

# RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

19B Victoria Street  
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

www.richardbuxton.co.uk  
law@richardbuxton.co.uk

New Forest National Park Authority  
Lymington Town Hall  
Avenue Road  
Hampshire SO41 9ZG

Attn. Steve Avery (copy by e-mail)  
Copy to Alison Barnes (copy by e-mail)

Our ref: FRR1-001/LF  
Email: lfoster@richardbuxton.co.uk

19 August 2014

Dear Sirs

## **New Forest engineering works: Harvestslade Bottom, Burley, BH24 4DF - application 14/00611**

We refer to the above planning application registered with the New Forest National Park Authority (NFNPA) on 25 July 2014 with a target date for decision on 24 October 2014.

Although the Harvestslade application is within a different location within the New Forest, the proposed engineering works are part of the larger HLS project in the New Forest SAC, SPA and RAMSAR sites promoted by the Forestry Commission (FC), which includes Latchmore Brook. This is plain from the applicant's Planning Statement para 1.1, and the whole of the HLS project is funded through EU CAP funding administered by Natural England (NE) for Defra.

The nature of the engineering works is similar to the proposed engineering works at Latchmore Brook, as the works involve the infill or removal of an existing channel feature over an area of works exceeding 650 metres (Planning Statement para 5.2) and the introduction of 4700 tonnes of hoggins, gravel and clay, and other material to reinstate meanders, or partially infill the existing channel (Construction Environmental Management Plan - Appendix B - Construction Traffic Management Plan - para 4.4).

### Habitats Directive Issues

In relation to Habitats Directive, the Planning Statement confirms the NFNPA's position that the Conservation of Habitats and Species Regulations 2010 do not apply to the proposed scheme as it is necessary to the management of the New Forest SAC.

We have repeatedly stated in connection with other New Forest HLS-funded schemes that we do not agree that the works described in the Planning Statement qualify as works necessary or connected with the management of the SAC qualifying features of the site and so must be screened for adverse effects under the Habitats Directive.

We appreciate that NE also holds this view but, with respect, your shared position is based on a surprisingly superficial scientific reasoning which, when examined closely, is flawed. Furthermore, when our clients pressed for a more in-depth and transparent explanation of

the “reasoning” adopted by NE and the NFNPA through the FOI/EIR procedures, the NFNPA now claims “legal privilege” and cites other excuses to avoid disclosing the basis for your scientific conclusion that the works are necessary for the management of the site. This is plainly unsatisfactory.

So far, other than opinion from the parties financially benefiting from the European Union CAP funding (understood to be in the region of £8 million), there is little, if any, objective independent scientific evidence that assesses the effects of the works on SAC/SPA RAMSAR qualifying features. As a consequence, our clients do not consider your position to be proper discharge of your statutory duties.

### Environmental Impact Assessment Directive

The NFNPA screened the Harvestslade application on 12 February 2014 and reached the view that the works are not EIA development (the Harvestslade SO). The Harvestslade SO failed to consider the clear position of NE with regard to Latchmore, identifying very similar engineering works as EIA development and we are surprised at the lack of consistency in your reasoning.

Further, the Harvestslade SO fails to consider the wider cumulative effects of this project or of the other engineering projects proposed for the New Forest, although the Planning Statement plainly accepts that the Harvestslade works are part of a wider scheme of engineering works. See e.g. Case C-2/07, Abraham v Region Wallonne

“[27] Finally, the national court should be reminded that the objective of the legislation cannot be circumvented by the splitting of projects and that failure to take account of their cumulative effect must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of Directive 85/337 (see, to that effect, Case C-392/96 Commission v Ireland [1999] ECR I-5901, paragraph 76).”

Also see Case C-142/07 Ecologistas en Acción-CODA v Ayuntamiento de Madrid.

“[20] It is apparent from the order for reference that the Madrid City Council has split the larger 'Madridcalle 30' project into 15 independent sub-projects, treated separately, only one of which concerns alteration or rehabilitation work on any existing road on a section exceeding five kilometres, the threshold at which the regional rules applicable make a project subject to an environmental impact assessment, while the larger project taken as a whole substantially exceeds that threshold. It is also clear from the referring court's explanations that, according to certain estimates, the execution of the overall scheme will lead to an increase in traffic of nearly 25% and will involve different kinds of works in the urban area surrounding the M30.

...

[44] Lastly, as the Court has already noted with regard to Directive 85/337, the purpose of the amended directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the amended directive (see, as regards Directive 85/337, Case C-392/96 Commission v Ireland [1999] ECR I5901, paragraph 76, and Abraham and Others,

paragraph 27)."

The law on this can be no clearer and on this basis if you proceed to determine the application without treating it as EIA development or requiring the FC to carry out a full EIA, relying on piece-meal applications over the entire 29,000 hectare project area, the NFNPA decision will be unlawful. Please confirm you will review your screening decision in light of these comments.

Also please inform us of the outcome of the Harvestslade application and send us a copy of the decision notice so we can take instructions.

Yours faithfully

*Richard Buxton*

RICHARD BUXTON ENVIRONMENTAL AND PUBLIC LAW

cc. Natural England (Attn. J Lunt, A Wood, and A Macdonald) (by e-mail only)  
Forestry Commission (Attn. Michael Seddon) (by e-mail only)  
Verderers (Attn. Dominic May)