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West Oxfordshire District Council

By e-mail

Our ref: DW/E2232/SE-L1

5th February 2025

Dear Stephanie

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**24/01861/FUL – Land NW of Little Tew
Stage 1 response on ecology**

**LITTLE TEW MEADOWS SSSI
and
related drainage issues**

1 Background to and scope of this submission

- 1.1 We write in response to the appearance in the last week of additional information from the applicant in respect of the above application, including an 'Addendum' ecology report by Windrush Ecology (the "Windrush addendum"), dated November 2024. That addendum responds to Bioscan Report No: E2232R1, dated September 2024, which raised a number of criticisms and flagged various omissions, departures from industry standards and base factual errors in the applicant's original supporting report on ecology (dated April 2024 and also produced by Windrush Ecology).
- 1.2 The Windrush addendum helpfully confirms, in the first instance, the unreliability of their previous report for decision making. It does so via a number of concessions on points of error. These concessions are not trivial: on matters as basic as habitat classification, for example, Windrush now accept that certain habitats were omitted entirely from their assessment, that others were incorrectly classified, and that all of the grasslands were under-valued incorrectly.
- 1.3 While the applicant's concessions and acknowledgement of the need for corrections are helpful, many other points raised by Bioscan, and which are also relevant to determination, have been only partially corrected, or are ignored or refuted. The Windrush addendum does not therefore remedy the applicant's submission material sufficiently to make it reliable, representative or adequate for robust decision making, having regard to industry standards and planning practice guidance.
- 1.4 We will expand on the above in a full response on these matters once we have seen applicant's revised BNG calculations (my separate e-mail to you asking after these refers). In the meantime, we feel it would be helpful to issue an interim (Stage 1) response dealing with SSSI and drainage/hydrology matters, as these are a critical issue for determination. Our Stage 2 response (to follow) will deal with protected species, BNG matters and the remaining/continuing errors in assessment that are perpetuated in the Windrush addendum.

1.5 The rest of this letter therefore addresses the continuing information deficiencies and errors in relation to the applicant's assessment of the risk this proposed development poses to the Little Tew Meadows SSSI.

2 Does the submitted information resolve concerns as regards potential Impact on Little Tew Meadows SSSI?

Surface and ground water

2.1 It is common ground that the application site is located approximately 140m to the north of the Little Tew Meadows SSSI, and that it lies up-gradient of the SSSI as regards both surface water and groundwater flows. While Windrush appear to refute that there are surface water drainage vectors between the site and the SSSI (even going so far as to refute the very existence of surface water channels that are readily visible on aerial photography and on the ground), it is assumed not to be in dispute that the SSSI interest features are in part based around springs and issues where groundwater (including from underneath the application site) emerges at surface close to the River Dorn. We say "it is assumed" here as in addition to the inexplicable denial of the existence of physical features, the Windrush addendum includes two rather odd and on the face of it contradictory statements at 3.2.2: The first is "Bioscan claim that there are groundwater conduits between the application site and the SSSI, but offer no proof or evidence to support this claim. Bioscan also state that "surface and groundwater discharge is likely to resurface within the SSSI", but offer no proof or evidence for this statement". This is followed immediately after by the apparently contradictory statement: "Groundwater conduits between the wider site's northern & western areas and the SSSI could exist."

2.2 Of course, it is the applicant's role to provide determinative evidence of whether there is or there isn't a groundwater linkage to the SSSI¹. The absence of any such evidence, or indeed any substantive consideration of this matter at all, was, you will recall, a key omission from the originally submitted material. The fact that the applicant has now sought, belatedly, to try and address this matter can presumably be taken as it accepting that a groundwater linkage between the site and the SSSI is possible or (we would say, on the basis of local geology) highly likely. As the applicant has (still) not undertaken any empirical studies to attempt to disprove any such linkage, we conclude that the relevance of a possible or likely linkage is not really in dispute, despite the slightly bizarre Windrush comments.

2.3 The Windrush addendum cites and seeks to rely upon the conclusions of a further desk-based hydrology study evidently commissioned in response to the previous omissions on this issue flagged in ours (and NE's) previous submissions. This study (Price and Myers, October 2024) is responded to in detail in a separate report being prepared by Water Resource Consultants, but it is sufficient to say here that we note it does not appear to be based on any field testing of ground conditions, related infiltration/seepage/permeability rates or local geology, and is instead founded upon extrapolation from a coarse-grained desk study. We note that it does, at least, accept that the application site will contribute to baseflow (groundwater), in contrast to Windrush's suggestion.

2.4 Windrush further state that "The proposed lake will be lined with a rubber/butyl liner over the bedrock of Whitby Mudstone, which is impermeable, and so this feature will not be in direct contact with the

¹ The suggestion that Bioscan should do so is equivalent to suggesting that Natural England should collect its own evidence in these sorts of cases and/or that decisions should be made in an evidence vacuum where an applicant has elected not to provide any evidence one way or the other. This is of course nonsense.

groundwater". We are not aware of a liner being proposed before, and believe this to be new information which invites several questions, including:

- i) If the Whitby Mudstone is indeed impermeable, why the need for an rubber/butyl liner?;
- ii) If the lake is to be segregated from any link to groundwater, such that water levels cannot rise and fall other than via evaporation/evapotranspiration and/or overflow, how will such overflow (e.g. when high rainfall/storm conditions exceed lake capacity) be managed and where will it discharge to?

