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Tim Dawes  
Guildford Borough Council

Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

**BY EMAIL ONLY**

T 0300 060 3900

Dear Tim,

### **People Over Wind – Surrey Consultations**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England have recently been in receipt of a Judicial Review challenge result on a planning application from Redbridge Council. They are part of the newly created Epping Forest Strategic Solution which was adopted in 2019, and follows in the footsteps of Thames Basin Heaths Strategic Solution. It involved the timing of consultation with Natural England and the Appropriate Assessment required, as per the ECJ Decision – People Over Wind. The challenge was quashed by the Judge, stating that although the full due process wasn't followed, the final conclusion was correct and thus no legal challenge had traction.

Please find attached some details from [www.endsreport.com](http://www.endsreport.com) ;

***“A judge has dismissed a legal challenge to a local authority’s decision to grant planning permission for housing near an EU-protected site without an appropriate assessment, saying the agreed mitigation measures with Natural England would have created a similar outcome.***

*Last month, a local resident challenged the planning decision of the London Borough of Redbridge to grant permission for residential development within 3km of the Epping Forest Special Area of Conservation (SAC) before an appropriate assessment had been carried out – the assessment is a mandatory appraisal meant to demonstrate the potential adverse effects any development might have on a SAC.*

*The Epping Forest SAC is made up of 1,630 hectares of protected ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland designated under the EU Habitats Directive.*

*While the judge agreed with Jones that the council “was in error” for not carrying out an appropriate assessment prior to granting planning permission, he said the challenge was “academic” because the council had agreed mitigation measures with Natural England prior to implementing the planning decision. The judge said the findings of any appropriate assessment would have led to a similar result.*

*The developer agreed to pay a fee towards measures to avoid recreational pressure on*

*the SAC, which had been endorsed by Natural England.*

*Dr Ashley Bowes, a lawyer at Cornerstone Barristers who acted on behalf of the council, said the judge's decision is "likely to give comfort to developers promoting housing within the area affected by the Epping Forest SAC that councils may lawfully grant planning permission for new residential development, subject to an appropriately calculated financial payment to fund the approved avoidance measures".*

*Permission decision: R(Jones) v London Borough of Redbridge*

As this is now in the public domain we were hoping to follow a similar approach with the handful of TBH LPAs who since People Over Wind, have begun re-consulting Natural England on all planning applications involving the TBH Strategic Solution. Before People Over Wind, any application providing a standard SANG and SAMM contribution, was dealt with internally by the LPAs, pointing to Standing Advice issued by Natural England signing this approach off. 8 of the 11 TBH LPAs continue to take this approach. We were hoping that using this judgement decision we can return to that status quo, and reduce the level of administration between ourselves and yourselves.

Therefore in line with this judgement Natural England offers the following Standing Advice for Appropriate Assessments carried out on planning applications falling within Statutory Classes Q13 (Minor Dwellings) and Q17 (Minor Gypsy and Traveller Site) where the application sites fall within the 400m – 5km Buffer Zone of the Thames Basin Heaths Special Protection Area.

Natural England (NE) will NOT OBJECT to an Appropriate Assessment (AA) undertaken which concludes no adverse effects on the integrity of the TBHSPA due to measures being secured and required to be put in place through a legal agreement and accord with the provisions of the Development Plan and the adopted Guildford Thames Basin Heaths Special Protection Area Avoidance Strategy SPD 2017. An individual consultation with NE will NOT be required in these cases.

In the absence of these measures being secured NE will OBJECT unless a full consultation on the AA concludes otherwise.

This standing advice does NOT apply to any major applications, planning applications for new SANGS land or any applications for Permissions in Principle. At also cannot be used in connection with an Appropriate Assessment at either planning application OR appeal which may result in permission being granted for new residential development within the 0-400m Exclusion Zone.

NE will review the standing advice at least every 12 months to ensure it remains up to date and issue a further letter to the LPA upon review.

If you have any questions feel free to let me know,

Yours sincerely

Marc Turner  
Thames Solent Team  
Sustainable Development