

**IN THE MATTER OF LAND ON THE SOUTH SIDE OF
COWARDS LANE, CODICOTE**

ADVICE

Introduction

1. I am instructed by North Herts Council (“**the Council**”) in relation to an application pending determination submitted by Hawridge Strategic Land Limited (“**the applicant**”) seeking outline planning permission for residential development of up to 30 dwellings (including 50% affordable housing) following demolition of all existing structures; associated landscaping, drainage, car parking; infrastructure and all ancillary and enabling works (all matters are to be reserved except means of access) (reference 25/01766/OP; “**the application**”) on land to the south of Cowards Lane, Codicote (“**the site**”).
2. There is agreement between the Council’s officers and the applicant concerning a number of matters, including that the site comprises Grey Belt and there are no footnote 7 “*strong reasons for refusal*”. This means the application should be determined under the policy framework set out in §11(d) of the NPPF.
3. However, there are significant areas of disagreement, as outlined in letter submitted to the Council (with Minister Pennycook amongst others copied in) from Des Wicks, the applicant’s Managing Director. This letter (dated 15 December 2025) followed another formal letter and supporting appeal decisions received by the Council on 28 November 2025. Those were sent from Pinsent Masons on behalf of the applicant. I have not seen the Pinsent Masons letter but do not need to. I assume it raises the same issues as the correspondence listed above and/or if it differs, that the applicant has abandoned any extra point(s) raised in the Pinsent Masons letter as it is not referred to in the letter from Mr Wicks. The most recent correspondence from Mr Wicks provides:

“the report seems clear that the Council has elevated its declared ecological emergency above the very real housing and homelessness emergency facing North Hertfordshire, notwithstanding the NPPF’s clear instruction as to how such competing objectives are to be weighed...

The report does not set out, in any meaningful or lawful way, a planning balance exercise in which the harms of the proposal are shown to clearly and demonstrably outweigh its benefits, as required by paragraph 11(d) of the NPPF...

the treatment of ecology matters is disproportionate and legally unsound. The report proceeds on the basis of what is described as an ‘in principle’ objection to development affecting a Local Wildlife Site, coupled with an assumption that the site’s inclusion within the LNRS weighs against the acceptability of development. That approach is entirely flawed. There is no policy or legal basis for an absolute objection to development on a Local Wildlife Site (which is the lowest tier of ecological designation), and the LNRS does not operate as a designation or a constraint.”

4. The Council’s ecologist strongly objects to the development for a variety of reasons. Of primary importance is the fact the site is identified as a Local Wildlife Site (“LWS”) due to its grassland assemblage. The Council’s Local Plan Policy NE4 states that planning permission will only be granted for development proposals that appropriately protect, enhance and manage biodiversity in accordance with the hierarchy and status of designations. Policy SP12 requires the protection, enhancement and management of sites – including locally designated sites and non-designated sites that include important habitats and species.
5. The site is located outside, but adjacent to, the defined settlement boundary for Codicote in the Local Plan. Therefore, it seems to be common ground the proposal conflicts with Policy SP2 of the Local Plan. However, as noted above, the land was found to be Grey Belt and the Council is unable to demonstrate a five year supply of housing land. Confirming this, the officer’s report provides:

“4.3.6 At the time of writing, the Council cannot demonstrate a five-year housing land supply with the figure sitting between 2.6 and 3.3 years. In this respect, the matters set out under Paragraph 11d of the NPPF become relevant.”

