



**NOTES** of a **Meeting** between **Chichester District Council** and **representatives** from the **Neighbourhood Plan Steering Group (NPSG)** held on **Tuesday 14th December 2021** at **10:00**, via Microsoft Teams.

**Present** Mr. Andrew Frost; Ms. Valarie Dobson; Mr. Toby Ayling; Mr. Tony Whitty; Mrs. Sara Burrell (Chair of the NPSG); Cllr. Paul Jordan (Chair of the Parish Council); Cllr. Gareth Evans; Catherine Nutting (Clerk & RFO)

1. **Will the water neutrality matter impact windfall new development?**

Yes. Any new development with a net increase in dwellings and water consumption is impacted, including commercial development.

2. **Will the water neutrality matter impact residential extension applications?**

Possibly. A Material Impact Test is applied on a case-by-case basis. [Natural England's cautionary approach](#) – based on the Dutch Cases<sup>1</sup> - requires a reasonable assurance that there will be no adverse impact on water consumption. It is not clear-cut. Most extensions will not materially impact/increase the accommodation to impact water consumption; for example, adding a bathroom or bedroom (an additional water delivery point within a dwelling). However, for significant extensions e.g., causing a three-bed property to become a six or seven bed dwelling would likely be caught.

3. **If the Plan completes Examination will CDC give it weight as a post-examination plan despite it failing due to water neutrality? Especially if all other areas of the Plan are deemed sound by the Examiner.**

No. If the Plan fails at Examination stage (which it will, due to the water neutrality issue) the Plan will be deemed unsound and therefore will hold no weight whatsoever.

Neighbourhood Plans gather weight as they progress through the Neighbourhood Planning process towards referendum. However, this weight is based on the increasing reasonable expectation that the Plan will pass Examination and complete referendum successfully. If a Plan fails at Examination stage, then it holds no weight as a material consideration in the planning process. None of the other policies in Plan will be given weight, even if they are unaffected by water neutrality

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<sup>1</sup> Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu Case C-293/17 (often referred to as the Dutch Nitrogen cases)

and are 'passed' by the Examiner; ultimately the Plan is taken as a whole document and if it fails then that is the end of the road for the Plan in its current form.

There is no obvious benefit to letting the Plan complete Examination when it is a given that it will fail.

4. **What does CDC deem as 'critical' planning applications as per Natural England's [Position Statement](#)?**

*"Whilst the strategy is evolving, Natural England advises that decisions on planning applications should await its completion. However, if there are applications which a planning authority deems critical to proceed in the absence of the strategy, then Natural England advises that any application needs to demonstrate water neutrality..."*

CDC stated that this is a "curious statement" which "makes no sense". They are unsure of the meaning and have raised it with Natural England. The law is clear that there can be no work arounds. National England is currently re-looking at the statement and may issue new advice. In legal terms, there is no such thing as a 'critical planning application'. The Local Planning Authority cannot issue permissions if the development cannot demonstrate water neutrality.

5. **If developers can demonstrate water neutrality, as per Natural England's [Position Statement](#), will they be approved by CDC?**

This would be subject to all other material considerations. Water neutrality means no net increase in water demand, which is exceedingly hard to achieve.

It would not be possible for a developer to achieve water neutrality by off-setting water usage of a new development by approaching existing residents to promote/instigate water conservation in existing dwellings. Existing residents would have to enter a [s.106 agreement](#)<sup>2</sup> in perpetuity to use water harvesting equipment etc. It would be too onerous and unreliable/unworkable. The developer *could* enter into a s.106 agreement in terms of off-setting their other development/stock.

6. **Will CDC receive the legal opinion sought by Horsham DC and Crawley BC in relation to water neutrality and, if so, will CDC share it with PIPC?**

CDC are in talks with Horsham and Crawley LPAs who have shared the output of the opinions sought, but not the opinion *per se* due to confidentiality issues. Neither Horsham nor Crawley have pursued/are pursuing advice regarding

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<sup>2</sup> Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.

Neighbourhood Plans; therefore, the advice they have received is not applicable to PIPC and there is no prospect of an alternative/contradictory legal opinion from another source. The advice Horsham and Crawley have sought has been focused on the statement/advice from Natural England and its appropriateness. CDC have been in this situation before, regarding nitrates in Chichester harbor, and so focused their legal opinion on broader issues such as the Local Plan/Neighbourhood Plans.

