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The Chief Planning Officer
North Hertfordshire District Council
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cc Melissa Tyler

By email Melissa.Tyler@north-herts.gov.uk

Our ref: PT/RB/HIL3/1

Your ref: 20/00744/OP

Email: ptaylor@richardbuxton.co.uk; rbuxton@richardbuxton.co.uk

15 March 2021

Dear Sirs

Re Land opposite Heath Farm, Briary Lane, Royston, Hertfordshire: Outline Planning Application for up to 99 dwellings introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point via the demolition of an existing property on Echo Hill (all matters to be reserved save access).

1. We have been instructed to write to you on behalf of Royston Says No To Gladman, a local community group. Specifically, we have been asked to raise important issues relating to the above application which we understand is due to go before the planning committee in the coming months.
2. We had been instructed to write to you about the failure to disclose information relevant to the Access and Transport issues but understand that the documentation has finally been (rightly) provided. We reserve our client's rights in this respect.
3. We are also aware that our client has submitted a list of important issues (a RAG Summary) which remain outstanding. These include a number of aspects where information has yet to be provided and also a number of serious concerns about deliverability. Whilst acknowledgement of receipt of this information has been given, this matter does require action in order for the LPA to meet its statutory duties. The document clearly shows that this application cannot be determined until you have the required information that addresses these areas, and in particular on matters not allowed (as acknowledged and agreed in writing by both the LPA and the applicant) to be a reserved matter.

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4. We trust that you will continue to correspond directly with our client in relation to these aspects (but reserve the right to raise these issues if they are not appropriately addressed) and also request that you also confirm directly to us that you have taken action in regard to these matters in order to meet your statutory requirements, and if you have not done so to provide an explanation as to why not.

The failure to perform an Environmental Impact Assessment Screening Opinion.

5. Gladman Developments Ltd (“The Applicant”) addresses Environmental Impact assessment (“EIA”) in its Planning Statement:

1.5 EIA Screening

1.5.1 As the application proposals are for urban development on a site of more than 0.5 hectares, the proposals fall under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017. Such projects only require an EIA if the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

1.5.2 A request for a screening opinion was submitted to the Council in October 2018. In this case, although the proposed development would be on a greater scale than the existing agricultural use and would be of a markedly different nature, it was concluded that the it (sic) would not be of a scale or a nature to justify the need for an EIA. This view was reinforced by the sub-threshold nature of the number of dwellings (significantly less than 150) and the limited extent of the built form (less than 5ha).

1.5.3 The applicant is therefore of the opinion that EIA is not required in this instance.

6. No EIA screening opinion has therefore been requested or obtained for this application and no Environmental Statement has been submitted. North Hertfordshire District Council (“the Council”) appears to be proceeding on the assumption that this is not EIA development. For the reasons set out below, this view is not sustainable.
7. This is the second application by the applicant on this site and, as referred to above, an EIA Screening Opinion was requested and obtained for the earlier application (“the 2018 Application”).
8. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 apply in this case as they did at the time of the 2018 Application.
9. When the 2018 Application was screened, it was accepted that:
 - The proposed development fell within Schedule 2, Section 10 (b) of the Regulations which relates to ‘urban development projects’.
 - The proposed development did not exceed the threshold under Section 10 (b)(ii) as the development includes less than 150 dwellings.
 - However, due to the inclusion of a significant area of public open space the site area would exceed the 5Ha threshold set at 10 (b) (iii). This said the developable area would be 3.25 Ha with the remaining area of the site being open space.

10. As the proposed development fell within Schedule 2 it was necessary to appraise the characteristics of the site and the proposed development against the criteria in Schedule 3 of the Regulations and against the current Planning Practice Guidance. That guidance has remained unchanged since 2017.
11. Having undertaken this exercise, it was concluded that the proposed development was not likely to give rise to significant environmental impacts and so would not require a formal Environmental Impact Assessment (EIA) and an Environmental Statement (ES).
12. It is important to note that at paragraph 2.3 of the screening opinion it was stated that:
- “The site is not within a ‘sensitive area’ as defined under Regulation 2 of the EIA regulations. This said part of the upgraded access road would impinge slightly of the adjacent SSSI. Natural England has been consulted and has raised no concerns subject to a contribution to visitor mitigation.”*
13. The Planning Practice Guidance says:
- Projects listed in Schedule 2 which are located in, or partly in, a sensitive area also need to be screened, even if they are below the thresholds or do not meet the criteria.*
14. The Planning Practice Guidance also says (emphasis added):
- In practice, **the likely environmental effects of Schedule 2 development will often be such as to require an Environmental Impact Assessment if development is** to be located in or **close to sensitive sites***
- If a local planning authority or applicant is uncertain about the significance of a proposed development’s likely effects on a Site of Special Scientific Interest or European site it should consult Natural England.*
15. As noted above, Natural England had been consulted and had raised no concerns subject to a contribution to visitor mitigation (which suggests at least some likely effect).
16. It is also noted that in the assessment of the potential impact, using the criteria in Schedule 3, the Screening Opinion included the following comments (emphasis added):
- “The size of the development.*
- In this case the site is undeveloped and in agricultural use. The undeveloped character **of the site** would change significantly through its redevelopment for housing together with associated parking and landscaping and highway infrastructure. The provision of up to 107 dwellings is not considered to be a substantial development, relative to other allocations within the proposed Local Plan and although it would give rise to an urbanising impact on these particular fields, the site features natural boundaries which enclose it from the wider landscape and the proposed development would includes (sic) a significant amount of open space.”*
- “Location of development (having regard to environmental sensitivity of the area to be affected)*

