

Chichester District Council

Planning Committee

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Water resources in Northern Chichester District

1. Contacts

Report Author:

Fjola Stevens, Divisional Manager Development Management

Tel: 01243 534734 E-mail: fstevens@chichester.gov.uk

2. Recommendation

2.1 That the Committee:

- a) note the content of this report, and
- b) approve the date of publication of the Natural England position statement on 14 September 2021 as the date at which water neutrality is a material consideration, and consequently that its requirements are not applied retrospectively in respect of the determination of relevant planning applications, including applications for the revocation, modification or discontinuance of a permission on water neutrality grounds granted prior to that date.

3. Background

- 3.1 The Arun Valley is legally protected for its wintering birds, its wetland habitats, a rare snail species, invertebrates and several rare and uncommon aquatic and wetland plants. The protected sites, which have European designations, are:
 - The Arun Valley Special Protection Area (SPA),
 - Special Area of Conservation (SAC), and
 - Ramsar sites.
- 3.2 Natural England (NE) has advised that the existing water supply in the Sussex North Water Supply Zone cannot be ruled out as contributing to the declines in wildlife within the Arun Valley protected sites. A map showing the extent of the Sussex North water supply zone is attached at Appendix 1.
- 3.3 In September 2021 NE published a Position Statement requiring water neutrality to be achieved for new developments that would otherwise increase water demand (see Appendix 2). In December 2021 NE published a Frequently Asked Questions (FAQ's) document (see Appendix 3) to address queries raised by local planning authorities and developers.
- 3.4 This report explains in brief what water neutrality is, when the requirements apply, and the impacts of the guidance upon the determination of planning applications within the Chichester Plan Area that falls within the Sussex North Water Supply Zone.

4. Main Issues

i. What is water neutrality

4.1 Water neutrality is defined as: “For every new development, total water use in the region after the development must be equal to or less than the total water-use in the region before the new development.” This means for new developments that the total demand for water should be the same on the site after new development is built, as it was before.

ii. What type of development is required to demonstrate water neutrality

4.2 The requirement to demonstrate water neutrality applies to all new development that could increase water consumption from the public drinking water supply. This would likely include new dwellings, commercial development, and any other development that would likely increase demand on the public water supply.

4.3 When a planning application is assessed, the local planning authority is the competent authority under the Habitat and Protected Species Regulations 2017 and so is responsible for assessing the likely impacts upon the designated sites in the Arun Valley. This is a two-step process:

a) The local planning authority must establish whether there would be a likely significant effect upon the designated sites through a screening exercise.

If it is found that there would not be a likely significant effect on the designated site in the Arun Valley no further action is required. If it is found that the development would result in a likely significant effect upon a designated site then the second step is necessary;

b) Where a likely significant effect is identified, the local planning authority must undertake an Appropriate Assessment. The Appropriate Assessment will consider the potential impacts and whether the proposed mitigation would adequately mitigate the identified impacts.

4.4 The guidance from NE explains that water neutrality is required to mitigate the likely significant effects of new development that would otherwise increase water demand in the Sussex North Supply Zone. The FAQs sets out in detail how water neutrality can be achieved.

iii. When does the requirement for water neutrality apply

4.5 The position statement was published on 14 September 2021 and was effective immediately. Therefore, applications for development that would materially increase water consumption received after 14 September 2021 are subject to the requirements to demonstrate water neutrality.

4.6 Officers have attended meetings with NE to discuss how to implement water neutrality through the development management process. It was clear in the advice provided by NE that the requirement cannot be applied to planning application

decisions that were made by the local planning authority prior to 14 September 2021.

iv. Revocation of Planning Permissions and Compensation

- 4.7 There is a legal process under Section 97 of the Town and Country Planning Act (TCPA) 1990 through which an extant planning permission may be revoked via a Revocation Order if the local planning authority considers it expedient to do so. This power allows the local planning authority to revoke or modify a planning permission prior to the development being completed, although a revocation order cannot apply to any part of the development that has already been built. In the case of a change of use permission, a revocation order may be made at any time before the change of use has occurred. The Act states that the authority shall have regard to the development plan and any other material considerations when considering the question as to whether it would be expedient to revoke or modify a permission that has already been granted.
- 4.8 Where a planning permission is revoked or modified by a local planning authority under S.97 of the TCPA, then if, on an appropriate claim being made, a person with an interest in the land shows that he has incurred expenditure and/or has sustained loss or damage as a result of the revocation order, then the LPA must pay compensation to the claimant (S.107 TCPA). Such payment of compensation would be the depreciation in the value of the land caused by the revocation of the permission and would also include expenditure incurred in the carrying out of works which are rendered abortive by the revocation order and any preparatory work such as the drawing up of plans.
- 4.9 Clearly in the case of planning permissions for housing developments, the depreciation of the value of the land as a result of the revoking of a planning permission would be substantial. In the case of *Health and Safety Executive v Wolverhampton City Council 18/7/2012* the courts held that the amount of compensation for which the authority might be liable for can be taken into account as a material consideration when deciding whether to revoke or modify a permission. In this case the scheme related to a £40m development of 5 student accommodation blocks. It is not possible to calculate the precise amount of compensation that the Council would be liable for should extant permissions be revoked as it would be dependent on a range of variables. Additionally, it would not be possible to reasonably determine the period of time for which extant permissions should be revoked. However, it would in all probability amount to very significant sums of money, likely to be in the order of millions of pounds. Material considerations taken into account when considering the revocation of a permission for housing would likely include the liability for compensation and the risk to the Council's 5 year supply of housing; the implications of which would be a greater number of speculative housing applications. In summary, it is considered therefore that the requirements of the NE Position Statement should not be applied retrospectively to applications determined, and the decision issued, prior to the date of its publication.

5. Conclusion

- 5.1 The impact of water abstraction upon the Arun Valley designated sites and the matter of water neutrality emerged as an issue following its identification by Natural England. Water neutrality is therefore a new planning issue which is of very high importance and a material consideration for a wide range of applications within the Sussex North Water Supply Zone submitted following the publication of NE's Position Statement on 14 September 2021. Applications within the Chichester Local Plan area will be determined in accordance with the process set out within this report, NE's Position Statement and also their published guidance.

6.0 Background documents

Map of Sussex North Water Supply Zone:

[https://www.chichester.gov.uk/media/36218/Map-showing-the-part-of-Chichester-District-and-surrounding-area-within-the-Sussex-North-Water-supply-zone/doc/Map_of_the_part_of_Chichester_District_\(and_surrounding_area\)_within_the_Sussex_North_Water_supply_z.docx](https://www.chichester.gov.uk/media/36218/Map-showing-the-part-of-Chichester-District-and-surrounding-area-within-the-Sussex-North-Water-supply-zone/doc/Map_of_the_part_of_Chichester_District_(and_surrounding_area)_within_the_Sussex_North_Water_supply_z.docx)

Natural England Position Statement:

[\(Position statement on Water Neutrality Sept 21 2021.pdf \(chichester.gov.uk\)\)](#)

Natural England FAQ Document:

https://www.chichester.gov.uk/media/36521/Arun-Valley-Water-Neutrality-Developer-FAQ/doc/22122021_Arun_Valley_Water_Neutrality_Frequency_Asked_Questions_Developer_FINAL.docx