3.1 There are no information governance implications.

7.4 Climate and environment implications

- 7.4.1 Successful adoption of a new local plan will enable the Council to operate a plan-led planning system and have greater control over the location and form of development. In particular, policies to enhance the sustainability of development can be implemented to mitigate and adapt to the effects of climate change and provide increased environmental protection.

7.5 Other resources implications

- 7.5.1 There are no additional resource implications.

8 Legal implications

- 8.1 Relying on the officer's report, the use of external consultants is likely to further due diligence required of a competent local authority, towards sustainability of development and increased environmental protection.
- 8.2 In addition, the action recommended will ensure adequate critique of Southern Water data and information provision.

Monitoring Officer comments

The recommendations contained in this report are a response to the resolution passed by Full Council on 21 September 2022. The commissioning of consultancy advice will provide expert and independent testing of the reliability and veracity of Southern Water data. These actions will support and provide additional assurance in the wider work of Local Plan preparation.

9 Risks and mitigations

- 9.1 The Council is seeking to mitigate potential risks to the progress of the new local plan and timely decision making on planning applications.

10 Consultation

- 10.1 There would be no consultation on the proposed study. Nonetheless, it is anticipated that an increase in the trust in the local plan process could potentially lead to less critical consultation responses on this subject moving forwards.

11 Communications

- 11.1 The use of consultants will help the Council to communicate effectively with stakeholders on matters related to wastewater treatment and the new local plan.

12 Appendices

- 12.1 None.

13 Background papers

- 13.1 None.

Agreed and signed off by:

Portfolio Holder: Cllr Elizabeth Llyod (Cabinet Lead for Local Plan, Environment and Water Quality), 17 October 2022

Executive Head: Neeru Kareer (Interim Executive Head of Place), 17 October 2022

Deputy Monitoring Officer: Alan Harrison 17 October 2022

Section 151 Officer: Malcolm Coe (Chief Finance Officer) 20 October 2022

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