

EASTLEIGH BOROUGH COUNCIL AND RPS

Land at GE Aviation, Kings Avenue, Hamble-Le-Rice, Southampton, SO31 4NF

Appeal by GE Aviation

Planning Inspectorate Reference: APP/W1715/W/20/3255559

Eastleigh Borough Council Reference O/18/84191

AGREED NITRATES NOTE – FINAL

NOVEMBER 2020

1. This document has been agreed between the appellant and Eastleigh Borough Council ('the Council') to explain the position with respect to nitrates issues under the fifth reason for refusal.
2. It is recognised that the water environment within the Solent region is one of the most important for wildlife in the United Kingdom. It is internationally important for its wildlife and protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations. It is further recognised that this water environment suffers from problems as a result of nitrate enrichment. High levels of nitrogen from human activity and agricultural sources in the catchment have caused excessive growth of green algae which is having a detrimental impact upon protected habitats and bird species.
3. Since mid-April 2019 Natural England (NE) has required developers in south Hampshire including the Borough of Eastleigh to quantify the nitrate load generated by their development and mitigate any increase in nitrates compared to the existing land use. A development must demonstrate how it will ensure for at least 80 years there will be no nitrate loading from the development within the Solent.
4. A full explanation of the issues and the methodology for calculating the nitrogen load from a proposed development is set out in the NE guidance 'Advice on Achieving Nutrient Neutrality for New Development in the Solent Region, Version 5 – June 2020'.
5. During the course of the outline planning application that is the subject of this appeal, the appellant submitted a nitrogen budget calculation for the site (RSK letter dated 17 September 2019). Following an update to the NE guidance in June 2020, the Local Planning Authority requested that the nitrogen budget calculation for the appeal be updated to reflect the current methodology and enable a Shadow HRA Appropriate Assessment to be undertaken to assist the Inspector. This update was provided in the form of a further letter from RSK, dated 16 October 2020.
6. It is agreed that the nitrogen budget calculated by RSK follows the NE guidance and the figures contained within the calculation allow the carrying out of an appropriate assessment of the implications of the proposed development. The nitrogen budget calculation demonstrates a

budget of 77.6kg/N/yr with a 20% buffer. The development therefore requires a package of avoidance and mitigation measures to mitigate the increase in nitrogen load. It is agreed that the Inspector, in determining the appeal, will act as the 'competent authority' for the purposes of Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

7. It is agreed that the nitrogen leaching rate used for green space within the proposed development used in Stage 3 is contingent on this land being managed with no additional inputs of nutrients or fertilisers.
8. The appellant has requested flexibility in the options available for mitigating the increased nitrogen load for this development, to allow a future developer to either:
 - Enter into an agreement with the wastewater treatment provider that they will maintain an increase in nitrogen removal at the wastewater treatment works; or
 - Acquire, or support others in acquiring, agricultural land elsewhere within the river catchment area containing the development site, changing the land use in perpetuity (e.g. to woodland, heathland, saltmarsh, wetland or conservation grassland) to remove more nitrogen loss from this source and/or, if conditions are suitable, provide measures that will remove nitrogen on drainage pathways from land higher up the catchment (e.g. interception wetland).
9. It is agreed that as a definite fallback position, should the developer fail to demonstrate that their preferred option, or any other option, secures the necessary mitigation to the required level and to the satisfaction of the LPA and NE, the financial contribution towards the Eastleigh Borough Council interim mitigation strategy shall be paid prior to first occupation. This approach can be secured with an appropriately worded obligation within the S106 legal agreement.
10. Should the contribution towards the Eastleigh Borough Council interim mitigation strategy become payable, the contribution will be £666,000, calculated on the basis of £4,500 per dwelling ($£4,500 \times 148 = £666,000$).
11. Natural England have been consulted in relation to this provision and have stated that, 'provided the competent authority are satisfied that the appropriate level of mitigation can be ascertained and will be delivered and secured in perpetuity prior to first occupation of the development, Natural England would raise no further concerns over this aspect of the proposals.'
12. It is agreed that, subject to:
 - Securing an appropriately worded obligation within the S106 legal agreement to deliver the mitigation package (in whatever form this takes); and
 - Securing an appropriately worded S106 obligation requiring the submission of maintenance and management details for on-site public open space to ensure it is managed with no additional inputs of nutrients or fertilisers,the increased nitrogen load generated by the development can be mitigated.

13. It is agreed that, subject to the provisions in paragraph 12, Reason for Refusal 5 can be withdrawn.

SIGNATURES

Signed on behalf of Eastleigh Borough Council: Kitty Budden

Position: Principal Planning Officer

Date: 09 November 2020

Signed on behalf of the Appellant: Simon Chapman

Position: Director

Date: 09 November 2020