

Date: 16 August 2013  
Our ref: jal/LEG01-12 -011  
Your ref:



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**By Email Only**

Dear Steve,

**Latchmore Brook Restoration Project**

I refer to your letter dated 26<sup>th</sup> July addressed to Andy McDonald in Natural England. I have been asked to respond to the points raised in your letter. I apologise for the delay in doing so. Your letter raised four points set out in bullet points in your letter. For ease of reference I have numbered each bullet point and repeated them in full below, followed by Natural England's response to each.

You have asked Natural England to confirm:

- (i) Its reasons for considering that the proposed development now falls within schedule 2 of the (Town and Country Planning) EIA Regulations (hereafter "the EIA Regulations"), citing the relevant description relied upon.
- (ii) Why the proposed development is likely to have a significant effect on the development .
- (iii) The reason for natural England's change of view from that previously provided in December 2012 by lead adviser, Simon Thompson; and
- (iv) The relevant legal provisions that allow a local planning authority to re-screen a proposed development in circumstances where neither the description of the Project nor information submitted in support of the original screening request have changed.

Before I respond to each of these points I think it is important that I confirm that Natural England fully accepts that it is a matter for the local planning authority to determine whether a project falls within the EIA Regulations. Indeed as you are aware Natural England has no role in screening opinions however, having specifically taken Counsel's advice on the issue we thought it appropriate and in the spirit of the partnership to advise you of his advice so that you were fully informed and could take a view on the risks relative to your decision. Of course, you can and will, take your own view.

Taking each of the issues raised in your letter of 26<sup>th</sup> July in turn:

- (i) Natural England has already provided you with details of its Counsel's advice on this issue. The advice sets out the reasons why this project could fall within a description in schedule 2.

- (ii) We stand by our previous comments however it is our understanding that it is an established principle that both potentially adverse and beneficial effect are relevant and must be identified when determining whether or not EIA is required of any particular project. The key point being the significance of the consequences on the environment which must be investigated so that the decision maker can make a fully informed decision.
- (iii) Natural England is not a statutory consultee for an EIA screening decision. This is reflected in the fact you did not actually ask us for an opinion you simply told us of your conclusion and asked us to let you know if we had any queries. Whilst it is correct that Simon said by way of a response that Natural England agrees with your view it is the case that you had already made up your mind and cannot have attached any weight to that comment in reaching your decision. In any event things have moved on since then including Natural England receiving a pre-action protocol letter from the Friends of Latchmore solicitors. This led to Natural England seeking legal advice specifically on the issue of the need for an EIA either under the Town and Country planning regime or the EIA (agriculture) regime. This has led to us being in a position to provide you with a more informed view.
- (iv) Julia has already flagged that this may be an issue. Two issues appear relevant to me (a) Natural England is aware that the details of the project are yet to be finalised e.g. the quantity of gravel involved has yet to be fully determined. Indeed, I understand that FC are seeking a meeting in September to look at the approach - taking into account the JBA reports, which Andy (and presumably yourself) will be attending - although a date has yet to be confirmed; and (b) I think a risk of challenge if you were to re-visit this decision in light, I accept, of possible new information, is very low assuming FC are in agreement. Certainly it would appear unlikely that the Friends of Latchmore are going to challenge as this is an approach that they are advocating.

In terms of moving forward, clearly we all need to find a way through this that protects the environment and ensures the positive completion of the project. I can assure you that Natural England is fully committed to doing that.

Yours sincerely,

Julie Lunt  
Head of Legal Services

Cc: Andy McDonald