

Chichester District Council

Planning Committee

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Nitrate mitigation scheme at Droke Lane, East Dean

1. Contacts

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2. Recommendation

- 2.1. **That the Committee approves the recommendation to enter into a legal agreement with the owner of land at Droke Lane, East Dean, and the South Downs National Park Authority to secure the provision of a credit-selling nitrates mitigation scheme.**

3. Background

- 3.1 This report outlines the main issues surrounding nitrates in the protected Solent habitats; the recent advice from Natural England on the matter; the proposed measures to provide a mitigation solution at East Droke, how the mitigation would be secured, and how the mitigation scheme would monitor in perpetuity (or until such time it is no longer required).

4. Main Issues

Nutrient Neutrality

- 4.1 Nutrient pollution is a big environmental issue for important places for nature in England, including Chichester Harbour and the wider Solent area. Chichester Harbour is a designated Special Protection Area (SPA) alongside Langstone Harbour and this SPA forms part of the Solent Maritime Special Area of Conservation (SAC). Hereafter the Chichester and Langstone Harbours SPA is referred to as the Harbour. These are European designations for areas providing highly important habitats for wildlife. Water quality is a contributing factor to the build-up of excess nutrients in the Harbour causing algal growth which disrupts natural processes and harms wildlife living in the Harbour. Sewage from new development using wastewater treatment works or an on-site package treatment plant that discharges to Chichester Harbour contributes to the excess nutrients in the Harbour (albeit in small amounts relative to other sources).
- 4.2 Natural England's assessments of Chichester and Langstone Harbours during 2019/20 found that more than 3000 hectares of the intertidal parts of Chichester Harbour, should be classified in an 'unfavourable – declining' condition. As a result of the condition survey the impacts of new developments need to be considered in line with the Conservation of Habitats and Species Regulations

2017 (Habitats Regulations). Before granting planning permission for a development that may affect the Harbour the local planning authority (LPA) as the competent authority needs to undertake a Habitats Regulations Assessment (HRA) and be satisfied that the proposal will not have any adverse impact on the protected site or sites. Where sites are already in unfavourable condition, extra wastewater from new housing developments can make matters worse and undermine ongoing efforts to recover these sites. Therefore, if a proposal would lead to an increase in nutrients discharging into the Harbour, planning permission cannot be granted unless the impact of the development would be mitigated.

- 4.3 In June 2020 Natural England (NE) published guidance on how to mitigate new developments to achieve nutrient neutrality, and this guidance was updated in March 2022. The link to the most recent guidance is provided in section 7 below. Mitigation could involve putting place measures to stop nutrients from discharging directly from a site, this is commonly known as 'on-site mitigation'. Mitigation could also involve 'off-site' measures to reduce the discharge of nutrients from an existing source elsewhere within the fluvial catchment for the Harbour. When appropriate mitigation is provided to prevent a development discharging nutrients to the Harbour or off-site mitigation is secured to cancel the impacts of a new development, the development is nutrient neutral, and the requirements of the Habitat Regulations would be met.
- 4.4 One means of achieving nutrient neutrality is to take agricultural land out of an active farming use, thereby removing its contribution of nutrients to the Harbour. To be effective such mitigation needs to meet several criteria;
- be within the catchment of the Harbour
 - be effective prior to occupation
 - be effective in perpetuity (which in accordance with NE guidance, is 85-125 years).
- 4.5 The proposal for the East Droke Mitigation Scheme includes taking 4.78ha of agricultural land out of active agricultural use to provide off-site mitigation for new developments that would otherwise have a harmful impact upon the Harbour. Based on the latest guidance and from NE the proposed scheme would deliver mitigation for in the region of 158 houses, although this depends on the location of the development site and its existing use. The proposed mitigation scheme would unlock a number of applications that have been held up in the planning system, unable to progress without a solution to become nutrient neutral. These applications are mainly small scale windful developments, however their form part of the Council's 5 year housing land supply, and therefore it is important that these applications are able to move forward. The adoption of an overarching mitigation scheme would provide a model for other mitigation schemes.

