

The Conservators of Therfield Heath and Greens

The Therfield Regulation Trust
c/o Royston Golf Club, Baldock Rd, Royston, SG8 5BG
Registered Charity No. 277881
Chair: Clive Hall



THERFIELD
HEATH
& GREENS

Wednesday, 15 April 2026

By Email only to

anne.mcdonald@north-herts.gov.uk

planning.control@north-herts.gov.uk

Dear Anne MacDonald

**25/02547/FP : Residential development of 36 dwellings (Land to the South And East Of Senuna Park Station Road Ashwell).
S106 and the Therfield Heath SSSI Mitigation Strategy**

I refer to your email of 9:26 Tuesday, 14 April 2026. I note that:-

- despite NHC signing up to the Therfield Heath Mitigation Strategy in November 2022;
- despite the frequent lack of consultation, allowing over 300 units to be built in inner and outer zones without our consultation under the Therfield Heath Mitigation Strategy (which is a material planning consideration) ;
- despite NHC planning ignoring my letter of Tuesday, 24 February 2026 regarding the lack of consultation in this matter;

NHC staff have now listened to the interjection of Cllr May that consultation here is needed. I accept, and acknowledge that on Monday a consultation letter was sent out. I note however that NHC planning staff propose to present this application to councillors in 24 hours and before the end of our consultation period.

I cannot accept that your solution here is in any way workable.

You have said :

“Thank you for your email and it was brought to my attention by Cllr May that the application site is within the 538 km zone [sic: I presume you mean 5.8 km zone as per the map 4 which I sent you yesterday and in February and which is in the 2022 document].

When the application was submitted we were using our old mapping system so this was not picked up as a constraint and I apologise for this. I will update the committee about this matter at the meeting. I note the request for S106 funding.

The resolution to the committee will be that the application is approved subject to this issue being resolved” (my emphasis)

It is that last sentence where I have the greatest concern. I am not sure what issue you are seeking to resolve : is the lack of up-to-date planning software or our s106? I presume the latter. In which case

your proposal is to approve a planning application and then to resolve material SSSI mitigation matters via a s106 afterwards is not workable. You appear to be suggesting, I think, that you can sort this out post permission by some sort of planning condition.

We have seen last month how these conditions work out at NHC; last month, despite our representations ¹ the following was decided:

*“c) Providing delegated powers to the Development and Conservation Manager **to update conditions** and informative with minor amendments as required.*

*d) A revised Recreation Mitigation Strategy, in consultation with and receipt of no objection from Natural England, and **delegate power** to the Development and Conservation Manager **to agree this**” (my emphasis)*

This sort of condition just does not work. Not only because NHC allows its staff to change the condition but also because NHC allows whatever condition remains to be ‘agreed’ by total delegation of the matter to one member of staff. The NHC way of dealing with this matter is contrary to many Planning Inspector decisions (see Appendix 1) and I ask you to reflect on this.

That said even if we could overcome this point I can still explain why this does not work with reference to other relevant legal and legislative planning provisions.

1. Key provisions regarding harm to a SSSI site

Firstly, harm or damage to a SSSI is a serious issue. NHC is a section 28(g) body and needs to comply with its obligations and duties under s28(g) of the Wildlife and Countryside Act 1981 ². Harm to a SSSI is also an issue within the NPPF also at section 193,194,195 etc. to which NHC planning must also refer. The importance of the local SSSI sites, and the need to protect local SSSIs has already acknowledged within the NHC Local Plan at paragraph 4.162. I said all this in my Monday letter and you have neither responded nor addressed any of these points.

2. Assessment that there will be harm

We say there will be harm. You have not consulted with Natural England and so, absent their involvement, we are the competent authority under s7 ³ (as per NHC Local Plan at 4.162) and we have made our assessment. The harm of which we speak is also mentioned within the Therfield Heath Mitigation Strategy at pages 12-13 (as I presume you are aware)

*“The survey concluded that the issues for nature conservation on the site relate to **the volume of footfall on The Heath** and the longer-term challenges delivering the management necessary for the nature conservation.” (my emphasis)*

This is a development where residents will come and use the SSSI land ; their presence, use of our car park, use of dog bins, use of land and sporting provision, walking and running routes, will impact adversely the SSSI site. We do not see that current users of the Therfield Heath SSSI will now choose travel to this development to alleviate the footfall as there is nothing on the development to

¹ 24/01013/HYA LAND SURROUNDING BURLOES COTTAGES, NEWMARKET ROAD, ROYSTON, HERTFORDSHIRE

² “to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest” s28(g) WCA 1981.

