

Hearing Complaint re: NE advice, Natural Environment

From: Warsash Fishermen <[REDACTED]>
Sent: 11 April 2022 12:26:15 (UTC+00:00) Dublin, Edinburgh, Lisbon, London
To: Trueman, Kerry <KTrueman@Fareham.Gov.UK>
Cc: SM-NE-Protected Sites (NE) <[REDACTED]>
Subject: Hearing Complaint re: NE advice, Natural Environment

Dear Kerry

Please find the formal Letter of Complaint I indicated during the Hearing on 31st March (Natural Environment) that I would be sending to the Council.

I would be most grateful if you could forward this to the Inspector and the relevant personnel at Fareham Borough Council dealing with this Plan.

I have copied in Natural England at a previous address I have used, but do not have the personal email for either Rebecca Aziz or Nick Pincum (Urban Edge), so if you could advise me on their email contacts, or better still, ensure they receive this letter, I would be most grateful as clearly the issues raised here would be relevant for these personnel as well as the Council.

I would like to make it clear that this is not a complaint against the conduct of personnel but policy and advice failures alone.

sincerely

Steve Matthews

Warsash/Estuary Fishermen's Group

11-04-22

For the Attention of:

Rebecca Aziz (Natural England), Fareham Borough Council, Mr Nick Pincum (Urban Edge), Helen Hockenhull (Inspector of Planning appointed by Secretary of State)

Letter of Complaint

Dear Sirs and Mesdames

I am writing in connection with Thursday's 31-03-22 Hearing with the Government Inspector, Helen Hockenhall, which was convened to discuss the

Fareham Plan. That Hearing was conducted to consider **Matter 10, Natural Environment.**

As a participant I was able to speak on behalf of local commercial fishing interests and explore the soundness of the Plan in that context and environmentally.

During the Hearing I queried the scientific scoping advice and the Statutory advice from Natural England (NE) relating to the Habitats Regulation Assessments (HRA's) and I questioned the scope of the duties of both Fareham Borough Council and NE itself.

As a result of this questioning which was augmented by the positive questioning of the 'Save Warsash' campaign representatives, Mr and Mrs Megginson, it became apparent that there have been some basic failures in the assessments and scoping advice for this Plan which cannot be ignored and which have direct relevance to the potential impact upon the environment and the Fishing Industry.

Unfortunately, the responses offered to our concerns were not of a satisfactory standard and therefore doubts now exist regarding the soundness of the advice and therefore to the deliverability of the Plan both ecologically and the potential impact on local fishery interests.

I verbalized my intention to the Inspector during the Hearing that I would be writing a letter of complaint in due course because of these failures.

Failure 1: *Impact of the Fareham Plan on bivalve shellfisheries have not been considered, nor the wider effects of nutrients entering the SEMS.*

Regarding the Council's remit to assess whether the Plan is sound or not; the advice clearly states that the Habitats Assessment scope includes 'sandbanks that are partially covered with sea water at all times and mud flats not covered with water at all times (intertidal zone)'. Potential effects arising from housing development regarding those features must be considered.

The Inspector, Helen Hockenhall, appeared to be satisfied that these assessments have been carried out to the required standard and both the author of the Council's HRA report, Mr Pincum and Fareham Borough Council themselves appeared to be under the impression that duties in that respect had been fully and correctly discharged.

However, it soon became apparent because of our positive questioning that a major oversight has occurred with respect to the HRA assessment regarding the significance/scope of sandbanks/mudflat features, namely that the presence of bivalve mollusc species like hard shell, soft shell and Manila clams are intrinsic to those features. Bivalve molluscs denote existing local shell fisheries within Southampton Water and the Solent have obviously not been considered in the scoping assessments by either NE or Urban Edge (Council).

During the Hearing I explained the importance of the Southampton Water clam fishery (note: we had previously additionally mentioned that the Solent Oyster regeneration project was occurring within the local area in the Hearing Statement) and in order to put the importance of that clam fishery into context, I gave an example of the existing clam fishery in Poole Harbour, which supports over 40 permit holder fishermen. This generates a first sale revenue for clams alone of £1Million per annum. This does not include the high-level importance and contribution of shellfish aquaculture businesses in that area.

In order to emphasise the importance of water quality, I explained that any housing development plan that would likely increase the potential in raw sewage over spills after heavy rain (see Failure 3), should reasonably include the consideration of the impact upon shellfisheries. Unfortunately, there was not much time allotted during the Hearing to fully explore these failures and it seemed to be apparent that neither Fareham Borough Council or Natural England are aware shell fisheries should have been a subject of significance or worth to be duly considered.

