

To

Our Ref: 06/MOR/HPNP

Alan Massow  
Braintree District Council

CC:

Sarah Gaeta, Hatfield Peverel PC  
Diane Wallace, Hatfield Peverel PC  
Sue Hooton, Essex CC  
Jack Haynes, Natural England

Date: 28 August 2018.

Dear Mr Massow

### **Hatfield Peverel Neighbourhood Development Plan (HPNP)**

I refer to your letter of 8 August 2018 in response to my letter of 15 June 2018 in which I asked whether the Council considered that the Hatfield Peverel Draft Neighbourhood Plan Habitats Regulation Assessment (HRA) screening report is legally compliant in the light of the People Over Wind & Sweetman judgement<sup>1</sup>.

In your letter, you refer to legal advice obtained by the Council and propose steps to be taken to ensure compliance with the Court of Justice of the European Union ruling. I understand that those steps are to include rescreening of the HPNP (ignoring any operational mitigation wording), and if that screening concludes that there are likely significant effects, to carry out an appropriate assessment. On completion of those actions, you accept that additional consultation will need to take place and ask for agreement on the form that this should take.

I have considered this carefully and also have in mind that it is over a year since the Regulation 16<sup>2</sup> consultation was undertaken on the HPNP in June/July 2017. Since then there was another consultation in May/June 2018 on what were described as focused changes to the HPNP following HRA and Strategic Environmental Assessment screening and assessment and which took the form of a schedule of changes to policies F11, HO1 and HO6. You will recall that representations received on that targeted consultation were critical of the form it took.

In respect of the further consultation on the HPNP that you identify will be required following the rescreening of the HPNP and likely appropriate assessment, I am of the view that a consultation akin to that carried out under Regulation 16 in terms of its scope and length should be undertaken<sup>3</sup>. The purpose of the consultation is to provide an opportunity for comment and so it is important that it is transparent and it is clear to all those interested in the Plan as to what has happened, the reason why additional consultation is taking place, what is being consulted on and what is being proposed to be changed. To that end, the District Council with the Parish Council should comply and make available, as part of the consultation exercise, a comprehensive note on what amendments are

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<sup>1</sup> People over Wind & Sweetman v Coillte Teoranta Case C-323/17. View at:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddf571da66f02d449d9f60cc9f39bf8846.e34KaxiLc3qMb40Rch0SaxyNch10?text=&docid=200970&pageIndex=0&doclang=EN&mode=lst&dir=&oc=first&part=1&cid=628325>

<sup>2</sup> The Neighbourhood Planning (General) Regulations 2012 (as amended).

<sup>3</sup> Regulation 14 is also equivalent in scope and length (albeit it is undertaken by the qualifying body rather than the local planning authority).

proposed to the Plan with full justification. Furthermore, I advise that an amended document should be prepared comprising the submitted HPNP with clearly annotated revisions so that anyone reading it can clearly see what is proposed to be changed.

I would appreciate if you could advise me on what the timescale would be to complete the relevant stages of rescreening of the Plan, and any appropriate assessment, and to carry out consultation in its entirety as described above. Following provision of this information, I would like to be notified upon the commencement and completion of each stage. However, I must make it clear that I retain the discretion to come to my own view on these matters, as part of the examination, when consideration of the Plan against the Basic Conditions and other legal requirements resumes.

Yours sincerely

*Mary O'Rourke*

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