6. The Hertfordshire Local Nature Recovery Strategy (“LNRS”) was published on 24 November 2025. The site is identified within the LNRS as an Area of Particular Importance for Biodiversity as it sits within the Grass and Heath Focus Area. The LNRS confirms these areas form the baseline for nature recovery efforts which will support the Council’s efforts to address the ongoing ecological emergency. The LNRS

specifically notes there have been significant declines in the grasslands and heath habitats within Hertfordshire over the last 50 years. Proposed action is to “*manage existing grassland and heathland to maintain the biodiversity of existing good quality habitats and enhance poor quality sites.*”

7. The applicant’s scheme would evidently not contribute to the identified outcomes of the LNRS given that development would comprise the about half of the LWS. No detailed compensation scheme for the loss has been proposed, nor has the applicant confirmed how the scheme would otherwise comply with the objectives of the LNRS, eg. through off-site compensation for the LWS loss leading to overall biodiversity betterment.
8. Thus, it was concluded it was unclear whether the proposal was consistent with §159 of the NPPF (officer’s report, §4.3.24). However, later on in the officer’s report this is clarified to confirm there is in fact a conflict with §159. On how to make decisions in light of a published LNRS, the officer’s report notes the guidance provided in the PPG:

“4.3.42 As such, the PPG is clear that it is for the decision maker to determine what is a relevant material consideration, what weight to attribute to it and base this on individual circumstances. The LNRS is published and clearly outlines that for this part of the LWS, the proposed action is to manage the existing grassland and heathland to maintain biodiversity, which would again be directly precluded from occurring if development would take place. It would be inappropriate for development to be allowed on an area that is designated for its ecological value where an action plan seeks to manage and maintain it. For this reason, it is considered that there is strong case to be made that development should not take place on this site. The views of the Council’s Ecologist and the HMWT are fully endorsed and there is an objection in principle to development of this LWS.

4.3.43 Moreover, turning to Policies SP12 and NE4 of the Local Plan and Paragraph 193a of the NPPF, the development of this part of the LWS would result in significant harm to biodiversity through the erection of buildings and associated development on land that is designated for its ecological value.

[4.3.46]...Therefore, it is considered that the application has failed to show how significant harm to biodiversity, in this case the impact on the LWS, can be compensated for, which conflicts with Policy NE4 and Paragraph 193a of the NPPF.”

9. The officer’s report duly recommends refusal for the following reasons:

“1. The applicant has not demonstrated that alternative, less harmful sites were considered, and the proposal cannot avoid harm to the Local Wildlife Site. The suggested possible off-site mitigation measures are insufficient to offset the damage caused to the LWS or compensate loss of habitat. The proposed development would result in the loss of a large part of a designated Local Wildlife Site (LWS) which has been identified as having particular potential for habitat creation and nature recovery in the published Hertfordshire Local Nature Recovery Strategy (LNRS), which would result in significant and unmitigated harm to biodiversity contrary to North Hertfordshire Local Plan Policy NE4, Codicote Neighbourhood Plan Policy COD17 and Paragraphs 159 and 193a of the National Planning Policy Framework.

2. In the absence of a Section 106 Legal Agreement or similar legal mechanism, the proposed development fails to mitigate its impact on local infrastructure and services. This lack of mitigation is contrary to the aims of North Hertfordshire Local Plan Policy SP7 and paragraphs 56 and 58 and 59 of the National Planning Policy Framework. This is also necessary to meet the Golden Rules set out at paragraph 156 of the NPPF.”

10. Upon sight of the officer’s report the applicant then submitted a barrister’s Opinion from Zack Simons KC alleging, in several places, that the Council was “**wrong**” (double emphasis in the original, several times).

11. Mr Simons argues the second reason for refusal will fall away further to a resolution to approve, or pending determination on appeal. I agree with this as a likelihood as all it requires is the applicant to submit an acceptable s.106 agreement. That is not the focus of my advice however, which is reason for refusal 1. Mr Simons says this:

“(iii) RfR1 is predicated on a number of key errors.

(iv) First, it rests on an ‘in principle’ objection to development in a local wildlife site (‘LWS’) which is not supported in guidance, policy or law.

(v) Second, it misunderstands the mitigation hierarchy.

(vi) Third, it misunderstands the Local Nature Recovery Strategy for Hertfordshire (‘LNRS’).

(vii) Overall, the analysis that underpins RFR1 is fundamentally misconceived.

(viii) In addition to all the above, the OR fails to give the significant weight in favour of granting planning permission required by §158 NPPF – a clear error.”

