



FAREHAM BOROUGH LOCAL PLAN 2037

Hearing Statement

Written Statement relating to Matter 10

Natural Environment

Prepared on behalf of Persimmon Homes (South Coast)



February, 2022

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1. INTRODUCTION

- 1.1 This Hearing Statement has been prepared on behalf of Persimmon Homes (South Coast) in response to the Revised Publication Fareham Local Plan (CDC001). Our client previously made representations to the Publication Local Plan in December 2020 and also to the Revised Publication Local Plan in July 2021.
- 1.2 Persimmon Homes have land interests within Fareham Borough and in particular at the edge of Stubbington which includes (but is not limited to) the site south of Oakcroft Lane (Site HA54) which was recently granted planning permission on appeal.
- 1.3 This statement has been prepared in accordance with the prevailing planning policy and guidance, in particular the National Planning Policy Framework (NPPF), July 2021 and the Planning Practice Guidance (PPG). It expands on our client's previous representations and argues that a number of the proposed natural environment policies are not justified or effective as currently drafted, although these deficiencies are capable of being addressed through modifications to the text of the Local Plan and to the Policies Map.
- 1.4 Paris Smith LLP, on behalf of Persimmon Homes (South Coast) wish to take a full and active part in the Hearing to be held on Thursday 31st March 2022 in relation to Matter 10 (Natural Environment).

2. POLICY NE2 BIODIVERSITY NET GAIN

Q2. Are the requirements of the policy sufficiently clear in relation to:

i) the ability for developments to buy 'credits' where net gain on site is not achievable.

ii) That compensation can include new habitat or restoring/enhancing existing habitats.

- 2.1 Neither Policy NE2, nor the supporting text are clear that the purchase of credits remains an option where net gain cannot be achieved either on site or within the local opportunity areas, highlighted on the FBC Local Ecological Network plan (Appendix C of the Local Plan). The correction this omission is important for the policy to operate in a flexible way, covering the full range of anticipated circumstances.

Q3. How has viability been addressed?

- 2.2 The 2019 Viability Assessment (VIA001) included a token £500 per dwelling to take account of the costs to the developer of achieving compliance with Policy NE2. As Persimmon Homes set out in their previous representations to the Publication Local Plan (CD007), this is not considered to be a sufficient cost allowance and did not take account of situations where more of the net gain had to be achieved through funding off-site enhancement measures.
- 2.3 We note that the Viability Assessment Addendum Note (VIA003) sought to justify the £500 per dwelling figure by reference to engagement with Natural England and then by comparison with the 'Central Scenario' cost in the Government's Biodiversity Net Gain Impact Assessment of 2019.¹ However, the Impact Assessment is clear that costs per dwelling can vary significantly. For the South East region (for greenfield development), this cost varies between £162 and £3,305 per dwelling, with the lower costs (Scenarios A and B) associated with situations where the large majority or all of the net gain can be achieved through on-site measures. This means that the £500 per dwelling sum included in the original FBC Viability Assessment and the £948 per dwelling sum that was included in Table 2.4 of VIA003 both assume that at least 75% of the net gain will come from on-site measures. In our experience, that is optimistic at best. With

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf

the exception of the largest sites, we would expect a larger proportion of the net gain to only be achievable through off-site measures and/or the purchase of credits.

- 2.4 In summary, the FBC viability assessment (which is compared in VIA003 to the 'Central Scenario / Scenario B' of the Government's Impact Assessment) does not allow for any purchase of credits from the statutory scheme and only allows for up to 25% of the overall net gain to be achieved from off-site measures, through improvements to the local network of opportunity sites. VIA003 refers to the £10,000 per dwelling generic allowance for policy costs in the viability assessment. However, as is shown later in VIA003 at Table 2.4, after taking account of the various known policy measures proposed in the local plan, only £335 remains as a true contingency to cover any additional or unknown costs from all policy requirements. Therefore, we do not consider that viability has been adequately assessed for the purposes of Policy NE2.

