

By email to Rt Hon Michael Gove  
MP & Rt Hon Stuart Andrew MP

**Enquiries to:**  
**Direct line:**  
**Email:**  
**My reference:**  
**Your reference:**  
**Date:** 24 March 2022

Dear Mr Gove & Mr Andrew

## **RE: THE ABILITY TO DELIVER NEW HOUSING IN THE FACE OF UPDATED ADVICE ON NUTRIENT NEUTRALITY**

Thank you for the response from Minister Pincher to my letter of 8 December 2021 and congratulations Mr Andrew on your appointment. You may be aware that Havant Borough Council on 16<sup>th</sup> March 2022 withdrew the Havant Borough Local Plan from examination and commenced the preparation of a new local plan for the Borough.

On the same day, we received new guidance from Natural England regrading nutrient neutrality which further compounds the issues I highlighted in December. There was no notice or engagement with local planning authorities regarding this change of approach, which is extremely regrettable. The new advice is materially different to that which was in place prior to the update. There are changed inputs and information requirements which means that the approach to addressing nutrient neutrality is materially different.

Following the receipt of this new guidance and counsel advice on the matter, Havant Borough Council had no choice but to immediately cease to issue planning permissions for new housing and other types of development affected by the advice. This is obviously extremely regrettable. As I set out in my previous letter, Havant Borough Council is a pro-sustainable development authority. We are looking to advance an extremely ambitious regeneration agenda focussed on accessible, brownfield sites. As you're aware, this issue disproportionately impacts on brownfield sites – these are the most accessible and sustainable development sites in any area, they are the sites where development would be universally supported. In Havant Borough they are also sites that are the most challenging to bring forward in terms of viability and the schemes we are bringing forward already need grant funding from Homes England to bridge the viability gap – this issue will simply be exacerbated. The way that this new advice has been provided will also slow down the delivery of these and other sites as well as deflecting investment away from the Solent region at a time when there are significant opportunities, particularly through the designation of the Solent Freeport.

The letter from Natural England to local planning authorities introduces the possibility of a transition arrangement, presumably intended to avoid a moratorium on development. However our counsel advice is clear that this would not be a legally sound way to proceed, which is in line with the cautious approach taken by the Planning Inspectors during our Local Plan. Equally, in your

response to my December letter, you highlight clearly *“I appreciate that the rapid changes in advice from Natural England are unhelpful for you as the Local Planning Authority. Due to the requirement to act in a precautionary manner, if there are any indications of adverse effects, in the Habitats Regulations, Natural England cannot forewarn of forthcoming issues. **As competent authority, you would be required to factor in the harm to the site as soon as you were notified** of any potential for development to do harm, which would include such a warning”* (my emphasis).

I must respectfully disagree with part of what you say. It is possible for Natural England to engage with Local Planning Authorities, through workshops and discussion papers to highlight the areas of the advice that are likely to change – there is a framework for such discussions through the Partnership for South Hampshire. Such an example would be on occupancy levels. This would then enable LPAs to undertake their own research on this in advance of the publication of the advice, enabling a swift uptake of the new guidance. Nonetheless it is clear from Natural England’s advice and your letter that DEFRA agencies and DLUHC are not consistent in their approach and views on this matter. It is extremely disappointing and unacceptable that Natural England did not seek legal advice and engage with affected authorities prior to issuing this document. This has led to a position whereby the Government’s statutory advisor on nature conservation has published advice which suggests unlawful planning decisions be issued which could, in your words, lead to potential for development to do harm to the natural environment.

We are seeking to actively address the concerns raised by our local plan inspectors in order to find solutions before our local plan is re-submitted. It is notable that the Council’s approach to nutrients and the habitats regulations were not raised as areas of concern. We are updating our transport evidence base swiftly in order that decisions can be made on applications to bring forward housing. However the way that this advice has been brought forward has meant that decisions on these planning applications will now take longer than they would have. This actively subverts Government’s ambitions regarding housing delivery and could undermine the high quality work which the Council has already done on nutrients mitigation.

