

# RICHARD BUXTON SOLICITORS

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8 April 2021

**URGENT**

**FOR CONSIDERATION BEFORE 12 APRIL 2021 COMMITTEE MEETING**

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. As you are aware, we have been instructed on behalf of Royston Says No To Gladman, a local community group. We wrote to you on 15 March, primarily in relation to the failure to request an EIA screening opinion and have had no response. In the meantime, we understand that the planning committee will be considering the above application ("The Application") on 12 April 2021 and we have seen the Officers Report ("OR") for the committee. This comments on the EIA screening issue and also raises a number of additional areas of concern and we are writing to bring these to your attention.

## **Access**

2. At 4.3.60 the OR says that this is an outline application with all matters reserved **except for means of main site access**. However this is incorrect. As the heading to the OR states, the application is for "all matters to be reserved save access". Copies of an email exchange between the Applicant and NHDC (attached) also confirm this.

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3. As you are aware, during the consultation, a number of issues have been raised into the proposals for access to this site. In particular there are significant practical concerns about whether access to the site is achievable, including:
  - a) Concerns about the deliverability of the access to the site because of land ownership issues.
  - b) Doubts have been raised about whether Fire and Rescue ALP Vehicles will be able to access the development. The swept path analysis that has been provided is of a narrower vehicle with a smaller wall to wall turning radius.
  - c) Concerns that the requirement to achieve an acceptable gradient at the site access cannot be met.
4. While each of the concerns raised above should be considered carefully, the issue of whether the applicant owns all the land needed to provide the access provides obvious immediate concern. The applicant has submitted drawings in relation to access to the site which requires land which is outside of the applicant's control. NHDC has been provided with a copy of the title documents for 23 Echo Hill, which show that the land belong to that property. A copy of the title documents from when 24 Echo Hill (the house which is to be demolished) was last conveyed has also been provided and these support the claim that the land is part of 23 Echo Hill. The owners of the land at 23 Echo Hill have not been served notice and the legal status of the drawing the applicant has submitted, and which is displayed on the portal, has not been certified.
5. Under s13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, notices are required to be served on owners of the land to which an application relates. S.14 requires the Applicant to certify compliance with s.13. Under s.65 of the Town and Country Planning Act 1990 states that a local planning authority "shall not entertain" an application unless the requirements are met. In addition, the failure to correctly identify owners and complete a correct certificate has resulted in planning permissions being quashed by the High Court [Bishop, R (on the application of) v Westminster Council & Ors [2017] EWHC 3102 (Admin)]
6. Notwithstanding these concerns, at 4.3.68 the OR concludes:

*The means of access would, subject to mitigating conditions and planning obligations, be able to accommodate the development proposed without harm to the safe use of the highway and successfully connect the proposed dwellings to essential facilities without the requirement for independent vehicles. As such, it is considered that the means of access would be capable of accommodating up to 99 dwellings in a sustainable fashion.*
7. This is not an appropriate way of dealing with these issues. Section 9 (3) (a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, requires the application to explain how any specific issues which might affect access to the development have been addressed. The onus is therefore on the applicant to address these significant practical concerns and since access is not reserved, these issues should be addressed at this stage. If the access cannot in fact be delivered because of the obstacles that have been highlighted, this calls into question the deliverability of the site. It could also lead to the highly unsatisfactory outcome where outline planning permission is granted on a site which cannot be delivered.
8. These issues have been raised repeatedly by our client (and its transport consultant) with NHDC and HCC and yet there has been no engagement on this issue and no explanation as

to why HCC reversed its earlier opposition to the application. HCC has said that all engagement must be through NHDC but it is not even clear that NHDC has passed on to HCC the concerns that have been raised.