3. POLICY NE4 WATER QUALITY EFFECTS ON THE SPAS, SACS AND RAMSAR SITES

Q6. Is the policy clear and would it be effective?

- 3.1 We consider that if Policy NE2 is read alongside the supporting text, its meaning is relatively clear. However, nitrate neutrality in the Solent area is a Habitats Regulations matter and we question the need for a policy to cover this as the Natural England Guidance on Solent Nutrient Neutrality (version 5, June 2020) is the essential document needed to guide both developers and the local planning authority. If there has to be a policy in the local plan, it should simply signpost people to that guidance or its successors.
- 3.2 We are concerned that, as drafted, FBC could seek to use this policy to go beyond the Natural England Guidance. For example, FBC may decide to impose 'phosphate neutrality' on development in Fareham, even though Natural England has not identified phosphate pollution as a significant cause of harm to the protected Solent Maritime Sites.
- 3.3 A clear example of FBC seeking to go further than the Natural England guidance is found in paragraph 9.54 of the supporting text. This sets out an expectation that development will go beyond 'nitrate neutrality' and "*provide a net reduction such that they can contribute to the objective or restoring the condition to favourable*". It is not the role of the development industry to correct existing harm to the protected sites and nothing in the Natural England guidance suggests that this is the objective. The EU Habitats Directives and the UK legislation into which these are transposed clearly place the onus on public authorities to address existing harm to protected sites. These include local authorities as well as Natural England and the Environment Agency, but not the development industry. The role of the Natural England guidance is to set out an approach whereby development can proceed in a way that makes the harm no worse than it is now.
- 3.3 We believe that this concern could be addressed in two ways. First by referring to the Natural England Guidance (version 5 or any successor documents) within the policy text itself. Second, by deleting paragraph 9.54 of the supporting text.

Q7. Is it clear to decision makers, developers and the local community which developments are subject to this policy and how mitigation could be achieved?

- 3.4 We do not believe that this is clear at all. It would be easy enough in the supporting text to explain that development involving an overnight stay would include residential development with a net gain of a single dwelling or more. It would also be helpful to be clear that this policy is unlikely to apply to householder applications and replacement dwellings.
- 3.5 We also consider that more could be done to guide people as to how development can be mitigated. Whilst it is correct to signpost the Natural England guidance, a reference to the available third-party mitigation schemes would be helpful so applicants know that an opportunity

to secure mitigation through financial contributions exists, where sufficient on-site measures cannot be achieved.

Q8. What progress is being made to secure strategic options for mitigation?

- 3.6 Whilst this is for the Council to answer, I would respectfully refer you to the latest Partnership for South Hampshire Joint Committee report on nutrient neutrality from February 2022, which provides summary details of the progress with strategic mitigation.²

Q9. How has viability been considered?

- 3.7 The FBC 2019 Viability Assessment (VIA001) did not take the costs of achieving nutrient neutrality into account. This is perhaps understandable given the timing of those viability appraisals, before the third-party nitrate mitigation schemes began operation. The Viability Addendum Note (VIA003) suggests therefore that the costs of nutrient neutrality should be included within the £10,000 policy contingency. The level of cost included is £2,838 per dwelling, which is the mid-level of a cost range quoted in paragraph 2.5.4 of VIA003.
- 3.8 We undertake numerous nutrient budget assessments for clients in areas served by Peel Common WwTW and, in our experience, the average dwelling in Fareham Borough would require about 0.8 Kg/N per year of nitrates mitigation. Our experience is that the cost of mitigation credits (per Kg/N/year) for schemes that serve Peel Common is about £3,500 - £4,000, plus legal and administrative costs.
- 3.9 Overall, we consider that the figure assumed in VIA003 is reasonable, but only for larger residential schemes which can absorb the legal and administration costs, which are in addition to the above figures. These costs tend to be about £1,000 - £2,000 per transaction. However, smaller residential schemes (particularly single dwellings) are hit hard by the legal and administration costs which can increase the overall nutrient neutrality mitigation cost to over £5,000 for a single dwelling. It is therefore concerning that the Fareham viability evidence takes such a 'broad-brush' approach and fails to take account of the particularly high costs of mitigation for smaller residential developments.

