

Hi Hilary,

Email sent on the 15 Jan. Also, now having visited the site with my botanist, we have assessed the site as being plant species rich, invertebrate species rich, important to numerous fauna including bats and reptiles, is important as a wider mosaic habitat which is linked to current use and is important as a 'stepping stone' to surrounding important habitats. The UFA had not conducted detailed surveys and did not have sufficient data at hand when it made its recommendations. Had it had the data now currently available, I believe that it would not have recommended this site for development. Reason for refusal is supported and arguable in Inquiry. We believe if access concerns are overcome the site should be designated as a Local Wildlife Site.

Any queries please call.

Kind regards David

Arborweald Environmental Planning Consultancy

LANDSCAPE, ARBORICULTURE & ECOLOGY

SURVEYS\* PLANS\* ASSESSMENTS\* MITIGATION\* SOLUTIONS & METHODOLOGY\*

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**Email sent on 15/01/2018**

Dear All,

Please can you also forward this to Robert Williams.

Refusal Reason 1; points and whether the Ecological elements of the Planning Application accord or not. I'm providing basic responses which will be fleshed out in my P of E.

**Summary/paraphrase of Policy Points and Applicant's Accordance with**

Reason 1: The proposed development would have a harmful impact on the ecology and biodiversity of the site, which would not be sufficiently mitigated by the measures proposed contrary to paragraph 118 of the National Planning Policy Framework, policy CP10 of the Brighton and Hove City Plan Part One and Policy QD18 of the Brighton and Hove Local Plan. DK-S: ON

BALANCE I CONCUR WITH THIS REASON FOR REFUSAL AND IT IS MY PROFESSIONAL OPINION THAT WE CAN ARGUE THIS IN THE INQUIRY.

**NPPF 118: LPA should aim to conserve and enhance biodiversity applying the following principles:**

- **If significant harm resulting from development cannot be adequately mitigated, or, as a last resort, compensated for, then planning permission (pp) should be refused.** *Appellant has not provided demonstrable evidence that, 1) there won't be significant harm and 2) the harm that will be caused (accepted by Appellant that will be a level of deleterious impact [low in their view]) can be sufficiently mitigated.* DK-S: THERE IS A POSSIBILITY THAT SOME OF THEIR MITIGATION MAY BE TO THE BENEFIT OF SOME SPECIES HOWEVER, THE DEVELOPMENT AND THEIR MITIGATION WILL BE TO THE DETRIMENT OF OTHERS. MOST LIKELY TO THE DETRIMENT OF RED STAR-THISTLE OR OTHER SPECIES WHERE IT IS TRANSLOCATED TO ALSO, ANTS, REPTILES, LEPIDOPTERA (BUTTERFLIES & MOTHS) – ALTHOUGH SOME LEPIDOPTERA MAY BENEFIT, LIKELY DELETERIOUS IMPACT ON ROBBER FLY AND DUNG BEETLES AND THEREFORE DELETERIOUS IMPACT ON SOME BATS

PARTICULARLY, SEROTINE AND NOCTULE. THERE IS A GENERAL ECOLOGICAL PRESUMPTION THAT IF YOU REDUCE THE SIZE OF A HABITAT YOU THEREFORE REDUCE ITS BIODIVERSITY VALUE. RESIDENTIAL LIVING WILL UNARGUABLY HAVE A DETRIMENTAL IMPACT; CATS (PREDATE ON A WIDE RANGE OF FAUNA INCLUDING BIRDS, SMALL MAMMALS AND REPTILES), NUTRIENT ENRICHMENT FROM DOMESTIC GARDENING INCLUDING FERTILISERS, WEED KILLERS ETC., INTRODUCTION OF INAPPROPRIATE EXOTICS INTO THE ENVIRONMENT (GARDEN PLANTS) AND THE DESIGN IS TERRIBLE IN TERMS OF GARDEN ARISINGS BEING DISPOSED OF STRAIGHT INTO THE BROADLEAF WOODLAND AREA.

