

## **Independent Examination of the Purbeck Local Plan (2018-2034)**

### **Inspectors' response to the position statement relating to nutrient neutrality with regard to the Poole Harbour catchment and the approach to addressing Phosphorus Loading**

Further to our previous letter dated 24 November 2022, we thank the Council for the submission of the position statement on 7 December 2022 and the recalculated 5-year housing supply position taking account of the latest local housing need assessment as received on 1 December 2022.

Having had regard to the updated information, before we can offer our definitive findings on housing land and Policies I5 and V2 (Morden Park) of the Purbeck Local Plan (the Plan) subject of the hearing session in July 2022, we would be grateful for a Council response to the specific requests, queries and comments below.

#### **Position statement relating to nutrient neutrality**

In reviewing the position statement, we note the Written Ministerial Statement - Improving Water Quality and Tackling Nutrient Pollution on 20 July 2022 (WMS) and the subsequent Government update on the Nutrient Mitigation Scheme – November 2022 (NMS Update). In those respects, it is evident that the proposed amendment to the Levelling Up and Regeneration Bill (LURB) would require the improvement of waste water treatment works (WWTWs) to reduce phosphorus levels in Poole Harbour to levels that would enable favourable status to be achieved.

The LURB is currently expected to be enacted in 2023 and the indication in the WMS is that a deadline for the WWTWs improvements would be 2030. However, the WMS also indicates that habitats regulations assessment provisions would still apply to any consent, permission or other authorisation required for qualifying development such as proposed housing schemes. The WMS goes on to suggest that revised planning guidance would be provided on sites affected by nutrient pollution forming part of housing supply calculations, subject to relevant evidence to demonstrate deliverability. Nonetheless, the suggested updates to Planning Practice Guidance have yet to be made and the WMS is also clear that it will be for decision takers to make judgements about impacts on delivery timescales for individual schemes.

The recent NMS Update provides details of initial Natural England-led schemes for nutrient mitigation in the Tees catchment and states an intention to expand the schemes across the country to the other affected

catchments in England. In that regard, it refers to feasibility work also ongoing in five further unnamed catchments. As such there appears to be a potential need for shorter-term schemes to provide for mitigation in the interim period before the WWTWs improvements are in place.

In contrast to the above, the position statement suggests that Natural England have concluded that once the necessary upgrades to WWTWs have been secured in legislation; the requirement for phosphorus neutrality within the Poole Harbour catchment would be removed. However, this position appears to be different to the Natural England letter of 26 August 2022 which states 'once the LURB is enacted nutrient budgets for schemes can account for the required WWTWs improvements from 2030 or sooner if the relevant WWTW is upgraded before 2030'.

Taking account of the above, it would appear that the enactment of the LURB will be an important consideration in our assessment of the developability of sites within the Plan period. However, it would not appear of itself to remove the possibility of an increase in phosphorus loading in the interim period within Poole Harbour before the improvements to WWTWs are in place. In that latter context, we have specific concerns relating to the Council's preferred Option 3 as set out in the position statement. Our concerns regarding the use of the specified pre-commencement condition to prevent the construction of any new qualifying development until the necessary WWTW upgrade is required through enacted legislation, are as follows:

- Firstly, in terms of necessity of a pre-commencement condition, the mitigation would seemingly be required for the effects arising from occupation of qualifying development rather than the construction phase;
- Secondly, a reliance solely upon improvements to WWTWs which may not come forward until 2030 has the potential to undermine the prospect for shorter-term mitigation projects and associated nutrient budgets and credits to be accounted for in otherwise bringing forward development, and;
- Thirdly and most importantly, further explanation is required in terms of how it is considered that the pre-commencement condition would ensure that qualifying development would meet the requirements of the habitats regulations within an appropriate assessment and/or enable the competent authority to be convinced of no adverse effect on integrity of the habitats sites within Poole Harbour in advance of the improvements to WWTWs.

Alternatives to Option 3 as set out in the position statement are:

- Additional chemical dosing over a short period of time to remove additional phosphorus from WWTWs discharge (Option 1).
- Logging all additional qualifying consents issued by Dorset Council within the Poole Harbour catchment and securing a payment towards the delivery of phosphorus mitigation (Option 2).

With regard to each of the above, we recognise that there are potential uncertainties relating to delivery of mitigation and resource implications involved. Nonetheless, it would be wise that Options 1 and 2 should remain options to be refined as part of a package of potential mitigation solutions to ensure that the use of conditions would not otherwise undermine the ability of the Plan to contribute to the Government's objective of significantly boosting the supply of homes in the Plan period. In offering such a view, we would also welcome clarification from the Council as to why Option 2 has an implied linkage to what should seemingly be entirely separate funding arrangements for affordable housing.

Turning to the separate approach to nitrogen neutrality, it is noted that the Council have indicated that this could be addressed through the application of the Nitrogen Reduction in Poole Harbour Supplementary Planning Document (SPD). However, the position statement indicates that the SPD needs to be updated to reflect the methodology in Natural England advice dated March 2022. The detail of such an approach to mitigation is material to any findings that we subsequently reach in terms of potential delivery of development within the Purbeck area and soundness of the Plan. We, therefore, require an indication of when a draft of the revised SPD can be provided to us and/or a technical note should be prepared to explain the changes required to the approach to nitrogen neutrality and any associated implications for the Plan.

Finally, we note that the document provided is referred to as a 'joint position statement' with Natural England. However, it appears that it has been prepared by Dorset Council and there is no evidence therein of any specific agreement from Natural England to its content. In such circumstances, we would welcome clarification from the Council as to whether there is specific correspondence which demonstrates that agreement has been reached with Natural England on the position statement and/or whether there is an intention to prepare and submit a Memorandum of Understanding in relation to this matter. Any such agreement should include whether any proposed modifications are necessary to the Plan as submitted due to and arising from the suggested

approaches to nitrogen neutrality and reducing phosphorus levels in Poole Harbour (i.e. in terms of Policy E9 specifically and any consequential modifications elsewhere).

### **Other outstanding matter - addendums to HRA and SA**

Our previous letter of 24 November 2022 refers to the addendums to the HRA and SA documents remaining in draft rather than being finalised, given the potential for additional work that may be required should further main modifications be identified in our pending findings. Nonetheless, it would be helpful to us if a draft of each of those documents is provided within the deadline for a Council response to this letter to allow us to consider and advise on their content as part of our subsequent findings.

### **Actions requested**

Please provide a Council response to the following requests, queries and comments **by not later than Friday 20 January 2023**:

- A response to the specific concerns that we have set out in relation to the Council's preferred Option 3 as identified in the position statement.
- Confirmation that Options 1 and 2 remain options to be refined as part of a package of potential mitigation solutions.
- Clarification in terms of Option 2 and the implied linkage to what should seemingly be entirely separate funding arrangements for affordable housing.
- An indication of when a draft of the revised SPD and/or a technical note can be provided to us to explain the changes required to the approach to nitrogen neutrality and any associated implications for the Plan.
- Clarification as to whether there is specific correspondence which demonstrates that agreement has been reached with Natural England on the position statement and/or whether there is an intention to prepare and submit a specific Memorandum of Understanding.
- Provision of the current draft addendums to the HRA and SA documents for our consideration.

The Council response should include specific timescales for the provision of any additional work that may be required, if otherwise unable to provide the information within the deadline in this letter.

If there are any procedural or other questions arising from this correspondence, the Council should contact us via the Programme Officer.

We are not inviting, and do not envisage accepting, any comments or additional evidence from other examination participants at this stage.

*Susan Heywood and Gareth Wildgoose*

INSPECTORS

16 December 2022