4. POLICY NE5 SOLENT WADER AND BRENT GOOSE SITES

Q10. Is the policy clear and would it be effective?

- 4.1 We wish to make clear at the start that we are supportive of the intention behind Policy NE5 and of the work undertaken by the Solent Waders and Brent Geese (SW&BG) Working Group. However, the approach FBC has taken is flawed in a number of respects, as discussed in our responses below. In our view, neither Policy NE5 nor the Policies Map are justified or effective, nor are they sufficient flexible or consistent with the appropriate evidence base.
- 4.2 Our key concerns are first, the way in which the Policies Map has been used to identify areas important for SW&BG is inflexible and is not consistent with the SW&BG Strategy³ or Mitigation Guidance.⁴ Second, we are concerned that the drafting of Policy NE5 and supporting text places too much onus on protecting the sites identified on the Policies Map from development and not enough emphasis on the positive opportunities that development can bring to secure suitable sites for grazing and roosting that can be effectively managed to enhance wildlife in perpetuity. In this sense, Policy NE5 and its supporting text go beyond what was envisaged by FBC044 and NE003.

Q11. Do any of the sites allocated for development in the plan, or parts of sites, fall within sites used by Solent Waders and Brent Geese?

- 4.3 We will leave the Council to provide the full response, although we confirm that Site HA54 in which our client has an interest, falls within two relevant areas as defined by the Policies Map. The area to the south of Oakcroft Lane on which the residential development has been

² <https://www.push.gov.uk/wp-content/uploads/2022/02/Item-11-Update-on-Nutrient-Neutrality-in-the-Solent.pdf>

³ Solent Waders and Brent Goose Strategy (2020) prepared by the SW&BG Working Group (FBC044).

⁴ Solent Waders and Brent Goose Mitigation Guidance (2018, ref: NE003), prepared by the SW&BG Working Group.

permitted is identified as a 'Low Use' (Classification 4) area. The area to the north of Oakcroft Lane, which has been secured as an ecological enhancement area through Planning Obligations, is identified as a 'Secondary Use' (Classification 3) area.

Q12. Does the Policy sufficiently reflect the recommendations of the Solent Waders and Brent Geese (SWBG) Strategy?

- 4.4 The SW&BG Strategy (FBC044) recognises the crucial role that the management of land plays in providing effective habitats for the protected birds. For example, at the top of page 22 it is stated:

“The use of some sites will vary if the land use or management changes. For example, if a field is ploughed or allowed to scrub over, it will no longer be suitable to for use. The data therefore can only reflect the use of sites as dictated by their management regime during the study period.”

- 4.5 This is further stressed in section 5.4 of the strategy and overall, the strategy recognises that the only tool available is to encourage private and public sector landowners to adopt suitable management practices. This results in Policy W&BG5 within the strategy that expects relevant development proposals to assess their likely impact on the SW&BG sites. Where a negative impact upon an important site cannot be avoided or satisfactorily mitigated (and the tests of the Habitats Regulations are met as necessary), appropriate compensatory measures will be sought, in line with the SW&BG Guidance on Mitigation and Offsetting Requirements.
- 4.6 The Mitigation Guidance (NE003) is drafted in a positive and flexible way in that it accepts that the loss of some SW&BG sites is not only inevitable, but would provide opportunities to secure alternative sites to be kept in suitable management regimes in perpetuity as part of an evolving framework of sites.⁵ We do not consider that Policy NE5 and the supporting text has the same emphasis, in that it starts from the position that the existing identified sites should be protected from development and that alternative sites will only be acceptable in limited circumstances. This approach misses the point of the SW&BG Strategy on the importance of land management and the opportunities to secure a network of protected sites that can be put in favourable management regimes in perpetuity.