Such a position will clearly be at odds with the Association of the Inshore Fishery and Conservation Authorities, (AIFCA's) which are the competent authority Regulators of the UK's inshore sea fisheries. I made direct reference to the AIFCA's published views* on the importance of shellfisheries to the environment and the fishing industry during the Hearing.

**Fishing News, 18-03-21, p8: 'Study finds pollution threat to south coast sea life'*

During the Hearing conversation, Mr Pincum (author of the Urban Edge Report) verbalised his view that the seabed habitat under consideration (sandbanks) did not benefit from the shellfish (bivalves) but that instead, shellfish were dependent on the ecosystem of the sandbanks.

I then corrected Mr Pincum in public, explaining that, as such, his statement (and therefore by extrapolation, his advice to the Council) was factually incomplete and that in fact, bivalves like oysters and clams have a significant water filtering capacity, fix carbon and remove nitrates from the sea and are therefore of direct benefit to their immediate habitat/environment (which is why the Association of the IFCA's consider shellfisheries environmentally important).

Therefore, I am writing to reiterate the statements that I gave for the record and to explain that regardless of the opinion of the Inspector, (i.e: that the HRA Assessments are 'sound') it is a matter of fact that the advice which informs this Plan is not accurate or complete and therefore worthy of a Complaint.

I also went on to explain two other things: One; that the Association of the IFCA's takes the view that (Fishing News; 18-3-21) bivalve shellfish are highly important and should be considered whenever there are questions arising concerning sewage infrastructure (and therefore, by extrapolation, housing development). Two; that because of poor water quality issues in parts of Southampton Water regarding raw sewage contamination of the sea bed, large swathes of the upper estuary have been receiving poor quality sanitary surveys for the past 20 years. This has resulted in large sections of Southampton Water regularly being closed to clam harvesting with significant negative economic impact to the fishing industry.

Thirdly, I explained to the Hearing that: our local fishermen's group at Warsash had taken steps to approach the regulator, Southern IFCA to explore the possibility of developing a similar fishery to that in Poole Harbour, which use small, hydraulic dredges; continuing to emphasise however that any increase in sewage overspill potential into the Solent/Southampton Water could risk negatively impacting that latent fishery. I explained that this is not something which is mere supposition, as we already know that the upper estuary is receiving unfavourable sanitary surveys. (note: this is despite the fact that the sewage works at Woolston has been upgraded to include technology to assist the removal of bacterial loads from sewage wastewater effluent). All of that effort will be for nothing, if raw sewage overflows continued to increase arising due to unsustainable levels of development coupled with failure of local water companies to respond to the increased demand.

Failure 2: *No liaison with Fisheries regulators.*

It also became apparent during the questioning process and discussion during the Hearing that at no point during the environmental assessments related to the Fareham Plan had the inshore fisheries regulator Southern IFCA been approached by the Statutory Advisor, Natural England regarding shellfish beds and that certainly there was no existing Statement of Common Ground involving the IFCA or anything comparable.

This is a major oversight in the process. Had such a liaison occurred, it is highly likely that the significance of bivalve fisheries related to potential effects of housing development would have been explored and then duly considered in the ecological assessments by both the Fareham Council and Natural England themselves. Unfortunately, it was not.

Failure 3: *No policy to make rainwater soakaways mandatory requirement for developers.*

The discussion which ensued regarding the contribution of rainwater run-off from developments exacerbating spills of sewage after rain revealed that there appears to be no mandatory policy proviso for developers to divert rainwater runoff from developments into non sewer infrastructure (eg, soakaways). Rain water will go directly into the sewage pipe system, and increasing volume loadings will increase the likelihood of sewage overflows in the area and therefore impact the sanitary status (e-coli) of local shell fisheries.

Unfortunately, both the Inspector and the NE advisor, Mrs Aziz appeared to misunderstand the significance of this related to my points re: any potential impact on shellfisheries (a chain of simple cause and effect). Both mistakenly construed my point as relating to nitrate leaching from rainwater runoff via the land.

This was not the point I was attempting to make. I was making the point that rainwater run-off going into the sewer system (rather than ground soakaways) is exacerbating raw sewage overflows by overloading the system every time there is a high rainfall event. We have clear evidence for this.

I reminded the Hearing that over the last 12 months, during 2021, there were many days of raw sewage spills into Langstone Harbour (Solent watershed). Langston Harbour contains valuable Manila clam fishery beds and eelgrass. Any such overflows will deliver appreciable quantities of faecal matter containing E coli and nitrogen compounds directly into the ecosystem and fisheries.