- **Proposed development on land within or outside a SSSI likely to have an adverse effect on a SSSI (either individually or in a combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely an exception should only be made where the benefit of the development at the site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI. *There is an absence of evidence from the Appellant on this matter. They have widely discounted impacts on any other habitats.* DK-S: THE SITE IS WITHIN THE SSSI RANGE WHERE IT COULD IMPACT. HOWEVER, IT IS DIFFICULT TO ARTICULATE WHAT THAT IMPACT MAY BE WITHOUT SIGNIFICANT RESEARCH. WHAT WE CAN DO IS LOOK AT THE RANGES OF IMPORTANT SPECIES ON SITE AND WITHIN RANGE OF SSSIs, ASSESS HOW THE DEVELOPMENT WOULD AFFECT THEM AND THEN SEE IF IT IS WORTH CONSTRUCTING AN ARGUMENT THAT SURROUNDING SSSIs WOULD BE DETRIMENTALLY IMPACTED UPON. I NEED TO LOOK AT WHAT NATURAL ENGLAND AND OTHER CONSULTEES HAVE SAID (COMMENTS AVAILABLE?).**
- **Development with the primary objective to conserve and enhance biodiversity should be permitted. *The Appellant has not provided evidence that the primary objective is to conserve and enhance indeed, they acknowledge that there would be a deleterious impact.* DK-S: SAME AS MY COMMENTS AFTER FIRST BULLET POINT.**
- **Opportunities to incorporate biodiversity in and around developments should be encouraged. DK-S: NO RELEVANT COMMENT NEEDED FROM ME AT PRESENT.**
- **Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside of ancient woodland unless the need for and benefits of, the development in the location clearly outweighs the loss. *The Appellant has not demonstrated that this habitat will not be lost through the changes in management and through development.* DK-S: PART OF THE SITE WILL BE LOST TO DEVELOPMENT. IF WE CAN SHOW THAT THE SITE HAS SUFFICIENT ECOLOGICAL VALUE TO MERIT A WILDLIFE DESIGNATION THEN WE CAN ARGUE THE LOSS OF AN IRREPLACEABLE HABITAT. BHCC MAY THEN HAVE TO REVISIT THEIR DECISION THAT THE SITE CAN BE DEVELOPED (I WOULD LIKE TO VISIT THE SITE ON SUNDAY 21 JAN IF POSSIBLE?).**
- **The following wildlife sites should be given the same protection as European sites;
 
  - **Potential SPA and possible SAC**
  - **Listed or proposed RAMSAR sites; and**
  - **Sites identified, or required as compensatory measures for adverse effects on European sites, potential SPA, possible SAC, and listed or proposed RAMSAR sites.****

DK-S: PROBABLY NOT APPLICABLE BUT I RULE NOTHING OUT AT THIS STAGE.

**BHCC Policy CP10 1: Holistically conserves, develops restoration and enhances biodiversity through promotion of partnership work within South Downs Way Ahead Nature Improvement Area (NIA), which incorporates parts of the urban area, the urban fringe, the seafront and surrounding downland. Within the NIA, a strategic approach to nature conservation enhancement will be taken, objectives of;**

