



# **HEARING STATEMENT**

## **Examination of the Greater Norwich Local Plan**

On behalf of:

**Orbit Homes**

In respect of:

**Matter 4 – Sustainable Communities and the Environment**

Date:

**March 2023**

Document Reference:

**GA/DJ/00320/S0007**

## 1.0 INTRODUCTION

- 1.1 This Hearing Statement has been prepared on behalf of our client Orbit Homes in respect of **Matter 4 – Sustainable Communities and the Environment** of the Inspector's Matters, Issues and Questions (March 2023 Sessions) for the Examination of the Greater Norwich Local Plan (the 'GNLP').
- 1.2 The Statement is intended to assist the Inspector's consideration of the soundness of the Plan and will form the basis of our points for discussion at the Examination Hearing session on 21<sup>st</sup> March 2023.

## 2.0 Questions

**Q16. Is the modification to Policy 2 suggested by the GNLP (in the Nutrient Neutrality Mitigation Statement of Common Ground with Natural England) justified, effective and consistent with national policy, the Written Ministerial Statement of 16 March 2022, and the evidence?**

### *Justified*

- 2.1 No. The proposed modification would simply repeat a requirement that is already in place in national policy (i.e. the requirement to demonstrate no adverse effect on the integrity of sites in unfavourable condition) without providing any additional strategy to demonstrate that suitable mitigation is available and deliverable. Given the high proportion of sites affected by Nutrient Neutrality (NN) in the GNLP area, it cannot be considered appropriate to simply set out a requirement for sites to demonstrate NN without providing any strategy or evidence to demonstrate that this will be achievable for the vast majority of sites.
- 2.2 More seriously, we are not aware of any updates to the Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) in the wake of Nutrient Neutrality. The Planning and Compulsory Purchase Act requires an SA to be carried out on Development Plan Documents. Additionally, the Environmental Assessment of Plans and Programmes Regulations<sup>2</sup> (SEA Regulations) require an SEA to be prepared for a wide range of plans and programmes, including Local Plans. The SEA Directive states, in Article 5(1) as part of the requirements for preparing an environmental report, that the Local Plan making process must identify, describe and evaluate reasonable alternatives that have been considered as part of the plan making process.
- 2.3 In the wake of Nutrient Neutrality it is clear that the assessment of reasonable alternatives should be revisited. Not all of the GNLP area is affected by NN and it is quite reasonable to expect that this fact could have an impact on the spatial strategy and sites proposed to be allocated. It may also be that

some sites that were discounted for allocation are better placed to deliver nutrient mitigation and would now be preferred allocations.

- 2.4 We consider it imperative that the SA and SEA are revisited as soon as possible as this work could have implications for the GNLP that would require significant revisions. Following this, further hearing sessions should be held to consider Matter 1 Issue 2.

***Effective***

- 2.5 The policy would only be effective in a very narrow sense in that it would ensure that proposals will not adversely affect the integrity of sites in an unfavourable condition. However, it would only be effective in achieving this policy aim by making the remainder of the GNLP ineffective and undeliverable (i.e. development will not impact on habitats sites because there will be no development). There is currently no evidence that an effective strategy for nutrient mitigation is in place (see questions 18 below) without which the plan as a whole is ineffective.

***Consistent with National Policy***

- 2.6 No. The proposed modification would not accord with national policy as in the absence of a suitable mitigation strategy (see question 18 below) it would not enable the delivery of sustainable development as required by NPPF paragraph 35.

**Q17. Is the application of the Policy 2 as suggested to be modified in Q16 likely to affect the viability and deliverability of residential development in the plan area?**

- 2.7 Yes. The application of this policy modification will have a significant impact on the deliverability and potentially the viability of residential development in the plan area. The impact on delivery is already being felt (as the policy would simply repeat national policy with respect to habitats mitigation) but the failure of the policy to identify suitable mitigation would compound this impact by missing an opportunity to set out a clear strategy that will allow sites to come forward. The policy places the sole responsibility on identifying nutrient mitigation on the applicant / developer which will be utterly undeliverable without an effective mitigation strategy being put in place by the GNP and NE. Without a confirmed mitigation strategy it is also not possible to conclude what the impact will be on viability. As set out below the costs of the various mitigation options being considered are indicative only and if mitigation solutions are delayed the price of the few credits available could spiral.