9. *These reasons make it clear why these concerns about the deliverability of the access should be addressed at this outline stage and on this aspect alone this application should be refused.*

**The failure to perform an Environmental Impact Assessment Screening Opinion.**

10. At paragraphs 4.3.35-38, the OR addresses the issue of Environmental Impact Assessment ("EIA"). In particular, at paragraph 4.3.36, the Planning Officer states that the proposed development does not fall within Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regulations").
11. This statement conflicts with the applicant's own Planning Statement which says at 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.*

12. In addition, when the applicant's previous application on this site was submitted in 2018 ("the 2018 Application") (as referred to in paragraph 4.3.37 of the OR) a screening opinion was requested by the Applicant. The Screening Opinion provided by NHDC (attached) stated:

*The proposed development falls within Schedule 2, Section 10 (b) of the Regulations which relates to 'urban development projects'. The proposed development does 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.*

13. The current application covers the same area and the same EIA Regulations apply. It is therefore simply wrong to state at paragraph 4.3.36 that the development does not fall within Schedule 2.
14. Since the application falls within Schedule 2, it is necessary (in accordance with s5 (4) (c) of the EIA Regulations) to determine whether it is EIA development, by taking into account the selection criteria for screening Schedule 2 Development (at Schedule 3 of the EIA Regulations). These criteria enable an assessment to be made of whether the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.
15. This is the process that was carried out in relation to the 2018 Application and the first part of the conclusion it reached is set out at 4.3.37 of the OR. However, the second part of the conclusion is not included in the OR. This stated (emphasis added):

*4.3 In view of the above analysis and in accordance with the requirements of the Regulations and guidance in the Planning Practice Guidance, it is considered that any environmental effects that are likely as a result of the proposed development can be adequately addressed by conditions /agreements. Accordingly the Local Planning Authority issues a 'Negative Opinion'.*

16. In short, the screening opinion included an analysis of potential environmental impacts (as required by the EIA Regulations) and it was because of this analysis that the conclusion was reached that the 2018 Application was not EIA Development.
17. In respect of this Application, the applicant has proceeded on the basis that EIA is not required in this instance and NHDC has taken the same incorrect approach. However, since the current application also falls within Schedule 2 of the EIA Regulations, it is necessary that the same process is followed, namely that there be an assessment to determine whether it is EIA development, by taking into account the selection criteria for screening Schedule 2 Development (at Schedule 3 of the EIA Regulations).
18. Moreover, it cannot be assumed that a screening opinion in relation to this application would reach the same conclusion as was reached in relation to the 2018 screening opinion. One reason for caution is that when the 2018 Application went before the Planning Committee, the OR prepared in relation to that application noted that a number of consultees had 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 to reject that Application (see especially reasons 1 and 2 referred to at OR 4.3.39 and 4.3.49).
19. In light of the conclusions about the 2018 Application, the current Application is likely to give rise to significant environmental impacts and thus require EIA. As our letter in March 2021 indicated, the Council (in a letter dated 13 February 2020) has already acknowledged that although 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, many of the concerns raised in the 2018 Application remain and will need to be addressed.
20. Furthermore there may 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);
  - Potential Air Quality impacts;
  - The impact on residents of Echo Hill, particularly those residents next to the proposed access;
  - The environmental impacts associated with achieving a satisfactory gradient.
21. Finally in this context, it is also helpful to refer to the Planning Practice Guidance which 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.*
- 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*
22. Part of the purpose of the EIA process is to address the general public's concern about the possibility of unknown or unforeseen effects of a development. It is important that it is carried out at an early stage and this is particularly relevant where outline permission is sought. The failure to carry out EIA at a sufficiently early stage could lead to the situation where outline permission is granted before adverse environmental impacts are identified. If, as anticipated, this is EIA development, it is precisely for this reason that the Planning Committee should have the benefit of a detailed environmental statement to consider in order to make a decision.

## The Tilted Balance and the Impact on Therfield Heath SSSI

23. This Application is taking place in circumstances where NHDC cannot demonstrate a 5 year supply of housing land. As the OR explains at 4.3.18, Paragraph 11 of the NPPF is engaged and there is a presumption in favour of granting permission unless either of paragraphs 11 d) i. or ii. apply.