³ S7 The Conservation of Habitats and Species Regulations 2017

draw them there even if they could get there ; as there is no car parking for them to use or bike rack or bus route.

The displacement is one way only. The SSSI site will get additional visitors- additional visitors bring with them harms even if the general public do not realise it we do, councillors should be aware, and as planners you should be focussing attention on this point.

When there is harm (as per the above) NHC planning cannot proceed to grant planning permission unless and until you have mitigation measures in place.

Appeals to the Secretary of State consistently have found that where there is un-mitigated harm to a SSSI NPPF 11(d) disengages the tilted balance (See case appendix below). NHC should be making the same decision as the Secretary of State.

What that means is regardless of if NHC does or does not have a 5-year supply of housing it must disengage the tilted balance.

I now refer you to page 56 of the NPPF.

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;
 - b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

NHC planning needs to remember that under s193(a) you need adequate mitigation: at present you have no mitigation. See also 193(b) - this is a development outside a SSSI which in combination with other developments is likely to have an adverse effect ⁴.

Mitigation here is fundamental to the principle of development – it cannot be an afterthought.

3. Where there is a likely adverse effect/harm to a SSSI this needs mitigation agreed with us

So once we have established harm – and the need for mitigation - let us turn then to how that works – or should work according to NHC plans and policies.

Policy SP7: Infrastructure requirements and developer contributions is at page 6 of the January 2023 Developer Contributions SPD. It says (see Appendix 2 for the full wording)

⁴ The site pre 2022 was recovering – in 2026 it is not. The mitigation measure provided to date have failed to even maintain the 2022 position – let alone permit its recovery or enhancement (see s28G of the WCA 1981).

*“The Council will require development proposals to make provision for infrastructure that is necessary in order to accommodate additional demands resulting from the development. **We will***

a) Require developers to provide, finance and / or contribute towards provision which is fairly and reasonably related in scale and kind to the development

b) Ensure essential new infrastructure to support new development will be operational no later than the completion of development or during the phase in which it is needed, whichever is earliest;

*c) **Refuse planning permission where appropriate agreements or processes ensuring criteria (a) and (b) can be met are not in place;**” (my emphasis)*

Where then are the agreements or processes ensuring (a) and (b) are met – are these in place?

No: no they are not in place because we had not, until a day ago, been contacted.

I draw to your attention that “*Developer Contributions*” supplemental planning document states at 8.3.3 (page 61) that contributions towards provision or projects within the SSSI [are]

*to be delivered **in agreement with** Natural England **and / or** the Conservators of Therfield Heath.*

“*and/or*” is important to read. This is NHC’s policy and NHC’s words.

Can NHC agree this alone?

No

NHC needs at the very least **our agreement or that of Natural England**⁵.

Does NHC planning have this agreement? No it does not.

You only contacted us a day ago and our consultation period runs until early May.

4. At the Planning Committee meeting 16 April 2026

It is my view, and that of the landowners and managers, that at the planning committee meeting NHC planning department will be asking NHC councillors to pass an application where :

- There is the risk of harm to a nationally significant SSSI
- NHC is aware of the risk of harm
- NHC has no mitigation in place for this harm
- Mitigation is required under NHC and NPPF policies
- NHC require, but do not have, the agreement of Conservators to on-SSSI mitigation measures, Natural England (a statutory consultee) has not even been consulted
- NHC’s recommendation is to press on and pass this and sort out some uncertain unknown agreement later with parties unknown
- NHC has no assurance that NHC will get an agreement to mitigate harm to the SSSI allowing this site to be developed
- The developer is being invited to press on with an application where the principle of developing on this site has not been established.