- Linking and repairing habitats and nature conservation sites to achieve landscape scale improvements to biodiversity.** *Appellant has not provided evidence, based on peer reviewed published research/best practice e.g. They have not established evidence to define the probability of success in translocating red star-thistle into areas where it currently does not persist. In order to produce such evidence, proper receptor site investigation is required including sufficient flora and fauna recording, soil and hydrology testing. Conducting these investigations demands time, possibly taking account of all seasons and therefore possibly in excess of a year's study. The cumulative impact of the proposed development and ecological mitigating management has not been adequately assessed and demonstrated to accord with this policy point.* DK-S: THERE WILL BE AN ACKNOWLEDGED DAMAGING IMPACT TO THE SITE WITHOUT ADEQUATE RESEARCH TO PROVIDE AN EVIDENCE BASE THAT ADEQUATE MITIGATION CAN BE PROVIDED ON AND OFF SITE. ON BALANCE THE APPELLANTS SUBMISSIONS DO NOT ACCORD WITH THIS POLICY POINT. SURVEYING OF RECEPTOR SITE SUFFICIENT TO SUPPORT SUCCESSFUL TRANSLOCATION CANNOT BE CONDITIONED AS THERE IS NO GUARANTEE OF SUCCESS.
- Conserving, restoring, recreating and managing priority habitats and protecting and recovering priority species populations to contribute to local Biodiversity Action Plan targets.** *Appellant's mitigation and management proposals has not provided demonstrable evidence that this policy point can be accorded with indeed, they acknowledge harm to the overall habitat.* DK-S: THERE ARE A NUMBER OF PRIORITY AND RED DATA BOOK SPECIES ON SITE THAT THE APPELLANTS MAKE AN UNCOMPELLING ARGUMENT FOR CONSERVATION IN ASSOCIATION WITH DEVELOPMENT. THE GRASSLAND HABITAT IS NOT LISTED ON NATURAL ENGLAND'S 'MAGIC MAP' AS A PRIORITY HABITAT (LOWLAND MEADOWS) HOWEVER, THAT DOES NOT PREVENT A FUTURE LISTING AND IT APPEARS FROM SURVEY WORK CONDUCTED THAT IT SHOULD NOW BE LISTED AS A 'PRIORITY HABITAT' (FURTHER STUDY/ASSESSMENT TO BE CONDUCTED) IN ADDITION TO A 'LOCAL WILDLIFE SITE'.
- Enabling people to have improved access to and understanding of local habitats and species.** DK-S: THE DEVELOPMENT CERTAINLY PROVIDES IMPROVED PUBLIC ACCESS HOWEVER, THERE IS A DICHOTOMY REGARDING THE OBJECTIVES OF RESIDENTIAL GARDENS AND THE NATURAL MEADOW; MANY OF THE MEADOW SPECIES MAY BE VIEWED AS PESTS IN DOMESTIC GARDENS AND MANY OF THE RESIDENTIAL GARDEN SPECIES OFTEN ESCAPE AND BECOME DOMINANT IN THE WILD AREAS; WHETHER THIS LEADS TO BETTER PUBLIC UNDERSTANDING OR NOT OF LOCAL HABITATS AND SPECIES CAN BE ARGUED. ALSO, INTERPRETATION OF THE SPIRIT OF THIS POLICY POINT IS CONSERVATION WHICH DEVELOPMENT IN A LOWLAND MEADOW DOES NOT SUPPORT.
- Ensuring development delivers measurable biodiversity improvements.** *Appellant's mitigation and management proposals has not provided demonstrable evidence that this policy point can be accorded with indeed, they acknowledge harm to the overall habitat.* DK-S: THE APPELLANT MAY BE ABLE TO ARGUE SOME SPECIES ECOLOGICAL BENEFITS BUT NOT THE OVERALL BIODIVERSITY OF THE SITE AND SURROUNDING HABITATS.

**BHCC Policy CP10 2: Ensure that all development proposals: a) Provide adequate up-to-date information about biodiversity which may be affected.** *The Appellants have not provided sufficient evidence in regard to clause a), particularly in relation to translocation and, the development footprint and associated implications of development.* DK-S: IN SHORT, THERE IS INSUFFICIENT REQUIRED ECOLOGICAL DATA PROVIDED BY THE APPELLANT.

**b) Conserve existing biodiversity protecting it from the negative indirect effects of development, including noise and light pollution.** *Appellants have not provided demonstrable evidence of biodiversity conservation. They have made proposals regarding mitigation of light pollution but there will be inevitable light pollution associated with development including, footpath lighting across the site. Residential development will also bring an increase in noise.* DK-S: BHCC CAN PLACE CONDITIONS FOR MITIGATION TO BE IN PLACE REGARDING PARTICULAR SPECIES BUT

NOTWITHSTANDING SUCH CONDITIONS, THE PROPOSED DEVELOPMENT WOULD STILL RESULT IN HARM TO BIODIVERSITY. EQUALLY CONDITIONS REGARDING LIGHT POLLUTION CAN BE PUT IN PLACE BUT THERE WOULD STILL BE AN INCREASE IN LIGHT.