12. I am instructed the Council's aim is to return the application to the next Planning Committee meeting on 24 February 2026.
13. The Council accordingly seeks advice as to whether the approach relating to the impact upon the LWS and proposed compensation is reasonable, amongst other matters, and therefore, whether the reason for refusal would be upheld on appeal. I am also asked to provide a view as to whether the Council would be at risk of a costs order being made at any appeal (as an application for costs has been threatened by the applicant).

Summary of Conclusion

14. Officers disagree with Mr Simons that it would be wrong in law to refuse planning permission on the basis of conflict with §193(a) of the NPPF, as well as a breach of the development plan. I agree. The Council are entitled to come to the view that the proposal does not adequately mitigate and compensate for the loss of about half a LWS, given the limited information submitted to confirm suitable compensation is possible (on my understanding). Further, the Council has no information on the s.106 agreement that would secure necessary mitigation/compensation.
15. The obvious solution is for the applicant to propose and secure the means of off-site improvements to land identified within the LNRS which the Council can link to the grant of outline consent, should it be so minded.

Legal and National Policy Background

LNRS

16. LNRS is a strategy introduced, by statute, through the Environment Act 2021 (s.104). They are mandatory, so a responsible authority for an LNRS area must prepare and publish a LNRS: s.105(1). They must also be kept up to date: s.105(3) of the Environment Act 2021. The content of LNRS is also mandated by statute. The Environment Act 2021 sets out the headline content:

“106 Content of local nature recovery strategies

- (1) A local nature recovery strategy relating to an area (‘the strategy area’) is to include—
- (a) a statement of biodiversity priorities for the strategy area, and
 - (b) a local habitat map for the whole strategy area or two or more local habitat maps which together cover the whole strategy area....”

17. The Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023 then set out the detailed process for preparing, consulting on, and publishing LNRS’, including duties to involve supporting authorities and relevant organisations, publish consultation responses, and provide notice to the Secretary of State prior to publication.
18. The Planning Practice Guidance Natural Environment Chapter sets out how LNRS should feature in planning decision-making:

“How should local planning authorities have regard to Local Nature Recovery Strategies in plan making?”

Local Nature Recovery Strategies are intended to support local planning authorities in preparing local plans that conserve and enhance biodiversity and the natural environment, and local planning authorities have a legal duty to have regard to the relevant strategy for their area. Local planning authorities should consider the priorities set out in the relevant Local Nature Recovery Strategy when determining how their local plan should contribute to and enhance the local and natural environment.

Paragraph 192(a) of the National Planning Policy Framework states that plans should identify, map and safeguard areas identified by national and local partnerships for habitat management, enhancement, restoration or creation. Local Nature Recovery Strategies are prepared through local partnerships (involving all local planning authorities) established under a national legislative framework and will identify and map proposed areas for habitat management, enhancement, restoration and creation for biodiversity and the wider natural environment.

Local planning authorities should be aware of those areas mapped and identified in the relevant Local Nature Recovery Strategy and the measures proposed in them and consider how these should be reflected in their local plan. In doing so, they should consider what safeguarding would be appropriate to enable the proposed actions to be delivered, noting the potential to target stronger safeguarding in areas the local planning authority considers to be of greater importance. This will enable local planning authorities to support the best opportunities to create or improve habitat to conserve and enhance biodiversity, including where this may enable development in other location.

Relevant Local Nature Recovery Strategies can also inform the preparation of Neighbourhood Plans and Spatial Development Strategies.

Paragraph: 046 Reference ID: 8-046-20250219”

How should local planning authorities have regard to Local Nature Recovery Strategies in planning decision making?

The Local Nature Recovery Strategy is an evidence base which contains information that may be a ‘material consideration’ in the planning system, especially where development plan documents for an area pre-date Local Nature Recovery Strategy publication. It is for the decision-maker to determine what is a relevant material consideration based on the individual circumstances of the case.