2.5 Two further points of rebuttal on the issue of ground water are contained within the Windrush addendum at 3.2.2. Each is dealt with in turn below:

"Bioscan voice some concern over "changes in nutrient inputs, other chemical changes associated with grounds maintenance and land-management", but ignore the existing status quo which is that the northern fields of the wider site are under arable cultivation and receive fertilisers and pesticides."

2.6 We do not ignore the baseline situation/status quo and acknowledge that a change from intensive arable farming on permeable soils to low intensity permanent grassland and woodland might result in beneficial consequences for the quality of associated surface water and groundwater regimes. However;

- i) No evidence is provided by Windrush that the nature of current agricultural inputs onto the arable fields (most of which are further from the SSSI than the application site) is intense or excessive, nor that it is currently detrimental or damaging to the SSSI;
- ii) Even if such evidence were forthcoming, it is not the case (as is seemingly implied) that permitting this development is the only realistic means of remedy. For example, the land has been in an agri-environment stewardship scheme before and could be so again;
- iii) Nor would the proposed development offer the only means of effecting a land use change away from arable, were that to be deemed desirable. The BNG trading market would provide a mechanism by which conversion of the arable component of the site to permanent grassland could be achieved, potentially at significant financial benefit to the landowner, without the need for on-site development;
- iv) If the applicant were to provide evidence that damage to the SSSI was arising from agricultural inputs on the application site/blue line land in the baseline situation, or if such evidence were to emerge by other means, that could of course ultimately be remedied by enforcement action under the provisions of the Wildlife and Countryside Act 1981 (as amended).

2.7 The supposition relied upon by Windrush - that the proposed scheme will result in net beneficial consequences to ground and surface water quality – also ignores the legitimate concerns raised by ourselves and NE over the proposed future land uses. For example the water quality implications of the proposed stables (a new and potentially intensive focus of high nutrient animal waste in a location closer to the SSSI than the the arable

component, as well as very close to the proposed SuDS scheme²) and how intensively the grazing land is to be managed (e.g. if cultivated land with low or no inputs is swapped for grassland with high inputs – e.g. for silage/horse feed - then there may be little or no benefit versus the status quo).

2.8 All of this underlines the importance of the LPA and consultees having sufficient understanding of the baseline surface and groundwater regimes and sufficient confidence in the delivery of appropriate future management over the wider site in order to decide whether the land use changes will be net beneficial (as claimed by the applicant) or net detrimental to water quality and the hydrological regime feeding the SSSI. This point is also relevant to delivery mechanisms, and monitoring needs in respect of the BNG claims, a matter we will return to in our Stage 2 response.

2.9 The second point of rebuttal at 3.2.2 of the Windrush addendum reads:

“The proposed SuDS will treat surface water before discharging into the river.”

2.10 Putting aside uncertainties over the filtration and pollution fixing efficacy of a proposed SuDS system that is expected to operate on fairly steep gradients, this statement appears in any event to contradict the submitted surface water drainage design. If there is intended to be a direct or indirect discharge of surface water from the SuDS to “The River” (i.e. the River Dorn), then this can only be via an as yet undefined surface water drainage connection (which would involve third party land) or via discharge to groundwater (which contradicts with the claim that the lake will be lined to prevent any connection with groundwater). Alternatively, it would have to be via overtopping from the lake to boundary ditch systems (via as yet undefined channels outside the application redline and without any consideration having been given to capacity of the receiving ditch network). It is assumed the last of these is the most likely, but this has not been particularised in the applicant's submission. We emphasise that this is a 'full' planning application, and the receptor at risk here is a nationally designated site with stringent policy protection: – the requirement for further detail to understand the magnitude of risk to the SSSI and whether it can be avoided or adequately mitigated, is by no means unreasonable.

2.11 Overall, the concerns about impact on groundwater regime and quality and whether the applicant's surface water drainage strategy is even remotely fit for purpose in protecting the SSSI, remain. They are far from ameliorated by Windrush's rebuttal points on this matter, nor by the scant additional detail provided by the Price and Myers study.

Foul treatment and drainage

2.12 We note that at para 3.2.3 of their addendum, Windrush provide additional information about occasions where Bio Bubble type package treatment systems have been used close to sensitive receptors. The source of this information is not given (we note it is provided in inverted commas), but we assume it is a pers comm from someone at 'Advanced Aeration Ltd' whose specification for supply of a Bio Bubble package plant is at appendix B to the Price and Myers study.

² Appendix B of the applicant's Price and Myers hydrological assessment report contains a proposal from Advanced Aeration Ltd which states “Horse waste from the stables is planned to be collected and disposed of offsite”. No further information is provided on the mechanisms, regularity and/or disposal locations for this operation.

