

CABINET

THURSDAY 19 MARCH 2020

NITRATES MITIGATION CHARGING POLICY

Report of the Corporate Director – Support Services (CFO)

Recommendation(s)

- (1) It is recommended that Cabinet approve the introduction of a charge of £4,500 per dwelling to developers and £1,800 per room for tourism developments and care homes with immediate effect, secured by S106. These charges will be levied where developers opt to take advantage of the Council's mitigation offer where they have not made their own arrangements.
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Summary

There is evidence of high levels nitrogen and phosphorus in the Solent catchment water environment, including evidence of eutrophication at some internationally designated sites. The Habitats Regulations place the responsibility on the Council as Competent Authority to ensure when permitting new residential development, some tourism development or development that provides for overnight accommodation, that there is no net increase in nitrates reaching the Solent (nitrate loading) and that nutrient neutrality is maintained.

In light of advice from Natural England and in the absence of a national solution, the aim continues to be to develop a Partnership for South Hampshire (PfSH)-wide strategic approach to mitigation in order to achieve nutrient neutral development - and deliver the planned housing development compliant with the obligations set out within the Habitats Regulations.

In the interim it is important that the Council is proactive in ensuring housing development can continue at pace, maintaining a 5 year housing land supply and meeting its annual requirement for new housing as measured by the Housing Delivery Test. Failure in meeting both of these targets has the potential to undermine the plan led approach to housing delivery. This report recommends measures to aid developers to enable this.

Having reviewed a sample set of data from 29 varying sized schemes within the Borough it is recommended that the Council charge a fixed fee per dwelling, or room in the case of tourism developments and care homes.

Statutory Powers

Habitats Directive (transposed by the Conservation of Habitats and Species Regulations 2017 (as amended))

Town and Country Planning Act 1990

Strategic Implications

1. The decision in this report supports the Housing Development and the Healthy Communities in the Corporate Plan 2015-2025. It is also key to the Climate Change and Environmental Emergency action plan and will have a significant positive impact on the environment.

Introduction

2. There is evidence of high levels of nitrogen and phosphorus in the Solent water catchment environment, including evidence of eutrophication within internationally designated sites. The Solent water environment is internationally important for its wildlife and is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations. High levels of nitrogen and phosphorus must be addressed as required by the Habitats Regulations. The achievement of nutrient neutrality, if scientifically and practically achievable, is a means of ensuring that development does not add to existing nutrient burdens.
3. High levels of nitrogen and phosphorus is experienced across the Solent region and beyond the PfSH region, including to other parts of the country. Long term this issue can only be addressed at a national level with joint working between Government offices, the Environment Agency, Natural England and statutory sewage providers. Natural England's guidance on calculating nitrate impact advises that various agricultural practices are the majority contributors to nitrate pollution. It is also recognised that new residential development contributing significant less than many agricultural uses. The removal of land from certain agricultural uses can result in a long term reduction in nitrates and given the current hiatus in national policy and guidance, is the best short term arrangements to avoid nitrate loading i.e increasing nitrates within the Solent.
4. The Council has been working across the region with other councils and partnering organisations both at officer level and as part of PfSH to determine a long-term strategy to deal with this issue. The development industry is also working hard to identify how nitrate mitigation can be achieved.
5. In the interim, it is important that the Council does not hold up development by allowing the nitrates issue to delay the issuing of planning application decisions. The National Planning Policy Framework (NPPF) requires a Council to maintain a 5 year housing land supply and meeting its annual requirement for new housing as measured by the Housing Delivery Test. Failure in meeting both of these targets has the potential to undermine the plan led approach to housing delivery.
6. One proposed interim solution until a regional or national solution is developed, is for the Council to identify areas of agricultural land and remove them from a nitrate intensive use which would provide mitigation through offsetting a development. This would ensure no net increase in nitrates within

the Solent but long term a Government led alternative and more sustainable arrangements is more favourable. The Council would need to ensure the land would be set aside in perpetuity, which is defined as at least 80 years. The Council will calculate the level of nitrate mitigation this land provides (measured in kg) and make these nitrate credits available to developers to buy, securing the funding through the S106 process. This recommendation could be implemented quickly and provide some scope for the development of complimentary strategies. The full strategy including the recommendation from this report and other emerging options will be presented to Cabinet in May 2020.