There is a clear contradiction between the approach of the local plan’s inspectors and that of the NPPF under a ‘tilted balance’ scenario. For a local plan to meet the tests of soundness, clearly there is a high bar in terms of deliverability of housing sites. However under the tilted balance, there is an incredibly low bar, with development only being able to be refused planning permission where there is significant and demonstrable harm. I agree completely with your assertion previously that undue hurdles should not be put in the way of much needed development coming forward. However that development should be plan-led and accompanied by the necessary infrastructure and quality of design. Under national policy this will not be the case in Havant Borough whilst the tilted balance is in operation and Havant Borough Council have played no part in this. The way that this new advice has been introduced will lower the Borough’s five year supply position and lead to more applications for lower quality housing which will not stand the test of time.

All of these factors and others clearly demonstrate that the standard method for calculating housing need is simply not fit for purpose. It is encouraging that the version of the standard method consulted upon in 2020 was not introduced – this would have been extremely detrimental to Havant Borough. However the existing standard method firstly uses household projections from 2014 which is now significantly out of date and reflects a housing market and need which isn’t there anymore. Using this alongside affordability ratios creates an unrealistic, unachievable and

inaccurate housing need far higher than a Borough like Havant can ever achieve and deliver. Even this week, they have increased the unachievable need for new homes in the Borough further. The method also does not take into account geographical constraints of an area, infrastructure restrictions, environmental issues and achieving sustainable design which is something the Government and NPPF justifiably require when it comes to drafting a local plan – but less so to decision making under the tilted balance. The only achievable outcome of using the existing standard method therefore is delivering a high number of poor quality and design housing which fundamentally harms the locality. This must be changed.

You highlighted national designations which are not affected by the tilted balance in your reply to my December letter – namely green belt, Areas of Outstanding Natural Beauty and National Parks. There is no greenbelt in southeast Hampshire, however we are significantly constrained in our ability to meet housing need by the Chichester Harbour AONB, the South Downs National Park, the need to consider nutrients, recreation and supporting habitat under the Habitats Regulations. This, combined with the simple limits to expansion of a coastal area, mean that the standard method is simply not suitable. I would implore you in the strongest terms to reform significantly this outdated tool in the planning reforms which will be brought forward. I do however welcome your offer to my officers that we can work with you through the Planning Advice Service to analyse these matters more closely, however I am firm in my view that it will simply not be possible to meet the Borough's need for housing within our administrative area.

As I highlighted in my December letter, the period following the initial advice on nutrient neutrality in 2019 has led to a significant shortfall in housing supply in the Borough. Whilst it is expected that the current moratorium will be significantly shorter than was the case before, it nonetheless will make an already heavily constrained housing supply worse. As such, whilst awaiting with interest reforms to the standard method, I would like to set out how we will approach housing need in the interim. I am using this letter to inform the ministry that unless indicated otherwise with a reasoned justification, Havant Borough Council will be calculating its five year supply position on the basis of shortfall against previous under-delivery being eliminated<sup>1</sup>. This is due to the fact that it was wholly in place due to circumstances outside of the Council's control, now being added to through poorly communicated new guidance.

Overall, Havant Borough Council represents an authority which will happily work with Government to provide innovative and proactive solutions to the many challenges we face in bringing forward housing developments. We wish to continue to work with Government and its agencies, including Natural England, to avoid scenarios occurring again where goalposts are moved without any notice.

I await your response with interest and would be happy to meet to discuss any of the points raised.

Yours sincerely

Cllr Alex Rennie  
Leader of Havant Borough Council

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<sup>1</sup> In line with the Planning Practice Guidance paragraph 031 Reference ID: 68-031-20190722

Copies to:

Alan Mak MP

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Marian Spain (Chief Executive of Natural England)

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