In cases where there is a draft Local Nature Recovery Strategy that has been consulted upon but not yet finalised and published, the draft strategy may contain useful evidential information that can support appropriate decision making.

Paragraph: 047 Reference ID: 8-047-20250219”

National Biodiversity Law and Policy

19. Further supporting the importance of LNRS’, the Environment Act 2021 amends the legal duty under s.40 of the Natural Environment and Rural Communities Act 2006 (“**the NERC Act**”) to refer to LNRS as mandatory considerations when a public authority is taking such action as it considers appropriate to further the objective of the conservation and enhancement of biodiversity in England (under s.40(1) and (1A)):

“(2A) In complying with subsections (1) and (1A) the authority must in particular have regard to—
(a) any relevant local nature recovery strategy”

20. As to national biodiversity policy, the December 2024 NPPF supports LNRS as follows:

“159. The improvements to green spaces required as part of the Golden Rules should contribute positively to the landscape setting of the development, support nature recovery and meet local standards for green space provision where these exist in the development plan. Where no locally specific standards exist, development proposals should meet national standards relevant to the development (these include Natural England standards on accessible green

space and urban greening factor and Green Flag criteria). Where land has been identified as having particular potential for habitat creation or nature recovery within Local Nature Recovery Strategies, proposals should contribute towards these outcomes.”

21. Paragraph 193 could not be clearer in endorsing refusal if harm to biodiversity is unacceptable:

“193. When determining planning applications, local planning authorities should apply the following principles:
a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”

Direction of Travel

22. The guidance set out above in the PPG will have the force of law if / when changes to the Planning and Compulsory Purchase Act 2004 (“PCPA”) are brought into force. First, s.15C would mandate incorporation of all relevant LNRS’ into local plans:

“15C Local plans

(7) The local plan must take account of any local nature recovery strategy that relates to all or part of the local planning authority's area, including in particular—

- (a) the areas identified in the strategy as areas which—
 - (i) are, or could become, of particular importance for biodiversity, or
 - (ii) are areas where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits,
- (b) the priorities set out in the strategy for recovering or enhancing biodiversity, and
- (c) the proposals set out in the strategy as to potential measures relating to those priorities.”

23. The Levelling-up and Regeneration Act 2023 s.98 would (again, if / when brought into force) further amend the PCPA to replicate the provision set out above for neighbourhood development plans, to include a new s.38B(2B):

“(2B) So far as the qualifying body considers appropriate, having regard to the subject matter of the neighbourhood development plan, the plan must—...

(b) take account of any local nature recovery strategy, under section 104 of the Environment Act 2021, that relates to all or part of the neighbourhood area, including in particular—

- (i) the areas identified in the strategy as areas which—
 - (A) are, or could become, of particular importance for biodiversity, or
 - (B) are areas where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits,
- (ii) the priorities set out in the strategy for recovering or enhancing biodiversity, and
- (iii) the proposals set out in the strategy as to potential measures relating to those priorities.”

24. The draft NPPF currently out for consultation replicates the above in draft policy CC1(1)(d): plans “*should*” “[*identify*] opportunities for green infrastructure provision and nature-based solutions which can safeguard and improve carbon storage, support nature recovery and resilience, and which take account of Local Nature Recovery Strategies in accordance with policy N1.” Policy N1 in turn provides:

“N1: Identifying environmental opportunities and safeguards

1. Development plans should safeguard and enhance the natural environment, and reflect the wider benefits from natural capital and ecosystem services, by using Local Nature Recovery Strategies, Protected Landscape Management Plans, River Basin Management Plans, National Forest Strategies, Community Forest Plans and other relevant evidence at the most appropriate level to:

- (a) Set out the hierarchy of international, national and locally designated sites and areas of importance for their landscape, geological (including soil) or biodiversity value in the plan area, and identify other features which require particular consideration in managing development due to their environmental value such as chalk streams;
- (b) Identify opportunities for the conservation, enhancement and recovery of landscapes, sensitive waterbodies, habitats and species of principal importance, including through habitat restoration, the use of nature-based solutions, and the creation and strengthening of ecological networks that are more resilient to current and future pressures (including opportunities which exist at a catchment or landscape scale across plan boundaries);
- (c) Steer the location of development, including through site allocations, in ways which utilise land of least environmental value where that would be consistent with other policies in this Framework. This should include limiting the scale and extent of development within protected landscapes, avoiding the use of higher quality agricultural land where

land of poorer quality is available and avoiding and minimising harm to designated sites of importance for nature. Areas which could become of particular importance for nature identified in Local Nature Recovery Strategies should be taken into account as opportunities to integrate development with environmental restoration, but should not necessarily preclude the allocation of land for development;...”

25. Draft policy GB5: Beneficial uses of Green Belt Land provides (at (1)(b)) that green belt policies in local plans should set out “[h]ow the Green Belt can contribute to the priorities for nature recovery set out within relevant Local Nature Recovery Strategies”. This is supported by draft policy GB8: The Golden Rules, which presently provides:

“(c) The provision of new green space, or improvements to existing green space, which is accessible to the public. New residents should be able to access good quality green spaces within a short walk of their homes, whether through on-site provision or through access to offsite spaces. This provision should:

- i. make a positive contribution to the landscape setting of the development;
- ii. support nature recovery; and
- iii. meet local standards for green space provision where these exist in the development plan. Where no locally-specific standards exist, development proposals should meet national standards relevant to the development (these include Natural England standards on accessible green space and urban greening factor and Green Flag criteria). Where land has been identified as having potential for habitat creation or nature recovery within Local Nature Recovery Strategies, proposals should contribute towards these outcomes.”

26. Finally, draft policy HO4: Land for large scale residential and mixed-use development provides allocations should “[1](c) Address strategic environmental opportunities and safeguards, including those set out in Local Nature Recovery Strategies.”

Timing of Provision of Details

27. Another matter is relevant, which is the timing of the provision of a detailed mitigation and compensation strategy. In this respect the Supreme Court case of CG Fry v MHCLG [2025] UKSC 35 is relevant. The Supreme Court allowed the appeal on the second issue because it considered that there was a difference between the protection afforded to sites under law (through the Habitats Regulations) and the protection

afforded to Ramsar sites, which were given the same level of protection through policy. The court held that where protections are extended through planning policy rather than via legislation, a different approach was required.

28. Of critical importance here, the court considered that the grant of outline planning permission had the effect of conferring a right on a developer to develop its land in accordance with the permission which has been given. That right was only limited by the stipulated conditions. The discharge of conditions stage is therefore confined to consideration of matters fairly related to the subject of the conditions (§§66-69).
29. Therefore, it was not open to the Council to rely on policy or new scientific advice and the clear potential impact on the Ramsar site. It was not able to refuse to discharge the conditions unless one of the conditions expressly related to the protection of the Ramsar site.

Discussion

30. Local planning authorities have a legal duty to have regard to the relevant LNRS for their area. Officers are therefore reasonable and justifiable in their interpretation of local and national policy, with particular reference to ecological matters. While the weight given to planning benefits and harms, and the overall planning balance, is a matter for them, overall there are no red flags in the officer's report although I have comments below on specific matters and overall it would assist to more clearly set out in the planning balance section what factors were taken into account and what weight was afforded to each of the factors.
31. It can be seen from the law and policy set out above, and in particular the Government's clearly intended emphasis on the central position of LNRS in planning decisions proposed in the next iteration of the NPPF, that the Government places great importance on LNRS to set out the strategic direction for each area's biodiversity protection and for that strategic direction to be adhered to. It is obvious that as a document still undergoing consultation the draft NPPF cannot be relied on yet in decision-making, but it does provide a clear and helpful indication of the Government's intentions for the

interaction of LNRS' and national planning policy when making plans and determining applications.

