



Report to the Partnership for South Hampshire Overview and Scrutiny Committee

Date: **8 October 2019**

Report of: **David Bibby, Principal Planning Officer (Strategy), Test Valley Borough Council – on behalf of PfSH Water Quality Working Group (WQWG)**

Subject: **PFSH NUTRIENT NEUTRALITY UPDATE**

SUMMARY

The report will provide a further update on progress made to date on work that PfSH is undertaking with partners to address the issues of achieving nutrient neutrality from development across the region, following the previous report to the Joint Committee on 31 July 2019.

RECOMMENDATIONS

It is RECOMMENDED that the Overview & Scrutiny Committee NOTES the contents of the report and consider any comments to be passed to the Joint Committee for consideration.

BACKGROUND

1. This report updates the work that has been done following advice received from Natural England that highlighted the likely significant effect on the Solent's international sites due, in part, to the increase in wastewater from new housing and overnight accommodation. The aim continues to be to achieve a PfSH wide strategic approach to mitigation - in order to achieve nutrient neutral development and deliver the planned housing compliant with the Habitats Regulations.
2. 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 must be addressed as required by the Habitats Regulations. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring the development does not add to existing nutrient burdens.
3. Officers from PfSH local authorities, through the Water Quality Working Group (WQWG) (and in liaison with the Planning Officers' Group), have continued to work with colleagues from Natural England (NE), the Environment Agency (EA), Southern Water and other partners to investigate the potential mitigation options. A meeting has been held with officials from the Ministry of Housing, Communities and Local Government (MHCLG). A note of the meeting held with MHCLG on 20 August is attached at **Appendix 1**.
4. MHCLG have subsequently advised that they are working closely with NE, EA and DEFRA to understand potential resolutions to the issue. Progress has been made towards engaging senior level discussion between the two Government departments and technical discussions are taking place regarding the matter of nitrate permitting. It is also continuing to look at the implications of recent CJEU judgements and working with NE towards some revisions to the method for calculating nitrate neutrality. Further details are expected in due course, once these are agreed and Government is satisfied that are European Regulations compliant.
5. PfSH will be putting a programme bid into the Solent LEP Prosperity Fund to help provide mitigation at scale. Appropriate governance will need to be developed to support this bid but PfSH has a strong track record in such schemes through Bird Aware Solent. The PfSH is able to use the existing South Hampshire Green Infrastructure Implementation Plan (June 2019) as a basis to make a business case. A bid submitted in November should allow time for the preparation to include the results and feedback from ongoing consideration of the issue by MHCLG. Grants valued between £550k and £5m are available from the fund. The deadlines for submitting an application is 29 November.
6. Whilst positive progress is being made and some of the identified potential mitigation options look favourable as possible ways forward, no firm mitigation solutions have yet been found that would enable a PfSH wide strategic approach to be put in place. Best endeavours to achieve this continues.

Appendices: - Appendix 1 - Note of Meeting with MHCLG, 20 August 2019

Background Papers:

Item 7: [PfSH Nitrate Neutrality Update, 31 July 2019 Joint Committee](#)

Item 10: [South Hampshire Integrated Water Management Study, 5 June 2018 Joint Committee](#)

Item 10: [South Hampshire Integrated Water Management Study, 28 March 2018 Joint Committee](#)

Reference Papers:

Enquiries:

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Partnership for South Hampshire
Nitrate neutrality requirements and the impact on housebuilding across
South Hampshire

13.30 - 15.30 Tuesday 20 August 2019
Council Chamber, Fareham Borough Council Civic Offices

Note of Meeting

Welcome and introductions

- The PfSH provided a short appraisal, for the benefit of MHCLG colleagues, of the impact the issue is having on housing development in the south Hampshire region. Havant, Portsmouth, Test Valley, Gosport, East Hampshire, Eastleigh, Southampton, Fareham, New Forest, Natural England and Environment Agency contributed their individual positions. It is clear that the ability of local authorities to issue consents to developers for new housing is stalling significantly, the impact of the problem varies across the region, and there is a real risk to small and medium sized housing developers.
- The PfSH advised that unless measures are taken to address the situation quickly, the problems will escalate even further. A key frustration for members is the lack of parity between the approaches and guidance offered by Natural England and the Environment Agency to address the situation.
- Local authorities are looking at short-term solutions to mitigate nitrate pollution and that will result in resuming business as usual. A medium/long term strategy is required with central government buy-in and leadership.
- The PfSH considers that housing development and local planning authorities are being expected to provide a disproportionate level of responsibility for providing solutions to pollution caused largely by other industries.

MHCLG position

- MHCLG is aware that the issue is causing real problems and confirmed that it is on Secretary of States 'radar'
- Penny Mordaunt MP (Portsmouth North) met with Robert Jenrick MP (SoS MHCLG) 19 August at which the issue was discussed. The outcomes of that discussion not offered by MHCLG
- The issue is *not* one of the Government's making and confirmed that, post brexit, ECJ judgements and EU Directives will continue to be enforced in the UK
- In the short-term MHCLG felt that local authorities need to consider their appetite for risk to legal challenge when considering whether to issue any planning consent
- Collectively and individually, local authorities need to make a decision on how the outcome of the 'dutch case' is interpreted
- MHCLG understands that the housing development sector is taking an unfair 'hit' in terms of having to address the issue and that the balance needs to be redressed. MHCLG is keen to explore what other action can be taken so that new development can continue

- The MHCLG preference is for a strategic medium/long term approach and believed that offsetting (purchase of agricultural land/taking it out of use) is not necessarily the answer and does not work in cities
- MHCLG is also keen to explore options around the benefits of biodiversity net gain as a solution to the problem
- MHCLG appreciated that cross-departmental (MHCLG and DEFRA) discussions are required to form a medium to long term solution - but could only confirm that those discussions would happen 'in coming weeks'
- MHCLG cannot commit at this time to any funding for projects to look into mitigation measures

It was agreed that:

- Michael Bingham (MHCLG, Director of Policy) should be PfSH's main point of contact for ongoing discussions
- MHCLG will initiate cross-departmental discussions to look at ways of finding a medium to long-term solution to the problem. Since the meeting (email from Michael Bingham 21 August) the MHCLG has confirmed that it *will* be looking at possible short-term solutions
- Following enquiries from Fareham Borough Council, MHCLG agreed to provide advice on the process for invoking Imperative Reasons of Overriding Public Interest (IROPI)
- PfSH should provide MHCLG with an 'appraisal' of the current and future (6 to 12 months) impact of the problem and activity being undertaken to mitigate nitrate pollution. This should include:
 - clarity around expected housing need in line with expected population growth in the region
 - detail of what approaches local authorities were currently taking to address the situation
 - what are the barriers are to producing a medium to long-term mitigation strategy
 - Whether/which local authorities are currently issuing consents
 - Likely housing trajectory (what's in the pipeline) for the next 6-12 months - by local authority
 - Whether/which local authorities are developing a strategy of mitigations and if so, what those headline mitigations are.
 - Clarity around whether mitigation measures have been approved by Natural England, Cabinet or are simply being investigated
 - If strategies have been approved, when it is expected that individual local authorities will begin issuing consents again.
 - Clarity around the whether individual local authorities have assessed the amount of land required for mitigation (offsetting)
 - Confirmation of the quantity of land required to relieve a) the immediate backlog; and b) for the life of your local plan?

- PfSH undertook to present the above to MHCLG on or just after 2 September (the occasion of the next PfSH Water Quality Working Group). Once MHCLG has sufficient background on the current 'state of play' it will be in a better position to inform further discussions internally and across government with a view to developing medium to long-term solutions.

ENDS