

URGENT

Re Applications 26/01147/DOC (BNG - Fence and Access), 26/01237/DOC (Condition 4 - Hard and Soft Landscaping), 26/01241/DOC (Condition 9 - Highways) and other recent applications with respect to planning permission 24/02606/FP

I refer to the above Applications for Approval of Details Reserved by Condition recently received by the Council with respect to planning application 24/02606/FP and published on the Council's website.

I have been required to direct all correspondence to this email address *"to ensure [my correspondence] is logged and co-ordinated efficiently"*. The issues I raise below relate to applications which directly affect my proprietary rights and interests - as well as the proprietary rights and interests of others - though I (and they) have not been consulted on the relevant proposals. I am concerned that these applications will be considered and determined without regard to these interests unless this email reaches the relevant officers without delay. Please therefore ensure that it is allocated and made available (at least) to whoever is considering and/or may determine the above applications, and to the Council's Tree and Landscape Officer.

The development site is now registered in the name of Quanta Homes 6 Limited: I attach a copy of title HD307468, which I obtained on 20 May 2026, after these applications were made. I have assumed for the purposes of this letter that the applicants and their agents, none of whom have any proprietary interest in the application site, have made the applications with the consent and approval of the owner of the application site.

I note that the Council has determined that the land within title HD307468 and the development site as drawn on the plans submitted with application 24/02606/FP are coextensive.

In particular the Council has determined (as set out in a letter from the Council's legal adviser to my lawyer dated 13 October 2025) that:

"the land the subject of covenants in the Existing Section 106 Agreements (and being Title Number 312324) was acquired by Mrs Tina Suzanne Miller on 29 October 1993....Mrs Jean Bullard owns the Application Site with registered Title Number HD307468. Mr James William Croucher owns the land with registered Title Number HD312324, of which the Landscaped Strip forms the northernmost section. The Council's planning department have confirmed that most of the landscaping was planted...within HD312324. The Tree Survey Plan from the Arboricultural Report for application 24/02606/FP shows that all but one of the trunks and

stems of landscaping are located outside of the Application Site, beyond the southern boundary fence, but with some overhanging branches. Therefore, most of the Landscaped Strip is not within Mrs Jean Bullard's land, nor is it part of the Application Site for the present development, only some minimal trunks and stems with overhanging branches....

Mr James William Croucher owns the Landscaped Strip. From the Title Register for Title Number HD312324, he purchased this land on 3 September 1997, and our understanding is that this land would have been transferred from Mrs Tina Suzanne Miller....

In summary, Mrs Jean Bullard owns the Application Site, with registered title Number HD307468. Mr James William Croucher owns the land with registered Title Number HD312324, of which the Landscaped Strip forms the northernmost section."

"The Landscaped Strip", as defined and used in that letter, is the land to the south of the application site the subject of landscaping covenants in a section 106 agreement entered into between Mr David Miller and NHDC on 6 August 1993.

I also note, as further detailed below, that NHDC is considering as part of these applications proposals which relate to the use of land outside the development site (now owned by Quanta 6) that is, on land owned and controlled by third parties ie the owners of neighbouring properties to the north, east and south, including the Landscaped Strip.

Applications relating to such land made by Mr and Mrs Bullard (or their successors in title or agents), without authority from such third party landowners, cannot properly be considered by NHDC as such proposals can only be implemented with the co-operation of the neighboring landowners and would require such landowners to enter into Section 106 agreements to secure the planting and retention of the landscaping proposed. Those landowners, speaking for myself, have not even been directly notified of the proposals and I imagine the position is the same for the other third party landowners. I oppose the proposals. Based on conversations with other neighbouring owners, including Mr Croucher the current registered proprietor of HD312324, it appears they too are unwilling to co-operate with the would-be developers.

Landscaping proposals relating to land not within title HD307468

The landscaping plan submitted in connection with application 26/01237/DOC relies almost entirely on existing and new planting on land beyond the application site, that is, on land not owned by the applicants. NHDC has accepted that the application site is co-extensive with the land in title number HD307468 and that this excludes land beyond the fences to the north, south and east. The applicants have not claimed to own any additional land in the vicinity of

the application site. It is apparent therefore that all or virtually all the landscaping to the north, south and east proposed by the applicants is on land outwith the applicants' ownership and control.

I note that planning officers have consulted the Council's landscaping officer, requesting their views and comments. It appears planning officers have not however made them aware that the proposals relate to land outside the development site which is neither owned nor controlled by the applicants. This is essential information known to planning officers which they need in order properly to review these proposals.