- 2.13 The intention appears to be to present the quoted comments as a complete answer to our concerns about the consequences of any failure of the system. Windrush state we provide no evidence in support of that concern, but we note Appendix B to the Price and Myers report itself acknowledges, rightly and properly, the risk of failure and the importance of a strict maintenance regime with this type of system. We do not see Advanced Aeration claiming that the system never fails – rather, they emphasise the importance of a strict maintenance regime to minimise the chance of such failure. The fundamental concern therefore remains: that in the light of this risk factor, the proposed Bio Bubble and its associated drainage field are proposed to be sited too close to the proposed SuDS system, which in the event of a pollution incident, could act as a more rapid conveyance for polluted surface water towards the SSSI than would otherwise be the case.
- 2.14 It is also noted that the ground conditions in the specific location proposed for the treatment plant appear to be extrapolated from a coarse-grained desk-based exercise, rather than known. If the geology here is more permeable than the applicant assumes, such that there are links to groundwater and the underlying aquifer, as well as to surface water, the impact of a system failure and resultant pollution incident, including on the down-gradient SSSI, could be acute.
- 2.15 Given the sensitivity of the SSSI, the need for a precautionary approach to avoid impacts where possible, the topography and pattern of surface water drainage in the locality and furthermore the acknowledged likelihood of groundwater linkage between the site and the SSSI, there is simply insufficient justification presented for the proposed siting of foul water infrastructure, and no safe conclusion can be drawn by the LPA or consultees on the adequacy of the system for protecting the SSSI. The LPA is placed in a position where it cannot determine with any confidence the ability of the scheme to comply with (inter alia) NPPF para 193 (b) which states “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”.
- 2.16 We again make the point here that with this being a ‘full’ planning application: it is neither irregular nor unreasonable for sufficient detail to be provided on such matters to permit confidence that appropriate effort has been made to first avoid risks to the SSSI, or adequately mitigate unavoidable ones, in line with the mitigation hierarchy and the requirements of NPPF 193(b). We contend that the compunction to take a precautionary approach, in line with policy, is given additional weight here, where the application submissions have hitherto paid little or no heed to the SSSI, as we illuminated in our previous report. Of itself that does not inspire confidence that the issue has been taken seriously. Nor does it suggest that the need to avoid harm to the SSSI has informed the development design. Nor indeed is confidence inspired by the applicant’s cursory response to the matter, once raised – a response which appears to amount to little more than a desk-study and a quoting of manufacturer’s claims.

3 Conclusions

- 3.1 We suggest that LPA and Natural England contrast the unequivocal nature of the language used in Windrush’s conclusion at 3.2.4 of their addendum (below), with the standard of evidence that is actually presented, or otherwise available in the applicant’s submissions:

"In summary, the evidence presented above clearly shows that there will be no significant indirect impacts on the Little Tew Meadows SSSI, or the River Dorn, as a result of the proposed development, including surface water, ground water and foul water."

- 3.2 There is in fact scant or no evidence to support any such conclusion. It is striking that both the Price and Myers study and the information supplied by Advanced Aeration Ltd acknowledge that (respectively) a groundwater conduit to the SSSI is plausible or likely, and that package treatment plants can fail. The contrast between these caveats and the false precision/certainty in Windrush's statement is both stark and alarming.
- 3.3 This is a 'full' planning application, and given the weighty policy protection afforded to the SSSI, its sensitivity and proximity to the proposed development and the clear and acknowledged vectors of potential impact to it, the LPA and consultees should rightly expect to be furnished with a far more detailed understanding of the baseline ground and surface water regime, and how it will change or otherwise be affected by the proposed development and related land-use changes.
- 3.4 The applicant has made little or no effort, even reactively, to adequately document or understand these potential impact vectors. It has made no apparent effort at all to avoid impacts by design. The protection of the SSSI from likely significant effects currently hinges on (*inter alia*) apparently unenforceable commitments to certain types of land management (e.g. removing horse waste from the stables) and a forever unflinching diligence towards critical maintenance of foul waste. These duties will fall to an applicant that has already shown itself to be in the first instance dismissive about the SSSI, seemingly uninterested in making any changes to its scheme to improve the SSSIs buffering and protection and ultimately prepared to add only cursory technical information in support of its assertion that there is no risk. The language used by the applicant's ecology consultants is, unfortunately, further symptomatic of the dismissive and cavalier approach towards the assessment of potential impacts on the Little Tew Meadows SSSI that we contend pervades the application generally, and which we observe led to the LPA being misled in respect of the previous (failed) application.
- 3.5 We would expect the information that is missing from the applicant's submissions to date to compel the applicant to make substantive design and siting changes to its scheme. Absent such information, the LPA and consultees are bereft of a robust basis from which to test the scheme's adherence to the mitigation hierarchy and compliance with the national and local planning policies that afford stringent protection to such sites. As things stand, the applicant's assertions that the SSSI will be subject to no negative effects remain based on little more than guesswork, are thus unreliable and unsafe, and provide clear grounds for refusal in accordance with NPPF 193.

Please don't hesitate to contact me with any queries or if any clarifications arising from the above are required. I hope to issue our Stage 2 response on other matters shortly.

Best regards


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Managing Director