Schedule 3 states that the environmental sensitivity of geographical areas likely to be affected by development must be considered having regard in particular to:

a) the existing land use

The site is an edge of settlement location. The development is likely to have an urbanising effect on this location, although as mentioned above, owing to the relatively enclosed nature of some aspects of the site and the designed layout of the site (with proposed development set well back from the exposed western and substantially landscaped), the development would have a less than substantial impact on the wider countryside.”

17. An Officer's Report was prepared for the 2018 Application which summarised the views of statutory and other consultees and the assessment of the Planning Officer. The following extracts are relevant.

3.7 Landscape Consultant appointed by North Herts – Landscape Partnerships... consider that in landscape and visual terms the proposed development would still result in some localised significant adverse effects. Effects on landscape character would be most notable on the Site and immediate area extending up to Therfield Heath (c 250m distance). Notable visual effects in the medium term from Year 15 are from Therfield Heath (Viewpoint 10) ... Notwithstanding the information provided within the DAS due to the sensitive location on the upper scarp slopes there is still a good case for a more innovative design solution to the design for the units to help assimilate a scheme within the landscape setting, ... “

3.15 Natural England - Holding objection subject to NE being reasonably assured that the development can take place without impacting on the notified features of the Site of Special Scientific Interest....“As submitted, the application could have potential significant effects on Therfield Heath Site of Special Scientific Interest (‘SSSI’). Natural England requires further information in order to determine impacts on the designated site.

We also note from the Aboricultural Assessments that there may also be impacts upon trees within the SSSI as a result of the road construction. There is no acknowledgement of this within in the Ecological Appraisal or within a separate SSSI Impact Assessment and we therefore consider this document to be incomplete. It is extremely important that direct impacts upon the SSSI are accurately quantified and assessed.”

4.3.20 The most notable environmental issue arising from the development of the application site is its potential to have a significant adverse impact in what is a sensitive area visually, on rising ground near the top of a scarp slope. It is acknowledged that the site is currently cultivated farmland of lower visual value. However context is very important in that it is farmland within a landscape of higher value which, moreover, is highly sensitive to change.

4.3.28 I remain of the opinion that on balance, the development of this site as proposed would have a significant localised adverse visual impact on the rural character of the area and would have an adverse urbanising impact on the setting of the Therfield Heath SSSI as well as potentially other adverse effects on this designation.

4.3.82 The site is outside the boundary of Royston and would undoubtedly act to urbanise what is presently a prominent and locally valued landscape on the edge of the Heath SSSI. It is acknowledged that the applicant has made serious and earnest efforts to mitigate any adverse impact by re-considering such matters as building scale parameters and built footprint. However, it is clear from professional landscape advice that both the urbanising impact of the proposed new roadway up Briary Lane and the urban form of the development itself, would combine to occasion significant adverse visual impacts locally. These impacts would comprise the incursion of built form into open countryside and include consequent traffic activity and lighting.

4.4.1 I must therefore give significant weight to the harm identified in this regard, namely the environmental harm by reason of injury to the character and beauty of the countryside, the edge of town location and potentially the SSSI.

18. These views were adopted by the Planning Committee and resulted in refusal. The first two reasons were:

1. By reason of its prominent position and the topography of the site, the proposed development would be likely to result in significant localised adverse impacts on both the character of the area and visual receptors. While these impacts could be mitigated to a limited extent, the combination of residential built form on high ground and the associated urbanising infrastructure, including the proposed new road access over the Common and development breaking the skyline, would act to occasion a marked and adverse change in the character of the immediate and intermediate locality and wider valued landscape. This adverse impact would represent conflict with the aims of the NPPF and Policies CGB1, SP5, SP12c NE1 and NE6 of the emerging local plan and Policies 6 and 21 of the Saved local plan. This conflict would amount to significant and demonstrable harm that is not outweighed by any other material considerations or benefits.

2. Natural England has advised that there is no acknowledgement of the impact on the SSSI within in the Ecological Appraisal and therefore consider this document to be incomplete. It is extremely important that direct impacts upon the SSSI are accurately quantified and assessed. In the absence of a separate SSSI Impact Assessment in this case, the potential for significant adverse effects has not been adequately evaluated such that would demonstrate compliance with the provisions of NEx and NE6 of the emerging local plan and the NPPF.