Land to the north of HD307468

The applicants contended, and the Council agrees, that the northern boundary of HD307468 is the close-boarded fence and that the trees to the north of the fence are owned by the neighbouring landowner: see the extract from the Council's legal adviser quoted above. It is apparent, and confirmed in the arboricultural report submitted with application 24/02606/FP, that most of the trees currently screening this site to the north are beyond the northern fence. I attach a photograph extracted from the applicants' arboricultural report.

It is entirely for the owner of these trees whether the trees are maintained, lopped or felled. It is the duty of the local authority to ensure that this sensitive site on the top of the ridge is properly and attractively landscaped and screened. It cannot rely on existing planting outside the site and outside the ownership and control of the site owner, which the owner is free to lop or fell at any time. Having regard to Section 72 of TCPA 1990, it is unlawful to accept as satisfaction of a condition proposals relating to land outside the control of the applicants just as it would have been unlawful to impose such a condition.

In any event, many of the trees currently screening the site would need to be felled or severely lopped to create the visibility splay. Drawing number 6607/EAS/s278/C400 submitted with application 26/01241/DOC indicates this is in the region of 70% of the existing screening. Drawing 583.01 (labelled "Landscaping Plan") submitted with application 26/01237/DOC quite improperly shows the trees which need to be removed to create the visibility splay as part of the ongoing landscaping.

Land to the south of HD307468

The Landscaped Strip contains all or substantially all of the landscaping relied on in application 26/01237/DOC to screen the site from the south and provide soft landscaping.

The Council's legal adviser wrote to my lawyer in the letter referred to above as follows:

"In summary, Mrs Jean Bullard owns the Application Site, with registered title Number HD307468. Mr James William Croucher owns the land with registered Title Number HD312324, of which the Landscaped Strip forms the northernmost sectionThe 1996 Section 106 Agreement, which concerned the Landscaped Strip, was made between the Council and Mrs Tina Suzanne Miller. As the land containing the Landscaped Strip now belongs to Mr James William Croucher, who remains bound by the 1996 Landscaped Strip covenants (sic)."

The Council's legal adviser misdirected herself in thinking that any covenants relating to the Landscaped Strip were in an agreement signed with Mrs Miller, the proprietor of HD312324. It is in fact clear that the 1996 agreement signed by Mrs Miller did not relate to the Landscaped Strip at all but to a small area of land beyond and to the west of the Landscaped Strip. All the covenants relating to the Landscaped Strip are in the agreements signed by Mr David Miller. I attach for ease of reference the s106 agreements relating to landscaping of the application site.

It is to be noted therefore that if the Council's analysis of the legal ownership position since 1993, as conveyed in its lawyer's letter, is correct, Mr Croucher is not bound by the covenants in the section 106 agreement signed by Mr David Miller relating to the Landscaped Strip. Mr Croucher is neither a signatory to that agreement, nor does he derive his title from the signatory, David Miller, who (NHDC has accepted) never owned land within title HD312324: see further below.

Aside from preserving existing planting, the applicants' proposals involve new planting on the Landscaped Strip. There is no evidence on the Council's planning portal to suggest that Mr Croucher is willing to carry out new planting as provided for in the applications.

Again, it is the duty of the local authority to ensure that this sensitive site on the top of the ridge is properly and attractively landscaped and screened. This was a clear focus of the Committee in approving the planning application, the members of which were assured by Anne McDonald in her supplemental report that the existing planting protections would be maintained - although they have in fact been released, see below. The Council cannot properly rely for landscaping on proposals which involve a third party undertaking works on his own land when he is under no obligation to do so and where there is no mechanism for enforcement.

As well as being inappropriate, given the owner of the trees is a stranger to the proposals and is free to deviate from them and remove the landscaping - or fail to plant the new landscaping -

at will, approval of the proposals would be unlawful having regard to Section 72 TCPA 1990 (see above).

Land to the east

Although drawing 583.01 shows the existing landscaping as within the application site, it is in fact beyond the close boarded fence which NHDC's legal adviser has confirmed in her letter to my lawyer forms the boundary of title HD307468. This landscaping is within my adjacent title (held jointly with my husband). We will give no commitment to maintain this landscaping, or to plant new trees to fill gaps, and will certainly not allow our trees to be felled to open a new access onto our access lane, all as envisaged by the applicants. Appropriate landscaping of the development needs to be within the development site. In determining these applications, NHDC cannot and should not assume that we will assist with this development, to which we are opposed. Again, purporting to accept as details in relation to a condition proposals which would have been unlawful under s72 TCPA is itself unlawful.