32. Mr Simons argues the County ecologist's "*in principle*" objection to the development of the site "*is totally unsupported in guidance, policy or law. It is professionally inappropriate for the Council's Ecologist to have given that advice in the first place.*" (§10 of Mr Simons' Opinion). He argues this is the case because the acceptability of the scheme "*in principle*" turns on the operation of the balance at §11(d)(ii) NPPF, and neither the Council's ecologist nor the HMWT are in a position to assess that balance.
33. I completely disagree. Mr Simons is not reading the officer's report fairly. The ecologist was clearly objecting on the basis of ecological impacts, and rightly confined advice to matters of ecology. It is perfectly permissible for an expert consultee to object in principle, especially when, as here, the applicant has given no details upon which an objection could go any further than one in principle.
34. I am not instructed to comment specifically on the officer's report concerning BNG but I would note that there is no issue with the provision of off-site BNG in law or policy: applicants who choose off-site solutions in fact have to provide more BNG due to the spatial multiplier, which means greater benefits for BNG *overall* albeit not on the site of the actual loss.
35. With reference to §§4.3.35-4.3.46 of the officer's report, I cannot say the invitation to give locally designated sites more weight because the district does not benefit from any internationally designated sites is a conventional suggestion. Even the officer's report acknowledges that there is no local or national policy supporting this. I agree and this is best struck out of the report. I would also query whether Policy SP12 should also be referenced at §4.3.46 as a breach.
36. As to whether the approach to the grouping of benefits and allocation of weight to certain benefits and harms (i.e. housing delivery, compliance with Golden Rules, footpath and access improvements) reasonable, reports will be read as a whole and in light of the fact that they are addressed to informed readers. However, as noted above, it would assist to more clearly set out in the planning balance section what factors were taken into account and what weight was afforded to each of the factors. This would

assist in defending the decision on appeal, although as set out below, there is no reason in my view why this must go to appeal as there is a perfectly obvious solution available to the applicant.

37. Turning first however to the interpretation in the officer's report of the mitigation hierarchy under §193(a) of the NPPF (§§4.3.37 – 4.3.47), and whether this is reasonable and justifiable, the officer's report advises that conditions and planning obligations cannot secure compensation in this case, and so §193(a) is not complied with (see §4.3.46). Again Mr Simons says that is wrong.
38. While it is quite correct that conditions and/or planning obligations are routinely accepted by planning inspectors and the Secretary of State to secure off-site compensation details to be agreed post-consent, the case of CG Fry causes difficulties for the Council. The court has made clear that once outline consent is granted the applicant then has a legal right to develop the site in that way (here, for 30 homes). Only express conditions can cut down that right, not policy, nor subsequent changes in scientific evidence or national guidance. This is quite different to the approach previously taken to the discharge of conditions.
39. While it is theoretically possible that a condition could be worded in such a way to avoid any risk of a legal argument that a compensation scheme / layout which reduced the quantum to be developed was unlawful and compensation had to be paid (following CG Fry), there is a very high risk of such a legal argument when the Council has insufficient details about whether suitable compensation is even possible. In other words, by agreeing a condition to work out all details of compensation later the Council risks making itself a hostage to fortune as it will have agreed to grant a crystallised legal right to develop the site for 30 dwellings – a right supported by UK Supreme Court case law - without knowing anything at all about whether, in fact, compliance with biodiversity policy and guidance, including the aims of the LNRS, could be satisfied at 30 dwellings.
40. Prior to the decision in CG Fry I regularly advised that compliance with the Habitats Regulations could be satisfied by the imposition of a Grampian condition. If the condition could not be satisfied, then development would not occur so no harm would happen. Now, after CG Fry, the legal risk matrix has shifted considerably. Councils

have significantly less leeway to argue conditions should be discharged in such a way that they cut down the legally acquired right to develop the site, without having to pay compensation to a developer. This is especially so when the subject matter of the condition is policy-based as opposed to law. I would therefore advise a much more precautionary approach to the grant of outline permissions than previously, even when the consent sought is in outline. The terms of the permission now need to be absolutely crystal clear at the very first moment permission is granted because there is significantly less scope for a Council to amend the terms of that permission later.

