

# RICHARD BUXTON

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Attn. Steve Avery (copy by email)

Our ref: FRR1-001/LF

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10 November 2016

## URGENT LETTER

Dear Sirs

**Latchmore Brook Restoration Project (Higher Level Stewardship ref AG0030016)  
planning no/ref 16/00571**

We are instructed by Friends of Latchmore Brook and refer to our previous correspondence with your authority in relation to this matter. They have raised an urgent concern that they may not be able to address the development control committee when it meets to determine the application on 15 November 2016.

We understand that there will be a large number of objections to the application (some 300) and that you are proposing a total of 9 minutes for all objectors to speak. This is woefully inadequate and our clients are concerned that they may not have an opportunity to express their views and that, even if they do, they will not be able to raise all of their points in the allotted time. Plainly some other arrangement for full public participation must be put in hand and failure to do so could result in a legal challenge under the principles of legitimate expectation and fairness. See e.g. *R (oao Kelly) v Hounslow LBC [2009] EWCA Civ 1029*; *Alnwick District Council ex parte Allan Robson and Kathleen Robson [1997] EWHC 933*: (planning decision quashed for failure to follow council policy permitting objectors to speak); *(R) Majed v London Borough of Camden [2009] EWCA Civ 1029*; *Sullivan LJ statement of community involvement "is a paradigm example of such a promise and practice."*

Your attention is drawn to para 6.2 of the NFNPA Development Control Charter, which sets out the procedure for raising an objection, stating that:

*"People who wish to speak on individual items must register at least two working days before the date of the meeting"*

This is repeated at para 10.6 of the NFNPA December 2013 Consulting Communities document, which incorporates the NFNPA Statement of Community Involvement.

As the case law makes clear, your public participation procedures create a paradigm legitimate expectation that anyone who follows the registration will have the opportunity to speak and raise their views. To frustrate this legitimate expectation would be unlawful and a clear breach of fairness. We note that in the *Kelly* case Dove J held that in assessing whether legitimate expectation has been met or not the Court must look not just at the form,

but also whether the action of the Council in practice enabled the objectors to avail themselves of the procedures ensuring public participation. Applying that principle here, there can be no doubt that allocating some 300 speakers a total of 9 minutes cannot enable objectors to make a meaningful contribution to the decision-making process, especially as it masks the weight of opposition and so does not enable the members who will decide the application to gain anything like a full understanding of the weight of opposition to the application.

What you are requested to do

Please confirm that our client will be allocated the full 3 minutes and that other individuals or groups similarly be allocated adequate time to address the development control members. If this necessitates an extended meeting or requires another slot to be allocated for hearing the application then you must make appropriate arrangements to discharge your procedural fairness duties.

We look forward to hearing from you as a matter of urgency.

Yours faithfully

*Richard Buxton*

**Richard Buxton Environmental & Public Law**