The Applicant's Submissions on Landscaping

Application 26/01237/DOC (*"Details reserved by condition 4 (Hard and Soft Landscaping) of planning permission reference 24/02606/FP"*) when viewed on the planning portal contains only the application form and a plan. However the applicants have also submitted "Statements to Inform Discharge of Biodiversity Conditions" (referred to in this email as "the BNG Statements"), available for example in relation to application 26/01147/DOC (*"Details reserved by BNG Condition (Fence and Access Details) of planning permission reference 24/02606/FP"*), which contain information highly material to a consideration of application 26/01237/DOC.

The BNG Statements include the following:

*"The existing hedgerow will be retained **where the existing trees or shrub species present can be retained or managed** [emphasis added] to provide an existing feature that will be of value."*

*"The proposed design has retained ...the hedgerows along the north, south and east boundaries, **as far as practically possible** [emphasis added]."*

It appears this recognises that whether hedgerows can be retained/managed may not be possible as a result of their being outside both the development site and the ownership and control of the applicants.

There are nevertheless statements that various actions will be taken - actions which are key to the landscaping strategy - on land which the Council has concluded definitively is not owned or controlled by the applicants but by a third party who has not been party to, involved in or apparently even notified of the applications.

For example (para 2.3.1):

“Gaps in the hedgerow [to the south] will be identified for planting and marked with posts to indicate the location of planting. Where sections of hedgerow have become thin or failed, gapping up hedgerows will be undertaken with an appropriate mix of native species to an approximate density of 6 plants/linear metre, planted in a double staggered row... Less dense areas will be filled in with additional plants as required to achieve a continuous hedge line taking due allowance for natural growth and regeneration of cut material.”

This is contrasted with the planting to be effected on the development site itself (also para 2.3.1):

“Scattered individual trees and groups of shrubs will be planted along the inside of the boundary features with medium standard tree planted approx. every 5m; these trees/shrubs will be planted to provide protection to the hedgerow and to enhance the boundary feature on each of the north and south site boundaries.”

Document 583.01 shows virtually the entirety of the landscaping (in both number of trees and area) in relation to the northern and southern boundaries to be planted/maintained on land beyond the boundary of the development site. This is not, the Council has determined, land which belongs to the applicants. It is not explained on what basis the applicants feel able to purport to commit the neighbouring landowner to these proposals.

The Council has not explained, if it is the case that the Landscaped Strip was purchased by Mrs Tina Miller in 1993 and acquired from her by Mr James Croucher in 1997, that it is and was at all material times part of HD312324 and that it is and never was part of HD307468 (Mr David Miller's title), by what negligence or worse NHDC nevertheless accepted as satisfied a condition precedent to the grant in 1994 of planning permission to Mr David Miller that he had acquired legal title to the Landscaped Strip. Nor has the Council explained by what negligence or worse it accepted David Miller as the only counterparty to the Section 106 Agreement entered into by the Council relating to the Landscaped Strip, nor why he was also the sole counterparty to the variation agreement relating to the Landscaped Strip signed in 1996. Nor for that matter has any explanation been offered for the fact that the registered proprietor of HD307468 has on

multiple occasions since 1993, up until very recently, certified in application after application that they are the owner of the Landscaped Strip and such certification has been accepted by the Council.

What is clear however is that, as a result of the Council's actions, no-one is now bound by the covenants in the 1993 Section 106 Agreement (as varied in 1996) relating to the Landscaped Strip: Mrs Tina Miller, did not sign it; Mr Croucher derived title through Mrs Tina Miller not Mr David Miller and is not therefore bound by it; and the successors in title of Mr David Miller in relation to HD307468 were released from these covenants by the Deed entered into by the Council on 18 July last year.

The Council can therefore only properly be satisfied that the landscaping proposed to the south is appropriate, given the Council is firmly of the view that the land on which such landscaping is to be planted/maintained is within title HD312324 and is not within the applicants' ownership or control, if a new section 106 agreement is entered into by Mr Croucher to ensure that the existing planting is maintained and that the new planting promised in the BNG Statements is in fact carried out and maintained. It is to be noted that the applicants' proposals show a 1.8m fence between the Landscaped Strip and the application site, so that the applicants will be 'fenced off' from the proposed planting.