Q13. What is the justification for including the sites on the policies map when they may be updated and reviewed during the plan period? Should it be clearer that reference should be made to the SWBG Strategy?

- 4.7 The SW&BG Strategy is clear that the identification of important sites will be done through regular surveys and reviews. The Mitigation Guidance (NE003) provides more detail on this and also sets out a clear procedure for cases where a classification is disputed, which will require three years of survey data to an agreed methodology.⁶ This approach is flexible and is 'evidence based' and contrasts starkly with FBC's approach, which seeks to enshrine the currently identified SW&BG sites on the Policies Map for a local plan with a fifteen-year time horizon.
- 4.8 By way of example to demonstrate why FBC's approach is unjustified and ineffective, the areas to the north and east of Stubbington are identified as SW&BG sites in the FBC Policies Map, based on the 2019 survey data from the SW&BG Working Group. However, since those surveys, the Stubbington Bypass has been constructed directly through the middle of these areas. This will have had significant impacts on land management and on the suitability of the sites for grazing and roosting and this now needs to be subject to new survey work, with consequential updates to the map of important sites.

Q14. Paragraph 9.55 states there are no Candidate sites in the borough, but the policy refers to them as being shown on the policies map. Is an amendment required for clarity

⁵ See for example, paragraphs 17 and 25 of NE003.

⁶ Paragraphs 9 and 10 of NE003.

and effectiveness?

- 4.9 In line with our points above, we consider that the text references to Candidate Sites could be retained to cover circumstances where such sites are identified within the Borough at a future date. However, the 'designations' should be removed from the local plan Policies Map, and reference made instead to the maps maintained on the SW&BG Working Group website.⁷

5. POLICY NE8 AIR QUALITY

Q18. Are the requirements of the policy clearly articulated and would they be effective? Is it clear what is expected in terms of good practice and principles of design in part b) of the policy?

- 5.1 We consider that parts of Policy NE8 are insufficiently clear. In particular, in part a), it is unclear what specification of EV charging points should be installed. The supporting text is of limited assistance here. For the first bullet point, is the intention for the specification to be left to the applicant? Whilst this may sound attractive to applicants, it is unlikely to result in a consistent approach or deliver the best solution for end users. We are also concerned that a lack of clarity here leaves a gap which has then to be negotiated for each individual planning application.
- 5.2 Given that the term 'fast charger' is widely understood within the industry to mean AC chargers which draw at least 7 kW of current, this could be referred to within the supporting text. As the specification of 'fast' chargers may well evolve over time, 7 kW AC charging could be used as a minimum standard.
- 5.3 We do not think that what is expected of applicants in part b) of Policy NE8 is at all clear and this should be revised.

Q19. Is it clear to decision makers, developers and the local community where areas of poor local air quality are located?

- 5.4 Again, this is unclear and should be revised.

Q21. What is the justification requiring fast rather than rapid charge points? Have the viability implications been considered?

- 5.5 Fast chargers are widely understood in the industry to refer to chargers that draw between 7 and 22 kW of AC current. Rapid chargers tend to be significantly faster, drawing at least 43 kW and converting the current to DC. This makes 'rapid chargers' much more expensive than 'fast chargers'.
- 5.6 Our understanding is that the cost of charging units that has been allowed for within the FBC viability evidence is based on 'fast chargers' only.⁸ Given that 'fast chargers' can fully charge an electric vehicle in two or three hours, and that the cost of 'rapid chargers' has not been taken into account within the viability evidence, we consider that there is no justification for requiring 'rapid chargers'.

Q22. What is the justification for the policy requiring major development to contribute to the delivery of green infrastructure? Does this duplicate Policy NE9?

- 5.7 We agree that this part of Policy NE8 duplicates Policy NE9 and should be deleted.

⁷ <https://solentwbgs.wordpress.com/page-2/>

⁸ Paragraphs 2.5.8 to 2.5.10 of the Viability Assessment Addendum Note (VIA003).