

HERTFORDSHIRE ECOLOGY

Providing ecological advice to Hertfordshire's Local Planning Authorities

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Steve Fraser-Lim
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Ask for: Bernie Fleming
Tel: 01992 555220

Date: 7 July 2023

Dear Steve,

3/22/2406/FUL

Hybrid planning application, comprising: a) Outline approval for a residential-led mixed-use development for up to 1,800 new market and affordable homes, including self-build and custom build homes and around 3 hectares of new employment provision, mixed-use local neighbourhood centres, new retail, business, commercial and community uses, new and expanded primary schools, with early years facilities and new secondary school provision, new public open space and outdoor sports facilities, including all an weather 3G sports pitch, the provision of plots for Travelling showpeople, new ecological areas, allotments, woodlands and other public areas, new pedestrian, cycle and vehicular accesses and movement networks within the site, associated drainage and SuD's infrastructure, utilities, energy and waste facilities and enabling infrastructure works to the existing highway, other supporting works, facilities and infrastructure, together with associated temporary enabling works and structures. With all matters reserved for later approval, apart from works in connection with the associated primary and secondary access junctions at the A10/A1170/Moles Farm interchange and the access junction at the B1004 at Widbury Hill and at Fanhams Hall Road. b) Full planning approval for internal highways works relating to the construction of Stages 1a and 1b of the Sustainable Transport Corridor, linking the A10/A1170 to the B1004, via the new access junctions, as defined on the Movement and Access Parameter Plan and the Detailed Access Plans

Land North and East of Ware (WARE2), Ware, Hertfordshire

Overall recommendation

Insufficient information has been provided to allow the Council to carry out its Habitats Regulations Assessment.

Summary of advice

The application cannot be determined.

As it is not certain that adverse effects on the integrity of European sites cannot be ruled out, the Council must 'have regard to any representations' made by Natural England; we agree with Natural England's letter of 27 January 2023.

This letter should be read alongside our previous letter of 21 June 2023.

Supporting documents

I have made use of the following document in providing this advice:

'Shadow Appropriate Assessment': Annex 10 of Volume 3 of the Environmental Statement, and

Biodiversity Air Quality Screening Assessment (Air Quality Consultants, May 2022)

Comments

We have already provided comments on the majority of the broad ecological aspects of this proposed development (letter from Martin Hicks, dated 21 June 2023) though this omitted observations on the 'Shadow Habitats Regulations Assessment' (sHRA); these are provided below. Accordingly, both letters should be read together to capture our complete position.

The role of the sHRA is to provide the competent authority (ie the Council) with the objective information it requires to carry out its own HRA under Regulation 63(2).

Fundamentally, the sHRA fails to achieve this in almost all respects. Reasons why include, but are not limited to the following:

- the omission of any assessment of potential impacts on Wormley and Hoddesdonpark Woods SAC;
- the lack of contemporary evidence regarding the European sites at risk and the influence of potential impacts;
- the lack of reference to and subsequent use of case law, and contemporary government and best practice guidance;
- the lack of a clear distinction between the screening and appropriate assessments;
- failing to explore potential impacts alone or in-combination;
- failing to assess the potential impacts and overall conclusions in terms of the conservation objectives and supplementary advice; and

- the use of mitigation, notably the necessary restriction of this to the appropriate assessment stage, is not made clear.

Importantly, the above shortcomings apply less to the Air Quality report, which is considerably, if not entirely, more robust. In making this statement, I acknowledge the latter's use of the JNCC decision making thresholds.

However, when taking the sHRA as a whole, these (and other) shortcomings above cast doubt on its findings to the extent it is unclear if the correct tests and the necessary level of scrutiny have been employed. Consequently, inadequate information has been provided to allow the Council to carry out its own Habitats Regulations Assessment

In saying this, the sHRA is correct in drawing attention to the HRA of the local plan carried out by AECOM in 2016. Indeed, government guidance makes clear that the assessment of strategic plans can be used to inform project-level HRAs if, importantly, there has been no material change in relevant circumstances.

On the basis of the information available at the time, and whilst making recommendations for further study (and mitigation for projects if required), the HRA of the local plan concluded that adverse effects on the integrity of European sites in the area could be ruled out. Importantly, the proposed development site was one of the allocations assessed in that report and its potential impacts taken into account if at a more strategic level.

However, given subsequent growth and development in the area and emerging concerns surrounding a range of potential impacts, I consider it unwise to place too much emphasis or reliance on the findings of the local plan HRA; considerably far more detailed information and scrutiny is required for the assessments of planning applications than strategic assessments.

Accordingly, I agree with the advice provided in Natural England's letter of 27 January 2023 which raised concerns that the sHRA fails to adequately assess potential impacts from recreational pressure, air pollution and both water quality and water resources on the Lee Valley and/or Wormley and Hoddesdonpark Woods. At present, therefore, the SHRA cannot be considered fit for purpose.

As Natural England is the statutory consultee on HRAs and, under Reg 63(3) the Council must, by law, 'have regard to any representations' it may make, I recommend that the Council follows its advice and encourages the applicant to address Natural England's various concerns. The Council should be prepared to provide cogent and compelling evidence if it chooses not to follow Natural England's advice.

Yours sincerely,

Bernie Fleming

Ecology Advisor, Hertfordshire Ecology