Proposals relating to land forming part of the entrance/visibility splay which is not within title HD307468

As the planning officers are aware, the proposals involve engineering works beyond and to the north of the land within title HD 307468 to create a newly profiled entrance. This is obvious from a comparison of the title plan relating to title HD307468 (attached) and the plan submitted with application 26/01241/DOC relating to details reserved by condition 9 (document THSYD-SCN-XX-XX-DR-A-01.003-A3). Whether or not this is highway land - which I believe it is not - the Highways Authority does not and does not claim to own the solum of the land below the surface of the highway. The consent of the owner of the solum is therefore required to the proposed works.

Further, many trees to the north and outside title HD307468 are shown in the applications to be removed to create the required visibility splay. The Council's legal adviser in her letter to my lawyers of 13 October 2025 wrote as follows:

"The Council agrees that the freehold owner of the land outside the application site but within the proposed visibility splay owns the trees planted in it."

Again, whether or not this is highway land, the consent of the owner is required to the destruction of their trees to facilitate this development.

The imposition of condition 9 was ultra vires s72 of the TCPA 1990. The power of NHDC as planning authority to impose conditions in s. 72(1)(a) is limited by the statute to land under the control of the applicant, whether or not it is land in respect of which the application was made. The entrance and visibility splays are situated, in material part, on land outside the control of the applicants. There was accordingly no power to grant planning permission subject to a condition regulating such land. Approving detailed proposals relating to land outside the control of the applicant would itself be ultra vires and actionable.

The applicants for permission 24/02606/FP claimed to be unable to identify this landowner (though I believe this is in fact entirely possible) but instead advertised the planning application in a newspaper. This is specifically allowed by legislation relating to the grant of planning permission. Local authorities cannot however properly approve detailed proposals for engineering works or the cutting down of trees on a third party's land without evidence of the owner's permission, the more so when condition 9 is in any event in breach of s72 of the TCPA 1990. A local authority cannot properly give consent to proposals which would be incapable of lawful implementation.

I note that planning officers have consulted Hertfordshire County Council requesting their views and comments. They have not however apparently made them aware that the proposals relate to land outside the development site which is neither owned nor controlled by the applicants. This is essential information known to planning officers which they need in order properly to review the proposals, and I am asking formally that the Council reconsult with the highways authority, having disclosed this information to them. Failure to do so may lead them into error not only when considering their consultation response but also when considering the s278 agreement application to Hertfordshire County Council as highways authority.

Conclusion

Evidence is needed that the owners of the land to the north of the application site will permit the engineering works and destruction of their property inherent in the proposals.

The landscaping proposals, which purport to shift onto third parties the burden of providing and maintaining necessary landscaping of this development, are clearly defective and unlawful. There is no evidence that any of us has agreed to this or even been consulted in relation to

application 26/01237/DOC - I certainly have not - and the Council can have no confidence that such landscaping will in fact be planted or maintained absent section 106 agreements entered into by the relevant owners. Again, there is no evidence that such agreements are in contemplation, still less that landowners are prepared to enter into them. I would not be prepared to enter into such an agreement.

I was advised by Mr Ellis, when the applicants brought forward proposals which appeared to rely for landscaping on planting on land which the applicants neither owned nor controlled, that there was sufficient space within the development site to effect appropriate landscaping and that this would be addressed if necessary at the details stage. We are now at the details stage and the issue can no longer be ignored.

I have pointed out on several occasions previously, in relation to successive applications in relation to this site that planning law and guidance requires a development site to include *"all the land to which the application relates"*; that this expressly includes all land proposed to provide landscaping; that it was not and is not acceptable or lawful to allow applicants to avoid the protections extended to neighbouring landowners whose properties are explicitly the subject of landscaping proposals by excluding their land from the application site; and that proposals which rely on the willingness of third party landowners voluntarily to provide landscaping are unacceptable as unenforceable.

Contrary to the assurances I received, NHDC is now allowing the applicants to include third party land, outside the development site, as the land to be used to provide the necessary landscaping when none of the relevant statutory procedures and protections have been adhered to and landowners have not even been consulted on the proposals. Approval of application 26/01237/DOC is manifestly ultra vires and would be unlawful.

The Council has always accepted that this highly visible site, outside the development limits of Therfield but adjacent to the Therfield Conservation Area and to my listed property, Tuthill Manor, should be suitably screened by soft landscaping having regard to the obligation to ensure that special regard is paid to the character and appearance of the area and to the setting of Tuthill Manor as provided in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy HE1 of the North Hertfordshire Local Plan. This needs to be achieved by appropriate landscaping within the development site, absent appropriate section 106 agreements with neighbouring landowners.

Yours

Lynne Bogie

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