**c) Provide net gains for biodiversity wherever possible taking account of the wider ecological context of the development and of Biosphere objectives.** *Appellant has provided some evidence to support focussed ecological gains but not, biodiversity net gains. With regard to Biosphere objectives; the Appellants evidence is lightweight at best and in specific areas there is insufficient evidence.* DK-S: NO NEED FOR ME TO REPEAT NET LOSS OF BIODIVERSITY COMMENTS. WITH REGARD TO BIOSPHERE OBJECTIVES; NATURE CONSERVATION IN PART MET AND IN PART NOT MET BY APPELLANTS, SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT THIS IS MORE NUANCED AND I SUSPECT PARTIALLY MET AND THEREFORE PARTIALLY NOT MET & KNOWLEDGE, LEARNING AND AWARENESS THROUGH A HOLISTIC APPROACH THE APPELLANTS' APPROACH FALLS SHORT OF AN HOLISTIC APPROACH AND WITH REGARD TO LEARNING AND AWARENESS THEY HAVE DONE LITTLE TO DEMONSTRATE THIS HOWEVER, PLANNING CONDITIONS COULD SEEK TO ADDRESS THIS.

**d) Contribute positively to ecosystem services, by minimising any negative impacts and seeking to improve the delivery of ecosystem services by development.** *Appellant has proposed mitigation for negative impacts nevertheless, negative impacts would result. Applicant has no measures proposed which would result in improving the delivery of ecosystem services.* DK-S: THERE IS NOTHING IN THE APPELLANTS SUBMISSIONS THAT WOULD RESULT IN AN OVERALL POSITIVE CONTRIBUTION TO ECOSYSTEM SERVICES E.G. NATURAL POLLUTION REDUCTION, NATURAL IMPROVEMENTS TO AIR AND WATER QUALITY, AND GREEN ROOVES ETC. THEY MAY ARGUE THAT TREE PLANTING CAN HELP IN IMPROVING AIR QUALITY BUT THIS IS DOUBTFUL WHEN ASSESSED AGAINST THE IMPACTS OF NEW DEVELOPMENT. THE MEADOW PROVIDES AN ECOSYSTEM SERVICE WITH REGARDS TO POLLINATION, THEY COULD ARGUE THAT THEY CAN ENHANCE THIS THROUGH SPECIFIC PLANTING BUT THIS COULD HAVE IMPLICATIONS FOR BIODIVERSITY PER SE.

**BHCC Adopted Local Plan Policy QD18: Direct and/or indirect affecting of fauna and/or flora protected under National and/or European legislation and/or categorised as 'a declining breeder', 'endangered', 'extinct', 'rare' or 'vulnerable' in the British 'Red Data' books, the applicant will be required to undertake an appropriate site investigation. Developer required to implement measures to avoid harmful impact of a proposed development on such species and their habitats. Where practicable it is expected that habitat of respective species is enhanced.....Permission will not be granted .....that would be liable to cause demonstrable harm to such species and their habitats.** *Appellants have conducted insufficient surveying effort regarding British Red Data Book species, including invertebrates (1 x beetle and 2 x bugs) but in particular, red star-thistle. Appellant has not demonstrated that Nationally protected and Red Data Book species habitat would be enhanced. Appellant has not provided evidence that harm would not be caused to such species and their habitat.* DK-S: OUR ARGUMENT REGARDING THE RED DATA BOOK INVERTEBRATES IS NOT PARTICULARLY STRONG AS GIVEN THEIR REQUIRED HABITAT NEW PLANTING (BY PLANNING CONDITION) CAN BE IMPLEMENTED TO CONSERVE THEIR HABITAT INDEED, THE PLANTING OF NATIVE SHRUBS/TREES WILL ENHANCE THE HABITAT FOR THE NATIVE BOX BUG. HOWEVER, THE DEVELOPMENT ITSELF WILL REDUCE THE SIZE OF THESE FAUNAL SPECIES' HABITAT OVERALL. THE RED STAR THISTLE IS A STRONGER ARGUMENT AS THE APPELLANT'S ARGUMENTS FOR ENHANCING THIS SPECIES' HABITAT IS WEAKER AND THERE IS ACKNOWLEDGED DAMAGE/LOSS ON SITE OF THIS PLANT'S HABITAT.

I will look at the previous Inspector's decision next and report back to you regarding the Inspector's view on ecological value and why this has changed. Please confirm if I can visit the site on Sunday accompanied by our botanist?

Kind regards David

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