The proposed scheme

- 4.6 The proposed scheme has been developed by a local farmer with the assistance of specialist consultants in accordance with the latest NE Guidance and in consultation with Chichester District Council (CDC), the South Downs National Park Authority (SDNPA) and Natural England (NE). The mitigation scheme would allow the landowner to sell nitrate mitigation credits to developers who wish to secure mitigation for their new development.
- 4.7 The scheme would include:
- a) taking 4.78ha of agricultural land used for cereal crops out of use, resulting in 126.67 kg of nitrates being removed from the Harbour each year.
 - b) implementing a scheme of planting to include native hedgerow planting to fill gaps in the boundary, scrub with native tree planting, tussocky meadow, and wildflower meadow.
- 4.8 The scheme has been developed following detailed discussions with the SDNPA about the appropriate planting for this area. It is important that the planting supports the objectives of the SDNP in respect of its landscape and its endeavours to provide nature recovery solutions. The proposed scheme with the balance of planting would meet these objectives. NE guidance advises that planting broadleaf trees is desirable to ensure certainty that a mitigation scheme will be maintained in perpetuity. Although the landowner was willing to provide tree planting across the mitigation land, this would not have been acceptable in respect of the landscape impacts, and it would not have taken the opportunities available to increase biodiversity on the site. It was for this reason that the SDNPA sought an alternative planting scheme.
- 4.9 The scheme has been accompanied by a Hydrological Report that demonstrates that the site is connected to the Harbour via an ancient riverbed that leads to the river Lavant. The report demonstrates that the lag time for the mitigation to take effect is 2 years from the date the land is taken out of agricultural use. The land was taken out of active agricultural use in June 2021, and therefore the mitigation scheme will deliver effective mitigation from June 2023. The land is classified a grade 3, 4 and 5 agricultural land, which is not the most versatile and valuable.
- 4.10 The proposed scheme has been considered under the Habitat Regulations, and NE have been consulted on the Habitat Regulations Assessment. NE initially raised concerns regarding the proposed planting scheme, as detailed below:

Thank you for providing some additional information in support of the Droke Lane Mitigation Scheme. We welcome securing a strategic approach to nutrient neutrality.

As stated in our previous advice, we advise that the nature of the scheme and lack of tree planting, although providing mitigation for nutrient neutrality, presents risks of uncertainty when considering the requirements for certainty of deliverability and enforcement in perpetuity under the Habitats Regulations. We have strongly highlighted these risks and advised that this is considered in your decision making.

It is important that you, as competent authority, are satisfied beyond reasonable scientific doubt that the proposed mitigation strategy will be in place for the lifetime of the development and is secured against future changes in land use. This should include assurance that positive management of the site will be delivered over this period, that monitoring can demonstrate ongoing effectiveness, and enforcement measures can be effected where necessary.

If you wish to rely on the submitted scheme you as competent authority will need to ensure that you are satisfied that sufficient certainty has been provided to evidence how the scheme will be effectively monitored, enforced and provided for the lifetime of the development.

- 4.11 However, following the provision of additional information explaining how the proposed planting scheme had been developed and how the scheme would be monitored further comments have been received which confirm that NE has no objection to the proposals:

We wanted to assure you that we are not objecting to the proposals and hope that the following explanatory note will provide your authority with reassurance on this matter.

The proposals are not entirely in accordance with our advice regarding quantum of tree cover that we have issued for mitigation sites elsewhere in the Solent Catchment, we have advised that the reduced tree cover increases the risk of the scheme, and this is consistent with our advice to mitigation schemes across the Solent Catchment. However we are not opposing the scheme, providing that you are satisfied that the monitoring and enforcement necessary will be sufficient to ass the Habitat Regulations. We further note that the scheme will be in keeping with the Character Area of this location within South Downs National Park. To conclude we advise that you as the competent authority, should ensure conditions are sufficiently robust to ensure that the mitigation measures can be fully implemented and are enforceable in perpetuity and therefore provide a sufficient degree of certainty to pass the Habitats Regulations. We welcome that your authority has identified a strategic approach to providing mitigation for nutrient neutrality scheme within Chichester.

- 4.12 Although NE initially raised concerns that the lack of tree planting across the site may reduce the certainty that the scheme would be maintained in perpetuity, they have subsequently confirmed that they do not object to the proposal. In doing so, NE has highlighted that it is for the LPA to be satisfied with the proposed mitigation scheme. Whilst it will in most cases be appropriate to secure tree planting as part of small-scale individual nitrates mitigation scheme, which are typically a small area of land on the edge of farmland, the circumstances for this large mitigation scheme are different. The proposal provides a comprehensive planting scheme which is to be provided as a whole across the 4.78ha of land, it would be monitored regularly by the SDNPA Countryside Policy and Management Team. In addition, the site lies in a highly visible location with access from a public highway where changes to the land use would be easily identified.