Therefore, it is obvious that the system locally is already under significant strain and that while the water provider companies were legally bound to provide service, the developers appear to have received no instructions on policy regarding rain water soakaway provisions.

Failure 4: *Failure to provide proof (on balance of probability) N-mitigation will be effective and failure to widen scope to include sub-surface seaweed impacts (already affecting local fishing industry).*

The representative for Natural England, Rebecca Aziz suggested that the nitrate mitigation plans will be effective. There was some discussion between Mr Megginson (Save Warsash) and Mrs Aziz regarding the different sources of nitrogen/nitrate and how effective/significant the delivery would be either through the geology (leaching), watercourses or that delivered directly into the Solent maritime via the Peel Common sewage outfall pipe.

It then became apparent during the Hearing that Natural England have made a fatally flawed assumption; they are failing to recognise the different ways that this nitrate (agricultural v development sewage burden) is delivered into the SEMS relative to their mitigation calculation methodology. This represents a significant practical disparity, the effects of which will never be able to be gauged, since nitrogen delivered to the land through agriculture takes a considerable amount of time to work through the environment and the geology into the watershed, whereas nitrate transferred from sewage burden from housing is transported directly into the SEMS in a relatively short time interval.

The assumption inherent in NE's nitrate mitigation scheme is that it is a simple like-for-like comparison and that a basic balancing methodology can be used to then declare 'nitrate neutrality' to allow development to go forward unhindered. Clearly, the methodology is capable of question and could have direct effects on the SEMS ecology and fisheries (through seaweed macro algal overgrowth). During Hearing Matter 1, this was touched upon by the Warsash fisherman representative but unfortunately, the NE participant was not present at Hearing 1.

NE (R Aziz) confirmed that most of the nitrate will enter the Solent Maritime through the Peel Common outfall pipe and confidently announced that this would be 'dispersed' in the Solent due to the 'effective dispersal of Solent waters'.

As we have already explained in the Hearing Statements, this is at odds with the understanding of the Solent fisherman regarding the existing seasonal, sub surface (mobile) seaweed problem and their knowledge of the local tidal flows. There are questions that need to be answered by Natural England about whether the nitrate plumes are effectively dispersing. Considering that NE have entirely ignored the already long existing sub-surface seaweed overgrowth issue and the experience of the fisherman in existing net fisheries regarding these weed overgrowths, it is highly likely that it is not dispersing effectively and while NE frequently refer to eutrophication in the intertidal sites, they fail to draw attention to the subsurface seaweed and to the effects of increased nutrient on that.

Signing off proposed developments as sound on the strength of pure guesswork is clearly scientifically dubious.

It has to be said that these failures may significantly detract from the assumed deliverability of developments within the Solent watershed and that at some level, serious inquiries must be made of these failures.

Bizarrely, Natural England have now effectively become the enablement wing of housing developers and are basically propping up policy failures (re unsustainable population growth) by central Government and previous Governments with nothing less than paper-science guesswork.

The price that will have to be paid will not be paid by either developers, the Councils, Natural England or the water companies; it will be paid for by the environment and the tab will be picked up by the fishermen, while increasing swathes of greenfield in the Solent catchment will continue to be destroyed.

It goes without saying, that in the likely event of the situation becoming worse, both with respect to sanitary conditions of shellfish beds and seaweed overgrowths in the Southampton Water/SEMS and considering already the nearly 20 years of lost potential revenue in the Southampton Water clam fishery, the fishermen are already in a very strong position with respect to any potential claim or litigation which may arise from these obvious failures of the Statutory Advice, housing policy, water regulator failures etc.

Therefore, I am writing to formally complain regarding these four failures and suggest that continued development in the Solent watershed with the assumption these marine features (or potential bivalve fisheries) will not be

negatively affected cannot stand even on the balance of probability alone and must be properly considered.

I look forward to hearing your explanations as to why these failures have occurred and why my questions were not answered properly and why this entire process has been rushed through.

I will be sending copies of this letter to the Fareham MP's in due course.

Yours sincerely.

Steve Matthews

Contact: 

Co-ordinator, Warsash/Southampton Estuary Fishermen's Group. Hearing participant (Matter 1, HRA assessments and Matter 10, Natural Environment), Nominated media spokesperson (Southampton Estuary) for NFFO.

Copies to:

Robert Clark, CEO Association of the IFCA's

NFFO (National Federation of Fishermen's Organizations)

MP's Fareham. 'Save Warsash' Campaign Group. Fishing News