

Firstly I'd like to thank you for allowing me to speak at this hearing at such late notice. And before I say anything else I'd like to give recognition to the outstanding efforts of Horsham District Council planning officers who have worked so hard to bring us to this point, despite everything they've had to contend with the last few years.

Changes in national policy are having an unforeseen impact on Horsham's Local Plan and this is what I want to address this morning. For clarity's sake, I believe the plan itself will be found to be sound and will meet all legal requirements. The problems that have arisen in the last few weeks are external to the plan. Although Horsham's plan was drawn up and will be assessed by the rules as they applied in September 2023, further changes to the NPPF, the National Planning Framework, are potentially having unintended side effects on Horsham.

This has been a long journey. Horsham's Local Plan has been delayed by all kinds of factors including covid, water neutrality and previous changes in the NPPF, the National Planning Policy Framework. As a Planning Authority, we seem to have an unlucky knack for getting caught out just days before the Plan is due to come to Council. But here we are at last.

As is the case in many other parts of the country, getting approval for any kind of plan has been an enormous political challenge. The previous Conservative administration at HDC tried 3 times to bring it to get support. But in the end it has taken the Lib Dem administration which took over in May 2023 to finally get this thing over the line. I was Cabinet Member for Planning during the vote at Full Council last December, when the plan was approved. While it's true we got there in the end, I share the views of those who say the local plan process has become too controversial and convoluted. I can't imagine how tough it will be to pass Horsham's next plan – I question whether it will be politically impossible under any administration.

It's always an extra challenge when one party has to take over a plan prepared by another party. The original strategic vision behind the shortlisted sites in Horsham's plan was to spread development across multiple settlements, but in practice that has made it very difficult to win support. I believe we would have been better off to have accepted the need for a single new larger settlement and kept development elsewhere largely to the level of what was in their Neighbourhood Plans, which do at least have a high degree of consent. However the Plan had already passed Reg 18 stage by the time we took over so that boat had sailed.

The main public focus is always on the size of the housing target and the sites for development. The important and valuable changes in policy we have made, such as enhanced protections for the environment, much higher eco building standards, and greatly improved cycling and walking provisions, tend to be overlooked. By necessity the choice of sites largely corresponds with previous versions of the plan produced under the last administration, such as that published in July 2021.

HDC has always followed its legal obligations scrupulously. However, I share the view of many others that UK planning law is in urgent need of reform. In particular, I would single out the lack of an enforceable link between housing development and the supporting infrastructure.

Horsham's previous local plans, in good faith, have allocated services such as schools and clinics which never got built. The responsibility for that often lies not with developers, but with government controlled bodies such as the Dept for Education. 3 times in Horsham schools have been promised to support new housing, but not delivered by the DfE. This makes the Council's task harder with each successive plan. Nevertheless we've worked hard to get assurances from government bodies, because democratic consent matters.

A better system would deliver better housing, in better places. We desperately need to build new homes under new building regulations, with proper insulation and renewable energy systems. Most importantly of all, the chronic shortage of homes to either rent or buy for younger generations is not acceptable. Rates of home ownership have been tumbling for years and this is storing up immense problems for society. What will happen when all these millions hit retirement and are forced to continue paying a market rent out of their pensions?

The target itself isn't the problem, it's the way it's calculated. In 2018, in an attempt to provide objectivity and speed, the Conservative government introduced a system known as the Standard Method as a way of setting local housebuilding targets. And it's the local target that counts, not the national figure, because it's the local target that gets used to determine every planning application.

The Standard Method is a mathematical formula which, to simplify, uses local wages versus local house prices to calculate an affordability ratio. This is assumed to be an accurate way to estimate local housing need. Unfortunately it's anything but. Under this system, it is literally impossible for HDC to solve its local affordability problems. And if we did try to put a mandatory figure on social housing delivery we would almost certainly fail this Examination because the numbers don't favour us.

Since 2018 the Standard Method has been used across the country to set inappropriate and sometimes unachievable targets. There is a massive democratic deficit here. No one ever really voted for this. It never formed a significant part of any manifesto. It may have been a Conservative idea, but I doubt they ever realised what they were voting for.

The pressure to build on greenbelt and virgin farmland is actually the direct and inevitable consequence of Conservative policy since 2018. Unfortunately the new government has not changed the mistaken assumptions that underlie national planning policy, so the same problems will surely reoccur.