Mechanism to secure the mitigation

- 4.13 The principle of the mitigation would be secured via a legal agreement between the landowner, CDC and the SDNPA which has been drafted to ensure that the landowner takes the land out of use and implements the mitigation scheme including the proposed planting, and that the scheme is maintained in perpetuity.
- 4.14 Once the scheme is established by the legal agreement, it would be possible for the local planning authority to impose a planning condition on a permission for a new development that requires the developer to purchase the required number of nitrate mitigation credits to off-set their development. This would result in these developments being nutrient neutral. The proposed mechanism to secure the mitigation is one that has been adopted elsewhere within the Solent catchment. The condition imposed on a planning permission would require a notice to be submitted demonstrating that the purchase of the necessary number of credits has been completed prior to commencement of development.
- 4.15 Each application would be accompanied by a Nitrates Mitigation Statement that would set out the level of mitigation required, and each application would be subject to its own Appropriate Assessment under the habitat regulations, in the same way that applications are present. However, rather than the applicant finding a piece of land to purchase, they would instead be able to purchase credits from the landowner to use the mitigation at East Droke. Once all the credits have been sold it would not be possible for any further applications to use the mitigation land to off-set their development.

Monitoring and enforcement

- 4.16 The agreement ensures that the landowner pays a monitoring fee to the SDNPA, which would pay for the resources of the Countryside Policy and Management Team to monitor the mitigation scheme for its lifetime. If the land is not maintained in accordance with the agreed Nitrates Mitigation Scheme this would be in breach of the legal agreement, and subject to an enforcement investigation by the SDNPA. In addition, should an applicant fail to complete the purchase of credits in accordance with a condition on a planning permission, this would constitute a breach of planning control. The Council will maintain a register of applications granted with a condition requiring the purchase of credits to ensure that compliance is proactively monitored.
- 4.17 Careful consideration has been given to the comments received by NE, and as competent authority, it is considered that effective monitoring the nitrates mitigation scheme would be achieved by the legal agreement, and that effective monitoring of the conditions securing the mitigation for an individual application would also be achieved. Therefore, it is considered that the monitoring and enforcement would be robust and would ensure that developments granted subject to a condition requiring the purchase of credits created by the East Droke nitrates mitigation scheme would be nutrient neutral.

Ecological Enhancements

- 4.18 Ecological enhancements are not required to secure nutrient neutrality, but they are a positive effect of the proposed nitrates mitigation scheme. They are also the reason why the scheme of planting has been developed to include a range of planting, and not simply tree planting as suggested by the NE's published guidance. The proposed scheme would provide the following enhancements:
- infilling the gaps in the southern boundary hedgerow will provide a connecting canopy with the ancient woodland to the south of the land,
 - infilling the gaps in the boundary hedges will provide habitat for nesting birds and dormice and will improve foraging and commuting routes for bats,
 - the tussocky grassland will provide a habitat for invertebrates, and therefore a food source for reptiles, birds, and bats, and
 - the wildflower meadow will provide a food source for pollinators.

5. Conclusion

- 5.1 The proposed nitrates mitigation scheme would take agricultural land out of active agricultural use to achieve nutrient neutrality for a significant number of dwellings. Whilst it would not be sufficient to meet the demand for all housing expected to come forward it would provide enough to mitigate over 150 dwelling and this is considered to be a considerable benefit, and one that would help the Councils 5 year housing land supply position. The mitigation is proposed on land which is not the most versatile agricultural land, potentially reducing the pressure to some extent for mitigation on those highest grades of agricultural land. In addition, significant ecology enhancements would be secured due to the planting scheme that has been negotiated. The mitigation is supported in principle by NE, and as competent authority it is considered that the scheme would be secured in its entirety, and therefore subject to effective monitoring to ensure that developments using the mitigation scheme remain nutrient neutral
- 5.2 For the reasons set out in the report the planning committee is asked to approve the recommendation to enter into a legal agreement with the owner of land at Droke Lane, East Dean, and the South Downs National Park Authority to secure the provision of a credit-selling nitrates mitigation scheme.

6. Background Documents

- [Nitrogen Budget Calculator V2.1 \[excel 3Mb\]](#)(Opens in a new window)
- [Natural England's Advice for Development Proposals \[pdf 499kb\]](#)(Opens in a new window)
- [Nutrient Neutrality Mitigation Principles \[pdf 152kb\]](#)(Opens in a new window)
- [Nutrient Neutrality - A Summary guide \[pdf 141kb\]](#)(Opens in a new window)
- [Nutrient Neutrality Solent Map \[pdf 2Mb\]](#)(Opens in a new window)
- [Nutrient Neutrality Generic Methodology \[pdf 987kb\]](#)(Opens in a new window)
- [Nutrient Budget Calculator Guidance \[pdf 815kb\]](#)

Appendix A: Plan showing the location of the mitigation land