24. Paragraph 11 d) i. of the NPPF says:

*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

25. At paragraph 4.3.23 the OR says:

*Paragraph 11(d)(i) and accompanying footnote 6 of the NPPF make clear that SSSIs are 'areas or assets of particular importance' which may provide a clear reason for refusal. Paragraph 175 of the NPPF states that proposed development outside of a SSSI likely to have an adverse impact should not normally be permitted.*

26. The wording of NPPF 175 (emphasis added) is:

*175. When determining planning applications, local planning authorities should apply the following principles:*

*b) **development** on land within or **outside a Site of Special Scientific Interest**, and **which is likely to have an adverse effect on it** (either individually or in combination with other developments), **should not normally be permitted. The only exception** is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest*

27. In short, **where there is an adverse impact on the SSSI**, development should not normally be permitted unless the benefits of the development **clearly outweigh** both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts. Therefore, if an adverse impact on the SSSI can be demonstrated in this case, this could provide **a clear reason for refusing the development** under NPPF 11, notwithstanding the housing supply shortage.

28. The OR (at 4.2.23) continues:

*Although the exact words differ, this is also the broad thrust of saved Policy 14. An exception should only be made where the benefits of the development clearly outweigh the impacts. This 'public interest' test overrides the 'tilted balance' in favour of permission that would otherwise be in operation. Notably there is no minimum threshold of 'adverse impact' at which the public interest test is engaged.*

29. It is therefore open to the Council to refuse the application if it satisfied that there will be an adverse impact on the SSSI unless the exception in NPPF 175 applies – ie the benefits clearly outweigh the impacts (including the broader impacts).
30. However, although the OR refers to the NPPF 11 d) i test at 4.3.52-53 (when discussing those reasons for the refusal of the 2018 Application which referred to the impact on the SSSI) the application of this approach is not clear in the balancing exercise at the conclusion of the OR. At 4.3.116 the OR says:

*Having identified the principal components of harm and benefit in the planning balance and the relative weight attributable thereto, it falls to establish the relevant scale by which to calibrate their impact on a decision. In this case the tilted balance in favour of sustainable development is assumed.*

31. At 4.4.3, the OR says (emphasis added):

*The test of paragraph 11 of the NPPF whereby **any identified harm must significantly and demonstrably outweigh the benefits** of delivering new homes **cannot in my view be evidenced on any of the substantive points discussed above**. Whilst the proposal development does not comply with the specific wording of saved and emerging Local Plan policies at this time and with only a 2.2 year housing land supply, with saved policies from a 1996 adopted Local Plan and an emerging Plan that is not adopted (upon adoption of the new Plan the Council can for a short period at least be able to demonstrate a 5 year land supply) **I consider that a case of refusal based on policy harm alone (without any substantive identified harms) can be sustained at appeal.***

32. Similarly at 4.4.4, the OR says (emphasis added):

*The NPPF from its inception did not enable local planning authorities to always resist development proposals in rural areas outside those protected by specific policies in the NPPF, such as SSSIs (note the site is now outside the SSSI), Green Belt or National Parks. In the clear absence of a five year supply of deliverable housing sites and without completely up to date and adopted policies **the decision maker in this instance must determine the planning application within the tilted balance which is clearly in favour of allowing sustainable development unless clearly identified harm significantly and demonstrably outweighs the benefits of delivering new homes.***

33. Both of these are applications of NPPF 11 d) ii rather than d) i. The Planning Officer has not used d) i when assessing the impact on the SSSI in this part of the OR and it is important that the Committee members understand that when assessing the components of harm and

benefit in the planning balance and the relative weight attributable thereto, there are two tests to be carried out:

- a) If the development is likely to have an adverse effect on the SSSI, unless the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, the Committee has to decide whether this provides a clear reason for refusal.*
- b) In respect of other components of harm and benefit, the Committee has to decide whether any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.*

26. At the moment the OR is potentially misleading and it will be important to clarify this point to the committee.

### **The Assessment of the Impact on the SSSI**

27. The OR addresses the impact on the SSSI at 4.39-453 and again at 4.3.82-99 and the key points can be summarised as follows:.