And now I come to the heart of the difficulty Horsham faces. Since Sept 2021, Horsham District Council has faced the impossible task of obeying two entirely contradictory laws. One law says we must build at least 900 houses a year. The other says we're not allowed to build any houses at all if they're going to use more water. That was obviously impossible at first and even now very it's difficult to achieve.

The reason for Horsham's Catch 22 situation is the requirement for Water Neutrality. Although this creates similar challenges to the much more widely known Nutrient Neutrality, they are not identical.

Water Neutrality is a requirement placed on Horsham District by Natural England under Habitats legislation. Since 2021, no development has been permitted which might increase extraction from sites including the Amberley Wild Brooks Site of Special Scientific Interest (SSSI), Pulborough Brooks SSSI and Arun Valley Special Protection Area/Special Area of Conservation and Ramsar site.

To obtain planning consent, a development must therefore prove water neutrality by such methods as offsetting water usage elsewhere in the district (for example by installing flow restrictors on social housing); or by finding a separate water source (for example by drilling boreholes in geologically separate areas). According to an agreement drawn up under the last administration at HDC, which will also apply to Crawley Borough Council and Chichester District Councils, new houses will have to be designed to achieve an average water mains usage of 85l per person, per day.

This will require widespread use of such techniques as greywater harvesting, such that demand on the mains water supply can be reduced. Although there is a national trend to set lower usage averages in new housing, this is significantly lower than anything that's been tried at scale and it may complicate future Local Plans. But that's for another day.

In the longer term, solutions are being agreed between the affected LPAs and Southern Water, such as reductions in water wastage, new reservoirs etc. But in the first 5 years of Horsham's Plan only offsetting measures are available. This significantly limits the amount of new building that's feasible. Therefore, the Plan uses a stepped target into a 10/15 year future, starting low and rising as Southern Water addresses the fundamental supply problem.

Horsham District is the only LPA wholly affected by Water Neutrality. Parts of Chichester and Crawley are also affected, but development is still possible in their unaffected areas so they don't face the same problem.

The requirement for water neutrality has put a significant brake on the delivery of both previously consented and proposed development proposals. For example, our three main consented and partially-built strategic development sites, which would normally deliver a significant proportion of our annual housing needs, have been forced to halt work. This is entirely out of the Council's control as water supplies are a matter for Southern Water.

Prior to the pandemic, Horsham District had an exemplary record of housing delivery. At times HDC even exceeded its local target. But Horsham's Land Supply has collapsed since the advent of Water Neutrality, and that means the 'titled balance' applies under Paragraph 11d of the NPPF.

More recently, speculative applications are coming forward with their own alternative water solutions. Some of these applications are in direct contradiction of Horsham's planning

strategy. In making their decisions, planning inspectors only take into account the housing target shortfall, but not the legally constraining reason for it (ie Water Neutrality). Therefore the LPA is unable to exercise any control over development or apply its usual district policies.

Some of the speculative applications now being put forward are very large in scale but are not selected sites in our emerging Local Plan, as voted on by councillors. Clearly, the entire Plan strategy is being undermined. Increasingly, our development follows a random pattern based on the availability of water offsetting, rather than any kind of coherent social or commercial plan.

At the same time we are potentially storing up new problems for the future. The legislation controlling boreholes was never designed to support large housing estates on a widespread basis and there's no prospect of Parliamentary action to sort this out. These boreholes may themselves have unforeseen environmental consequences, and they certainly present challenges for enforcing water quality. The 85l per person, per day target will also need to be enforced, and it's not clear how much support from government HDC is going to receive with this task.

However, the challenge that water neutrality creates today, with the contradiction between the need to meet our housing target while not being allowed to build houses, is hugely greater. It needs a solution now.

Paragraph 11d of the NPPF sets out, that the presumption in favour of sustainable development (aka the "tilted balance") applies where the policies which are most important for determining the application are out-of-date. Footnote 8 clarifies that this includes situations where either:

- a) the Council cannot demonstrate a 5 year housing land supply; or
- b) where the Housing Delivery Test indicates the delivery of housing was below 75% of the housing requirement over the previous three years.

Paragraph 79 explains that where the Housing Delivery Test indicates that delivery has fallen below 75% of the housing requirement over the previous three years:

- a) the presumption in favour of sustainable development applies,
- b) the Council should prepare an action plan to assess the causes of under-delivery and identify actions to increase delivery in future years, and
- c) a 20% buffer should be added to the supply of deliverable sites when calculating the five-year housing supply per paragraph 77.