41. Another criticism of Mr Simons' is that the officer's report suggests (at §4.3.42) that the site's inclusion in the LNRS is relevant to the acceptability of the principle of development on the site. Mr Simons says that is wrong.
42. I could not disagree more strongly with Mr Simons' opinion. While a LNRS does not create any planning designations, that is not at all the point of an LNRS. The point of an LNRS is to identify areas having potential for habitat creation or nature recovery, so that all proposals for development can contribute towards these outcomes. LNRS' are not means to create Green Belt by the back door – development is positively encouraged in LNRS areas because an LNRS' aim is to integrate development alongside environmental restoration. The draft NPPF is clear that LNRS should not necessarily preclude the allocation of land for development. But land which could become of particular importance for nature, as identified in an LNRS, should be taken into account. That is a common thread from the Environment Act 2021, to the NERC Act, to the 2024 NPPF, to the PPG and through to the draft NPPF currently out for consultation. I see no reason why refusal predicated on the harm it would do to the ability to achieve the objectives of an LNRS is precluded in law. Rather, that is the very purpose of developing an LNRS, bearing in mind at the same time the need for compliance with s.38(6) of the PCPA and where relevant §11(d) of the NPPF.
43. So, turning to the specific wording of the refusal, I consider this ought to be amended. I do not consider it is within the applicant's gift to survey all possible housing sites and prove there is no other alternative, notwithstanding the wording of §159. It need only present to the Council the site it proposes to develop. While alternative sites can be relevant to planning decision making, the evidence to support such a refusal is not

available to the Council here. The conclusion that the suggested possible off-site mitigation measures are insufficient to offset the damage caused to the LWS or compensate loss of habitat needs to be fully explained. It strikes me as very likely the applicant can propose an off-site mitigation and compensation scheme that provides BNG, compensates for the loss of the LWS, and complies with the objectives of the LNRS elsewhere.

44. To be clear: it is permissible for the Council to object to the development on the basis that the proposed development would result in the loss of a large part of a LWS which has been identified as having particular potential for habitat creation and nature recovery in the published LNRS, which would result in significant and unmitigated harm to biodiversity contrary to North Hertfordshire Local Plan Policy NE4, Codicote Neighbourhood Plan Policy COD17 and §§159 and 193(a) of the National Planning Policy Framework. I am unclear whether the Council considers there is also a breach of Policy SP12.
45. As indicated, one obvious solution is to agree a suitable compensation scheme for the features of the site identified in the LNRS which led to its identification as a LWS. This can be secured from the applicant by way of s.106 obligation. Mr Simons states the applicant has proposed a scheme to achieve BNG on land off-site which is itself identified as an opportunity area by the LNRS. I have not seen this proposal but if it exists and can be detailed then this does represent a suitable way forward: the site is degraded and is very unlikely to be restored without developer funding and a legal agreement / conditioned obligation to secure works. The same is probably true of much of the area identified for restoration in the LNRS. While this site's grassland assemblage may have to be sacrificed, if it means a grassland assemblage within the LNRS elsewhere can be restored and protected then overall the Council would be able to conclude there has been compliance with Policy SP12, Policy NE4, §159 and §193(a) of the NPPF. Notwithstanding a technical breach of Policy SP2 permission could be granted on the basis that the benefits of the development were not clearly and demonstrably outweighed by the harm.
46. On the basis of the suggested changes above and if this extra attempt to reach a solution is made but the applicant's scheme is still unacceptable, leading to a refusal and

subsequent appeal, I consider there is a high risk of a costs award being applied for but a low risk of it being successful. The Council's refusal would have been in line with the NPPF and its legal obligations. The two parties merely differ on the planning balance, even in the context of §11(d) of the NPPF.

Conclusion

47. I trust I have addressed the questions posed. If I may be of any further assistance please do not hesitate to contact me in the usual way. In particular, I would be happy to review the updated officer's report in due course.

Nina Pindham
Cornerstone Barristers
29 January 2026