**Q18. Is the nutrient neutrality mitigation strategy likely to be successful in facilitating the delivery of the plan?**

2.8 No. The Nutrient Neutrality Evidence Note (G2.1), the Statement of Common Ground between the GNP and NE (Appendix 1 to G2.1) and the Norfolk Nutrient Strategy Mitigation Solutions prepared by Royal Haskoning (G2.2) set out the current status of the mitigation strategy as follows:

- A report has been produced by Royal Haskoning (G2.2) which identifies numerous potential mitigation solutions and categorises them into short, medium and long-term solutions, with short term solutions identified as 'potentially' implementable within 1 year. The report does not identify any specific sites, projects, or agreements that are in place to secure mitigation. In fact, it sets out next steps that include the identification of costs, timescales and delivery mechanisms.
- Work is ongoing to establish a Joint Delivery Vehicle (JDV) with Anglian Water to broker the delivery of a variety of mitigation options between providers, such as landowners and developers. The Joint Venture company is intended to secure mitigation and then issue certificates confirming the credits that have been purchased. Reports on the JDV are being considered by relevant Norfolk LPA cabinets between January and March 2023 with a view to mitigation credits being available for purchase by Spring 2023. No explanation is given as to how a company that has not yet been established is expected to identify mitigation projects, secure their delivery, cost their implementation and sell credits within the next 3 months.
- The credits available are to be targeted at small to medium scale development and it is expected that most large-scale greenfield developments should be able to provide on-site mitigation measures. This is far from proven. Orbit Homes submitted proposals for on-site mitigation in the form of wetlands and a package treatment plant for their proposed development of 272 dwellings at Land North of Smee Lane (ref: 20180193) on 26<sup>th</sup> October 2022. It took Natural England more than 3 months to respond to the submission on 27<sup>th</sup> January 2023. Their response raises a number of concerns that may or may not be resolvable, but at present Natural England are refusing to meet directly with the applicant and we foresee an ongoing back and forth through planning officers that will take months to resolve (if indeed a resolution is possible at local level). Our client is increasingly aware of the lack of knowledge and experience of dealing with Nutrient Neutrality issues at both local authority and Natural England levels. This is leading to huge delays such that our client is now forced to consider going down the appeal route. We understand that Orbit were one of the first developers to submit detailed proposals for on-site mitigation and there is therefore no certainty at this stage that Natural England will be satisfied with any bespoke on-site solutions. The expectation that large sites will provide on-site mitigation is currently unproven and will likely take a significant time to agree for each site and will not be possible for many.
- Planning permissions for housing will only be able to be granted once schemes are ready to be implemented (SoCG paragraph 19).

2.9 In the housing trajectory update topic paper (D3.2D) the GNP forecast that securing mitigation for stalled developments will result in a delay in delivery of 18 months. This is nonsensical. Projects affected by Nutrient Neutrality have already been delayed by 1 year and there no chance that sufficient mitigation will be in place to release sites within the next 6 months. For this to happen, the following would need to be completed:

- Joint venture company established;
- Specific projects, timescales, delivery mechanisms and costs identified;
- Natural England approval of specific mitigation projects;
- Legal agreements put in place to secure the delivery mechanisms;
- Sale of credits;
- Planning applications determined (in some instances required to be taken to committee and then requiring the preparation of S106 legal agreements); and
- Sufficient legal assurances provided to developers that the mitigation will be implemented on time to allow the occupation of dwellings, without which many developers may choose to delay implementation until solutions are actually implemented to avoid the risk of making significant outlays with little surety that they will be able to sell dwellings when they are completed.

2.10 In other parts of the country affected by Nutrient Neutrality it has far longer than 18 months to establish nutrient mitigation solutions and especially so in areas affected by phosphates (i.e. where land reversion is not a viable solution). For example to take 3 areas affected since 2019 in Somerset, Kent and Herefordshire, just Somerset now has a mitigation strategy in place. This doesn't yet mean that sites in Somerset are being released for residential development, however, as the organisation appointed to manage the credits system has now informed the local authorities that they can't deliver on the first round of bids. This has left the first tranche of sites that thought they had secured mitigation with nothing and the second tranche of sites bidding for credits has been told that the earliest they will be available is the end of 2023. In the meantime, the price of the few private credits available has skyrocketed with sales of up to £75,000 per kg of phosphorous.

2.11 The above demonstrates the complexities of setting up a functioning mitigation strategy and credit system and the perils of getting it wrong with respect to impacts on delivery and viability. In this context, we reiterate our call for the SA and SEA to be revisited and consider that there should be a delay in the examination of the GNLP until a functioning mitigation strategy is in place. It is simply not possible to forecast how long this will take or its impact on delivery and viability at this stage.