Paragraph 80 explains that these consequences apply the day following the annual publication of the Housing Delivery Test results, until the next Housing Delivery Test results are published.

In other words, the Housing Delivery Test has created a scenario whereby Local Authorities like Horsham follow the rules in adopting a new Local Plan with a robust 5 year land supply,

but will nevertheless continue to be subject to the tilted balance for the first 2-3 years of the plan period due to past undersupply outside of the Authority's control.

Officers will show that Horsham's new Local Plan can demonstrate a 5 year housing land supply from adoption in late summer 2025. However, *as it stands the Council will not be able to demonstrate it has delivered over 75% of its housing requirement over the previous 3 years, thereby immediately 'failing' the Housing Delivery Test.*

The next Test results are expected to be published later this month. It's expected to show that in the best case scenario just 64% of the housing requirement over the last 3 years has been delivered. This falls to 55% and then 53% in December 2025 and December 2026, before recovering to 82% in December 2027 and 104% in December 2028, once it is fully subject to the new housing targets in the new Local Plan.

This is because the Housing Delivery Test is calculated based on our previous higher housing targets in 2020/21 – 2022/23, which we as I have described, it was legally impossible for us to meet because of Water Neutrality.

It's possible that other authorities subject to Nutrient Neutrality requirements may find themselves in a similar situation. Whilst the intention of the HDT is clear - to ensure local authorities are continually reviewing and facilitating plan-led development to come forward - the outcome for Horsham District Council and potentially others is that the HDT may instead may serve to undermine the whole plan-led system.

I strongly believe in the importance of maximising public consent. Confidence in the planning system relies on it being genuinely plan-led. HDC officers and elected members have made considerable efforts to explain to our communities the benefits of having an up-to-date Local Plan, and the value of enabling plan-led development in their areas. We have done exactly what we were asked to do by the government - but it's not working.

Without action, planning departments in Horsham and elsewhere will continue to spend considerable resource in defending planning appeals against speculative development rather than focussing on working with the development industry positively to bring forward plan-led growth.

As I said earlier, I am currently meeting with Minister Mathew Pennycook to discuss our situation. It's clear that he was previously unaware of Horsham's position or the unique impacts of water neutrality, which have always been overlooked in the more common issue of nutrient neutrality. Although HDC planning officers have tried to raise this with Ministry officials many times, I don't believe they have ever fully engaged with our unique challenges.

This situation is relatively easy to fix. I have suggested some changes that could be made in planning guidelines, which wouldn't necessarily require a change in the NPPF. I realise that the Minister will be mindful of the government's very high housebuilding target and he won't want to do anything to undermine that. However I believe that these changes won't damage the government's strategic needs. In fact if anything it will help them, because it will increase public consent and give encouragement to law abiding authorities like Horsham's.

The Housing Delivery Test has a clear function. However it is having significant unintended consequences in Water and some Nutrient Neutrality areas. There are a number of possible solutions:

1. The NPPF/PPG could provide clarity that the Housing Delivery Test does not apply for the first 2-3 years following adoption of a new Local Plan
2. The NPPF/PPG could clarify that the Housing Delivery Test is calculated solely on the new annual housing target within the new Local Plan, backdated for the previous three years
3. The Secretary of State may choose to exempt certain authorities from the tilted balance when publishing the Housing Delivery Test.
4. The Secretary of State could clarify that planning inspectors should allow Water Neutrality limitations to be regarded as a material constraint in planning decisions, in the same way as ANOB or greenbelt designations.

As it stands, there is no possible version of the Local Plan we could propose which would not immediately fail the Housing Delivery Test. Normally an LPA in danger of failing the test would be asked to allocate more housing. But in our case, this would actually make the problem worse. Even if we promised to build 10,000 houses every single year, it would still fail. This is clearly unjust and not at all what was intended by the law. One could argue, if this is allowed to continue, there is no obvious value in having a Local Plan at all – it just adds to an already chaotic legal situation.

I refer again to HDC's exemplary record over many years in following national planning policy. Where so many other councils have thrown up obstacles, HDC has a strong record of compliance. Obviously we're all constrained in any decision by NPPF rules and Ministerial guidelines, and you may be unable to solve our problem directly. But it would greatly help our case with the Minister if you might be able to include an explanatory note for his attention.

There's so much good work gone into this Plan and so many positive improvements. I hope we can find a way to make sense of the new national guidelines so we can support plan-led development into the future. Thank you.