19. In summary, notwithstanding the earlier Screening Opinion that the proposed development was not likely to give rise to significant environmental impacts, the more detailed assessment of the 2018 Application concluded that there would in fact be significant environmental impacts.
20. As set out above, the Applicant has not requested a Screening Opinion for this Application and, submitted that EIA is not required. The Applicant specifically relies on the earlier Screening Opinion.
17. It is questionable whether the 2018 Screening Opinion was carried out correctly in the first place, but it is very clear from the way that the 2018 Application progressed, that a number of consultees concluded that the 2018 Application **would have** resulted in significant

environmental impacts. That view was accepted by the Planning Officer and the Planning Committee and reflected in its decision.

21. Although the current application is not identical to the 2018 Application, it cannot simply be assumed that the proposed development is not likely to give rise to significant environmental impacts. Instead, in light of the conclusions about the 2018 Application, the current Application is clearly likely to give rise to significant environmental impacts and thus require EIA.
22. It might be possible to avoid this conclusion if it were clear that the differences between the 2018 Application and the Current Application would address the concerns raised in the 2018 Application. It is acknowledged that the current application differs from the 2018 Application in two important respects. We note that the proposed number of dwellings has been reduced to a maximum of 99 and the access to the site has changed and no longer involves a route adjacent to the SSSI. However, it is clear that many of the concerns raised in the 2018 Application remain and the Council has already acknowledged this in its letter providing Pre Application Advice on 13 February 2020. The letter says:

“In order to fully assess the impact of any future proposal, the following matters should be dealt with at outline stage – means of access. Layout and scale. Leaving (sic) appearance and landscape reserved. Further structural landscaping details (indicative) should also be provided in order to clearly demonstrate how a planting scheme would assist in assimilating the scheme into the wider landscape.”

23. The point is even clearer when taking into account the Council’s landscape consultants (TLP) comments on the latest landscaping proposals. TLP still express the view that:

“in landscape and visual terms the proposed development would result in some localised significant adverse effects. Effects on landscape character would be most notable on the Site and immediate area extending up to Therfield Heath (c 250m distance). Notable visual effects in the medium term from Year 15 are from Therfield Heath (Viewpoint 10) and along Briary Lane /Bridleway Royston 13. These effects result from placing built development at an elevation higher than the adjacent residential areas. The scheme includes a generous provision of open space that would be accessible to the public and provide for green infrastructure benefits. The proposed planting would in part help to assimilate the development in the medium to long-term from the adversely affected locations on Briary Lane and Therfield Heath. However, there would still be a net adverse impact on the site and distinctive local setting of the landscape at this edge of Royston.”

24. Similarly, although the letter of 13 February suggests that the revised access reduces the harm to the SSSI, the letter continues:

“any recreational or other impacts upon any part of Therfield Heath SSSI still need to be appropriately assessed.”

25. In short, it is difficult to see how, in light of the result of the 2018 Application, the views expressed in the letter of 13 February 2020 and the opinion expressed above by the landscape consultants, NHDC could reasonably conclude that the development is not likely to give rise to significant environmental impacts.
26. Furthermore and in any event there may of course be additional impacts related to the new

access and transport issues. These could include for example:

- The increase in car usage (given the distance from local facilities and the lack of bus services to the site);
- The impact on residents of Echo Hill, particularly those residents next to the proposed access;
- The environmental impacts associated with achieving a satisfactory gradient.

27. The potential impacts of the last of these have been highlighted in the letter from Mr Marshall of RHDHV dated 9 December 2020 which states that achieving the required gradient (to comply with the condition proposed by Hertfordshire DC ("Highways")) would not be possible to provide:

"unless considerable alterations were made to existing surface levels. Stripping several metres from the site would have significant environmental impacts, none of which have been assessed, including (but not limited to):

- *Volume of Heavy Goods Vehicles required to dispose of spoil;*
- *Ecological Impact;*
- *Landscape Impact; and*
- *Flood Risk and Drainage Impact."*

28. Part of the purpose of the EIA process is to address the general public's concern about the possibility of unknown or unforeseen effect of a development. The environmental statement should allay fears created by lack of information and enable the public to understand for themselves how its conclusions have been reached, and to form their own judgments on the significance of the environmental issues raised.
29. The complexity of the issues in the Application is reinforced by the number of reports produced and relied upon by the Applicant. These do not obviate the need for an environmental statement. As Lord Hoffman expressed in *Berkeley v SS Environment* [2001] 2AC 603, a "paper chase" is not a substitute for an environmental statement which is intended to be a "single and accessible compilation, produced by the applicant at the very start of the application process, of the relevant environmental information and the summary in non-technical language."
30. In conclusion, it is certainly not safe to rely upon the 2018 Screening Opinion and a fresh screening opinion should be obtained.
31. We request that you confirm within the next 14 days that a screening opinion will be obtained.
32. We look forward to hearing from you.

Yours faithfully

Handwritten signature of Richard Buxton in cursive script.

Richard Buxton Solicitors
Environmental, Planning & Public Law