7. **If the legal advice received by Horsham and Crawley LPAs differs from the opinion obtained by CDC, will CDC challenge their legal opinion/seek to align with Horsham/Crawley LPAs?**

See above at point 6.

8. **Can PIPC wait to see the outcome of this legal advice before deciding regarding the Plan?**

See above at point 6.

9. **Do we need to withdraw the policies supporting windfall/extension?**

Yes.

See 10 below.

10. **Can we amend the Plan to remove Policies H1 and EE4 only and is this sufficient to remove the water neutrality issue?**

If the Plan is amended to remove Policies H1 and EE4 (and other Policies supporting windfall/extension) this will amount to a significant alteration and necessitate the Plan to return to public consultation at Regulation 14 stage. The premise of the Plan will be materially altered by the removal of policies pertaining to development; therefore, this is tantamount to a new Plan.

For the Plan to avoid failure on the issue of water neutrality, all aspects pertaining to residential and/or commercial development (density/extensions etc.) would either need to be removed or altered, such as Policy H2.

Policies regarding design *could* be permissible and have a basis to be taken forward. However, feedback from Natural England would be required (at Reg 14 stage) and another HRA at Reg 16 stage before the Plan could return to Examination stage.

If PIPC were to withdraw the Plan and strip it back to remove/alter development policies, it could return to Reg 14 at the current time.

There is no way to avoid PIPC's Plan returning to Reg 14 stage. Even if the Plan is pulled and PIPC wait to resubmit once the water neutrality issues has been resolved (no current timescale – likely years) the Plan would be deemed out of date, especially in terms of the Local Plan revisions, and therefore would require

significant alterations to bring it up-to-date and therefore would return to Reg 14 as it would have materially changed. There is no benefit to PIPC to pull the Plan and wait and see what happens regarding water neutrality.

**11. Will our amended Plan need to return to public consultation and, if so, Reg 14 and/or 16?**

Yes. See answer given above at 10.

**12. If we withdraw the Plan, can we take the opportunity to amend other aspects of the Plan as set out by the Examiner in her draft report (withdrawn)?**

Theoretically yes. Although the Examiner's draft report has been withdrawn and cannot be referenced (it should be treated as if it never existed) it is impossible to 'un-know' what was stated, particularly as the NPSG was at fact-checking stage. Once the Plan is withdrawn, any changes can be made in addition to the removal of /amendment to development policies. If the Plan returns to Examination stage in the future (further to Reg 14 & 16) it will be looked at by a new Examiner.

**13. If we allow the Plan to conclude Examination, can we then, at that stage, amend other aspects of the Plan as set out by the Examiner's final report?**

The Examiner may not comment on the whole Plan in a final report of any usefulness. The Examiner may simply fail the Plan on the water neutrality issue. It is unlikely that the Examiner will produce a full detailed report on all aspects of the Plan when it will ultimately fail.

**14. Would the Parish be more vulnerable to inappropriate development if the Plan is withdrawn? Will it be any 'safer' if the Plan concludes Examination?**

No. The lack of Neighbourhood Plan will not impact the decision-making process of the Local Planning Authority.

In terms of withdrawal or failure, neither provide any benefit to PIPC. An opinion was offered by CDC that it may be deemed detrimental to the Plan, from a PR point of view, to fail at Examination stage. This would send a message to the community and prospective developers that it was found 'unsound' and could impact the Plan moving forward.

CDC could offer very little information in terms of timescales. The Local Plan will be published for public consultation in summer 2022. They are in dialogue with Central Government, DEFRA, Environment Agency, Southern Water and Natural England about the water neutrality issue.

In terms of amending the Plan in the future, once made (i.e., to re-instate the development policies once the water neutrality issue has been resolved) CDC stated that it is still early days regarding the acceptability for made Plans to be materially altered / amended once made in a way which fundamentally changes their nature. There is no definitive answer or precedent, and this matter is in

its infancy. CDC suggested looking at Southbourne's Plan, as the Examiner is looking at a modified Plan.

There being no further business, the meeting concluded at 11:15