5. Conclusion

There is little in this pathway which seems sensible/advisable. We arrive at the outcome that NHC is seeking to permit a development which will cause harm to a SSSI - for which there is no mitigation

⁵ NHC can seek a joint agreement between us and Natural England but it will still need our agreement.

in place (despite this being needed under NHC and NPPF policies) and such action appears to be a breach of s28(g) of the WCA 1981.

For this reason, **I wish this letter to be before the councillors before 16 April 2026** and for a copy to be placed forthwith onto the public planning portal.

If you press on without respect of your own policies and your duties in law you will surely invite complaint and potential legal action by way of a judicial review.

Your sincerely,

A black rectangular box redacting the signature of Carol Fossick.

Carol Fossick

Clerk to the Conservators of Therfield Heath

Clerk to the Trustees of the Therfield Regulation Trust

Appendix 1

Decision	Para	Quote
APP/D0840/W/24/3354604	23	<i>It has been suggested that further assessment of potential impacts on the SSSI, could be secured by condition. However, the Guidelines for Preliminary Ecological Appraisal (CIEEM, Jan 2018) make clear that, in line with Government guidance, ecological surveys should normally be completed and any necessary measures to protect biodiversity identified before permission is granted. Moreover, conditions can only be imposed in relation to Reserved Matters and cannot retrospectively secure evidence or mitigation fundamental to the principle of development.</i>
	25	<i>The Council cannot demonstrate a 5 year housing land supply, which stands at about 3.8 years. This would normally mean that Paragraph 11d) of the Framework' is engaged. However, because the application of policies in the Framework as far as they protect designated Sites of Special Scientific Interest and heritage assets, provide a strong reason for refusing the proposal, this would not benefit from the presumption in favour of sustainable development set out in the Framework</i>
APP/B1930/W/23/3325998	25	<i>It has not been demonstrated that there would not be an adverse effect on the SSSI and LWS arising from the proposed development.</i>
	53	<i>The harm to the Green Belt and the SSSI would result in a conflict with the development plan when read as a whole. My findings in respect of the Green Belt, lack of very special circumstances and the SSSI also means that there are policies in the Framework that provide a clear reason for refusing the development proposed. Therefore, under Paragraph 11d)i of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.</i>
APP/L3245/W/21/3289216	35	<i>It would also be contrary to Paragraphs 174 and 180 of the Framework, which amongst other things, requires planning policies and decisions to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils in a manner commensurate with their statutory status or identified quality in the development plan</i>

Appendix 2

Policy SP7: Infrastructure requirements and developer contributions

The Council will require development proposals to make provision for infrastructure that is necessary in order to accommodate additional demands resulting from the development. We will:

- a) Require developers to provide, finance and / or contribute towards provision which is fairly and reasonably related in scale and kind to the development, including:
 - i. on-site and/or off-site improvements and infrastructure necessary as a result of the development in order to:
 - ensure appropriate provision of facilities and infrastructure for new residents;
 - contribute toward addressing cumulative impacts that might arise across multiple developments;
 - avoid placing unreasonable additional burdens on the existing community or existing infrastructure;
 - mitigate adverse impacts where appropriate; and/or
 - enhance critical assets or make good their loss or damage; and
 - ii. maintenance and/or operating costs of any such new provision;
- b) Ensure essential new infrastructure to support new development ~~is~~ will be operational no later than the completion of development or during the phase in which it is needed, whichever is earliest;
- c) **Refuse** planning permission where appropriate agreements or processes ensuring criteria (a) and (b) can be met are not in place;
- d) Have regard to relevant national guidance or requirements in relation to planning obligations and any Community Infrastructure Levy or successor funding tariff which may be introduced by the Council;
- e) Work with landowners, developers and other agencies in facilitating the delivery of sites identified in the Local Plan and associated infrastructure and seek to overcome known obstacles; and
- f) Need robust evidence to be provided where developers consider that viability issues impact upon the delivery of key infrastructure and/or mitigation measures. This evidence will be used to determine whether an appropriate and acceptable level of contribution and / or mitigation can be secured.