Land acquisition and Nitrate Credit Scheme

7. To address the initial impact of the nitrate problem, in June 2019 the Council agreed, as landowner, to offset new development against the Horton Heath site until such time as a sub-regional solution emerged. This approach has been supported by Natural England (NE) as this offsetting solution will be in perpetuity.
8. This solution could only be used in the short term and work has been ongoing to determine an appropriate medium-term strategy. In drafting this strategy, consideration will be given to a suite of mitigation measures to tackle the nitrate issue; this work is being finalised and will be recommended to Cabinet in May 2020. Beyond this timescale, the Council may wish to establishing a framework for examining in more detail the science behind the Natural England methodology for calculating nitrate levels, having regard to actual impact of new developments and projected population growth or decline, as well as engage in meaningful discussions with the water industry who under stricter licencing requirements from the Environment Agency could significantly reduce nitrates as part of the wastewater treatment process.
9. In advance of the draft strategy being presented to Cabinet it is necessary to address the immediate concerns over mitigation to ensure there is no delay in the issuing of planning decisions. It is worth noting that mitigation needs to be in place from the date of first occupation and therefore timescales to deal with existing planning applications are short.
10. The Council will need to demonstrate offsetting for the One Horton Heath project and this coupled with other developments within the Borough means that mitigation is needed in the short term. The strategy proposed in this report will enable the Council to identify appropriate mitigation land, remove it from an intensive nitrate generating agricultural use and determine its long term use in perpetuity, which in turn will offset nitrates generated by wastewater created from new residential, tourism and overnight accommodation developments. This will see a controlled and coordinated approach to the problem which fits with the Council's ambition to accelerate housing delivery.
11. A sample of 29 developments of varying sizes within the Borough has been analysed, with each site either discharging to Peel Common Waste Treatment Water Works or Chickenhall Lane Waste Water Treatment Works (WTWW).

The Environment Agency's licenced nitrate output level allowable from the two WTWW differs and approximately half of the sample sites discharge their waste water to each WTWWs.

12. It is recommended that the Council offer the option for a developer to purchase a nitrate credit per dwelling against land that the Council will own. This charge is recommended to be £4,500 per dwelling. This charge includes estimated costs of land purchase and ongoing maintenance (having regard to research that the Hampshire and Isle of White Wildlife Trust have undertaken in support of their own nitrate offsetting project). To create a "level playing field" for development within the Borough and having regard to the even split between WTWW serving developments, the charge will be borough wide and not WTWW specific.
13. For other development that generates overnight accommodation (including care homes) a proposed charge of £1,800 per room is recommended.
14. The charging mechanism, if approved, will be secured through the S106 obligations process. Consideration has been given to the effect this new cost could have on the viability of schemes. Where new schemes involve land purchase the cost will be included by the developer in the land price negotiation and should therefore have no impact. If a developer can demonstrate appropriate mitigation without the use of these "credits" then again there is no impact. In the small number of cases already in the pipeline where there may be viability concerns raised the Council's Housing Intervention team will work with the developer to propose ways forward which may involve the Council becoming involved in the sites for delivery alongside the developer.
15. If the recommendation in this report is approved the Council will develop a robust process and begin to charge all relevant developers and reserve the income received for future land purchase and maintenance costs. This report does not ask for approval for land purchases as any proposed future land purchase would be considered on its own merits by Cabinet. It is proposed that charges, if approved, are reviewed for reasonableness within six months.

Financial Implications

16. Initially the nitrate credit charging scheme will be cost neutral as the income will be held against costs of land holdings already in the Council's control. The income will be ringfenced for the purposes of nitrate mitigation and could be used for future land purchases and ongoing maintenance. If additional land is required in the future, each purchase will be considered on its own merit.

Risk Assessment

17. There is no initial risk with using land already in the Council's control. The risk of not introducing this scheme is that housing delivery could stall within the borough as planning application decisions will not be issued. Longer term

risks could arise if the supply of land is exhausted however it is hoped that the regional approach to this issue will address this.

Equality and Diversity Implications

18. The Equality Act is not relevant to the decision in this report.

Climate Change and Environmental Implications

19. The proposals contained within this report will have a positive impact on the environment and climate resilience in several ways, by addressing nitrate issues affecting sensitive marine locations within the region, Biodiversity Net Gain of land set aside in perpetuity and improving resilience to an issue exacerbated by the changing climate."

Conclusion

20. It is recommended that Cabinet approve the introduction of a charge of £4,500 per dwelling to developers and £1,800 per room for tourism developments and care homes with immediate effect, secured by S106 negotiations. These charges will be levied where developers opt to use the Council's mitigation offer where they have not made their own arrangements. The proposed charges will be reviewed within 6 months to ensure that the charging levels within appropriate.

SARAH KING
CORPORATE DIRECTOR – SUPPORT SERVICES (CFO)

Date: 6 March 2020
Contact Officer: Sarah King
Tel No: 023 80688011
e-mail: sarah.king@eastleigh.gov.uk
Appendices Attached: nil

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

None.