- a) The removal of the access along the bridleway means the site no longer encroaches the SSSI. (4.3.42)*
- b) In landscape and visual terms there will be significant adverse effects extending up to Therfield Heath (c 250m distance). 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. (4.3.46)*
- c) The development itself would give rise to more general pedestrian use of the SSSI and Natural England is concerned about the impact of dog walking on the fragile heathland ecology. There would be some 'adverse' effect and funding has been secured to fund a warden to mitigate any harm to the SSSI (4.3.51)*
- d) The proposal includes the provision of a significant quantity of open space as part of the development which would not only serve the needs of the new residents but return an area of arable farmland back to heathland for the wider enjoyment of all.*
- e) This new open space has the potential to draw future occupiers of the development and others in the vicinity to use this new open space to relieve additional pressures from the use of the Heath. New pedestrian routes across the site would link the existing public rights of way which could include circular dog walking routes, drawing people away from the Heath and its more sensitive ecology. (4.3.46, 4.3.52 and 4.3.91)*
- f) The Environmental Protection Team has advised that there are no objections in terms of ... local air quality.... If permission is granted then a recommendation for the inclusion of requirement for specific conditions have been included. (3.89)*

- g) *According to HCC Ecology, it is not considered that “there are any demonstrably fundamental ecological constraints related to the application site itself or represented by Therfield Heath SSSI which would justify refusal on ecological grounds, on the basis of the known site history and low value as well as measures proposed to reduce impacts on the SSSI.” (4.3.95)*

28. The OR concludes that:

- *the provision of up to 99 dwellings on currently open land would, inevitably, result in a significant change in the character of the site, impacting on the wider landscape (4.3.47). 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. (4.3.112). There is identifiable harm in landscape terms but a refusal based on landscape grounds alone would be difficult to defend at appeal (4.3.48 and 4.4.3)*
- *there would be some ‘adverse’ effect from increased pedestrian use (4.3.51)*

29. It is also stated (at 4.3.52 and 4.3.115) that

*the provision of a significant quantity of open space as part of the development which would not only serve the needs of the new residents but return an area of arable farmland back to heathland for the wider enjoyment of all, is a potentially a social and environmental benefit in the planning balance. This new open space has the potential to draw future occupiers of the development and others in the vicinity to use this new open space to relieve additional pressures from the use of the Heath.*

30. At (4.3.52), the OR concludes that subject to:

- *suitable obligations delivering funds for management activity on the Heath;*
- *the provision of open space, with appropriate future management arrangements for these facilities which would need to be demonstrated and secured through both the S106 and reserved matters application, will in part mitigate / minimise landscape and SSSI impacts.*
- *the submission of an appropriately specified landscaping scheme at the reserved matters stage*

*the development would not have a detrimental impact on the Therfield Heath SSSI.*

31. This conclusion, that there will be no detrimental impact on the SSSI, is at odds with observations elsewhere that there will be an adverse impact.

32. There is also some doubt about the view that a refusal based on landscape impact alone would be difficult to defend on appeal. In particular, it is unclear which of the tests referred to in NPPF 11 d) is being applied. If there is an adverse landscape impact on the SSSI, the justification for refusing permission would be lower (applying test d i). The OR should make it clear what test is being applied so that this assessment can be properly assessed.

33. *In addition the OR does not fully reflect the concerns raised by the consultees. For example, it appears that the concerns of Natural England have been misunderstood. The latest response from Natural England dated 31 March 2021 states:*



**NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED**

*We consider that without appropriate mitigation the application would have potential significant effects on Therfield Heath Site of Special Scientific Interest ('SSSI').*

*... our advice here should be considered alongside that of our previous representation in relation to advice on Green Infrastructure; Residual use of Therfield Heath SSSI; The Conservators of Therfield Heath and Greens and Landscape.*

34. The earlier response from Natural England refers to the need to consult and give weight to the views of The Conservators of Therfield Heath and Greens as managers of the site:

*Their assistance will be particularly welcome in advising on current warden provision and how any contribution from these developers would fit in with existing funding streams. Natural England has always advised that a range of measures may be required to protect and enhance the conservation status of Therfield Heath SSSI and their local knowledge could assist in identifying alternative mitigation if our previous advice regarding warden provision is now outdated.*

