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Registration identification no: 20039412  
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**BY EMAIL ONLY**

Dear Jo Dowling

**NSIP Reference Name / Code: TR020001**  
**User Code: 20039412**

**Rule 17 letter**

**Examining authority's submission deadline 9 with a date of 30 January 2024**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We have the following responses to the Rule 17 questions that have been directed to us :

**Chilterns Area of Outstanding Natural Beauty Special Qualities Assessment (SQA)**  
**[REP7-046]**

***All Relevant Planning Authorities, CCB and NE***

***7. Please provide your comments on the suitability of the SQA assessment findings, taking into account the Applicant's response to D7 submissions.***

**Response:** We are unable to comment further on the suitability of the SQA assessment findings because this requires a detailed understanding of how the SQs are expressed across the AONB and their vulnerability to the effects of the proposed development, including changes to flight patterns. We recommend that the examining authority is steered in this matter by the Chilterns Conservation Board who are best placed to provide advice based on their local knowledge of the AONB and its special qualities. The Conservation Board is a statutory consultee for Nationally Significant Infrastructure Projects and so their advice carries the weight of that status.

***Applicant, all Relevant Planning Authorities, CCB and NE***

***8. The ExA requests comments at D10 regarding the compliance of the Proposed Development with both national and development plan AONB policies and any comments on the legislative provisions in Section 85 of the Countryside and Rights of Way Act 2000***

## **Response: Compliance with planning policy**

It is not appropriate for Natural England to provide a commentary on and thus advise on how this proposed development complies with relevant national and local planning policies applicable to the AONB, that being a matter for the determining authority and ultimately of course the Secretary of State. We have sought to identify issues and provide advice to assist the examining authority to make that judgement.

### **Section 85 of the Countryside and Rights of Way Act**

The application for this proposed development has been prepared and submitted for examination prior to a recent relevant legislative change. Section 85 of the Countryside and Rights of Way Act 2000 required a relevant authority to 'have regard' for the statutory purpose of the AONB (which is to conserve and enhance the natural beauty of the area). A relevant authority is any public body or utility provider. In this instance the local authority involved in making this application was subject to that duty, together with the examining authority in making a recommendation, and the Secretary of State in reaching a decision about the development. This duty of 'regard' was, in Natural England's view, not a strong or effective one and was, in strict legal terms, very easily complied with. The government's Landscape Review identified a need for the duty to be strengthened.

As of the 26<sup>th</sup> December 2023 the Section 85 duty has been replaced with a stronger duty under Section 245 of the Levelling Up and Regeneration Act 2023 which requires those same relevant authorities to 'seek to further the purpose' of the AONB. The new duty was of course not in place to guide the preparation of the application currently being examined. The examining authority may wish to seek legal advice on how this situation should be reflected in their assessment and recommendation.

The new duty will apply to the examining authority's recommendation and Secretary of State decision. We understand that the government (Defra) expect to issue guidance in support of the new duty soon. In the meantime, and without prejudicing that guidance, Natural England advises that:

- the duty to 'seek to further' is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered.
- The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.
- The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body (in this case The Chilterns Conservation Board) should be consulted.

## **Effects on European Sites**

### **NE**

**18.** *The ExA notes your conclusion that the Proposed Development is not likely to result in significant effects on the Chilterns Beechwoods Special Area of Conservation. Could you also provide a clear statement of your conclusion on the potential effects on the other European Sites referenced in the Habitats Regulation Assessment No Significant Effects Report' [Appendix 8.3,*

*APP-171], including Lee Valley Special Protection Area and Ramsar site.*

**Response:** Natural England considers that there is unlikely to be any significant effects from the proposed development on the other European sites referenced in the 'Habitats Regulation Assessment No Significant Effects Report' [Appendix 8.3, APP-171]. We agree with the evidence provided in section 4.2 of the report entitled 'Consideration of Effects and Significance' that there are no significant pathways for effects.

In terms of Lee Valley SPA/Ramsar, the distance of the application site from the European site means that there will be no significant changes to air quality arising from the predicted increase in road and air traffic, no increase in noise disturbance to birds using the SPA, no loss of or disturbance to land which is functionally linked to the SPA (i.e. outside the SPA boundary but regularly used by birds which are notified features) and no changes to water quality or quantity at the European site. Foul and surface water discharges from the application into River Lee (which feeds into Lee Valley SPA/Ramsar site) are discussed in the revised 'Volume 5.01 Chapter 20: Water Resources and Flood Risk' [AS-031]. The preferred option is to discharge foul and contaminated surface water runoff to a Water Treatment Plant or the Thames Water sewer network (Table 20.5, 4.7.7); uncontaminated runoff would be directed to an infiltration tank on site. Provided these options are secured, we do not anticipate hydrological effects on Lee Valley SAP/Ramsar site.

I hope this is helpful; we are happy to answer any further questions as required.

Yours sincerely

Alison Collins MCIEEM  
West Anglia Area Team