35. In short, Natural England were prepared to defer to the Conservators of Therfield Heath and Greens on the mitigation steps. In fact, as can be seen from the OR (paragraph 3.27) the Conservators of Therfield Heath and Greens objected to the development on a number of grounds which they believe would have collective negative impacts. They say:

*The applicant has not satisfactorily identified or assessed the risk and impact of the development on Therfield Heath as a Site of Special Scientific Interest (SSSI) and a Local Nature Reserve (LNR) in their application. Considering the SSSI Impact Risk Zones identified by Natural England at the eastern end of Therfield Heath we have identified risks that need to be assessed. We believe that the proposed development will have a significant detrimental effect and will harm the SSSI and LNR*

36. Furthermore, the response from the Conservators of Therfield Heath and Greens demonstrates that, although the bridleway section adjacent to the SSSI is no longer required for emergency access, the application continues to promote the bridleway for utilities for the site. The environmental impact of this does not appear to have been addressed by Natural England or NHDC.

37. In summary, Natural England deferred to the local experience of the Conservators of Therfield Heath and Greens – including in relation to whether increased warden provision will provide appropriate mitigation. The reliance on the warden scheme to mitigate against harm to the SSSI in the OR at 4.3.52 is unwarranted.

38. There is a similar concern about the treatment of the submissions on Ecology in the OR. At 4.3.94-5 the OR considers Ecology and Biodiversity and quotes the views of HCC Ecology:

*I do not consider there are any demonstrably fundamental ecological constraints related to the application site itself or represented by Therfield Heath SSSI which would justify refusal on ecological grounds, on the basis of the known site history and low value as well as measures proposed to reduce impacts on the SSSI.*

39. The full report from the Ecologist also includes the following statements (emphasis added):

*11. The proposed POS habitats will enhance the development itself and its recreational use will help to offset the potential for increased pressure on the SSSI. However it is recognised that new residents will also be expected to make use of the heath given its accessibility and as a large open space (5.5, Ecology rpt.). **This will increase pressure on the SSSI as a result of the new housing, and measures to address this cannot therefore be considered as part of the net gain<sup>1</sup>.***

*13. The existing undisturbed grassland field margins should be compensated in extent and quality. Previously there appeared to be a small net loss. Moreover, **the diagrammatic landscaping proposals will clearly compromise the potential for the creation and management of open chalk grassland if this is to support any characteristic ecology.***

*14. Despite the ecological proposals and enhancements (various species boxes) – I am not convinced that this ecology will be sufficiently compensated by the use of the POS which is primarily an amenity area. This by default is designed to be used by local residents for formal and informal recreation and will therefore be subject to local and regular disturbance, unlike the farmland currently in Stewardship. The planning statement acknowledges the urbanising effects of development (6.3.2).*

*17. The impact of this proposal would be similar to the impacts of previous suburban development to the north and east of the application site, namely loss of undeveloped countryside, **increase recreation pressure on the local area - in particular Therfield Heath** - and a general increase in the size of Royston.*

40. It will be appreciated that these comments contradict the Planning Officer's own conclusions. In addition, the OR does not make clear that the HCC Ecology response was based on the Applicant's desk-based study issued at registration of the Application. This was before a separate report prepared by Greenwillows Associates Ltd was submitted which found evidence of priority and protected species and other concerns regarding the impact to the SSSI. However for reasons that have not been explained, HCC Ecology were not asked to consult on this report.
41. A similar concern has been raised by our Client in relation to Air Quality. As the OR states (at 3.3) NH Environmental Health confirmed that there was no formal objection in terms of local air quality. However recommendations were made by Environmental Health and these are not included in the OR itself. For example, in the response from Environmental Health it is noted that the Applicant's Air Quality Report concluded:

*When considered in combination with other schemes, significant contributions to NOx concentration within the SSSI cannot be screened out within a portion of the conservation site adjacent to the local road network.*

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<sup>1</sup> This view is also inconsistent with the views expressed by the Planning Officer at the time of the 2018 Application at 4.4.2 "There would also be some benefit in terms of the offer of a substantial area of managed open space, the effect of which would likely improve biodiversity locally and act to divert pedestrian traffic away from the Heath. However, beyond serving the proposed development this benefit would be largely extraneous and I must therefore ascribe it limited weight in the planning balance."

*Should a process contribution of 1% or more of the critical level or load be predicted, it does not necessarily follow that there will be a consequent significant ecological effect; rather it indicates the potential for such an effect to occur. In accordance with guidance published by the Institute of Air Quality Management, the potential for any significant effects should be determined by a suitably qualified ecologist.*

42. The Environmental Health Officer therefore included the following recommendation:

*The requirement for further mitigation in respect to the impact of the proposed development on Therfield Heath SSSI, shall be determined by NHDC following receipt of a report from a suitably qualified ecologist.*

43. Despite this recommendation, it is apparent that the Ecology Assessment provided by the Applicant does not refer to air quality and neither does the response from Herts Ecology.
44. Similarly, the Environmental Health Officer wrote:

*Now that the proposals are classified as a major proposal, considerations for further mitigation measures are required following completion of additional steps to calculate the pollution emissions costs as detailed within section 2.3.2 of the air quality planning guidance for major schemes.*

There was therefore a further recommendation:

*The additional steps for the determination of pollution emissions costs in the Air Quality Assessment, relevant to major schemes shall be completed as detailed in Section 2.3.2 of the air quality planning guidance.*

*The full extent of mitigation required in respect of air quality can only be assessed on completion of the full air quality assessment and alongside consideration of the outcomes from:*

- ☐ *Outcomes from the Transport Statement/Assessment;*
- ☐ *Travel Awareness/Planning and Highway Development requirements.*

Although these concerns were raised and it is not clear that they have been addressed within the information made available for public scrutiny

45. In summary, in so far as assessing the possible harm to the SSSI is concerned, it is submitted that:
- a) There is a misunderstanding of the views of Natural England – in particular there is a failure to acknowledge Natural England's deference to the Conservators of Therfield Heath and Greens regarding appropriate mitigation for the harm caused by additional recreation on the SSSI; and
  - b) There is a failure to take into account the views of the Ecology Officer, or identify in the OR where those views contrasted with those of the Planning Officer. There was also a failure to consult the Ecology Officer when further concerns were raised during the consultation;
  - c) There is a failure to take into account the concerns and recommendations in respect of air quality (particularly the need for an assessment by an ecologist);
  - d) There is a failure to consider the environmental impact of the proposed use of the bridleway adjacent to the SSSI (for drainage); and.

- e) It is also unclear whether the Planning Officer applied the correct test when considering whether a refusal to grant permission based upon the landscape impact on the SSSI would be vulnerable on appeal.
46. All of these points should be brought to the attention of the planning committee when it is considering whether there has been an adequate assessment of the impact on the SSSI. The Committee will then need to consider this in the context of NPPF 11 d) i.
47. These concerns (particularly about air quality and the fact that this has not been fully addressed) reinforces the need for an EIA

## **Documents**

48. We are advised that there are documents are listed within the OR which have not been made available to residents or consultees. These are:
- Redacted Statement of Common Ground
  - *Indicative Green Infrastructure Plan 7407-L-05 Rev.A*
  - Sun Hill Pedestrian Improvements Arboricultural Assessment
49. The planning process should be transparent and until all relevant documents are made available to the public and other consultees by NHDC, the Application should not be determined.

## **Summary**

50. In summary, the concerns that have been raised about the failure to consider properly how access can be delivered for this development, the need for an EIA screening opinion, the method for assessing impacts on the SSSI, and the inadequate consideration of the consultees' assessment of those impacts, are all factors that could lead to any decision to approve this application being made unlawfully and vulnerable to legal challenge. We suggest that careful consideration is given to these points and respectfully suggest that the planning committee is postponed until the concerns have been adequately addressed.

Yours faithfully



**Richard Buxton Solicitors**  
Environmental, Planning & Public Law

## **Enclosures**

- *2018 screening opinion*
- *Email exchange relating to access*