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Our ref: EVA7/1 (LPF)
Your ref: WNS/2022/1741/EIA

29 June 2026

West Northamptonshire Council
Development Management
South Northamptonshire Area
The Forum
Moat Lane
Towcester NN12 6AD

Attn: Rob Burton, Planning Officer

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**URGENT LETTER
LATE REPRESENTATIONS
IN ADVANCE OF COMMITTEE MEETING ON 30 JUNE 2026**

Dear Sirs

RE: Application for full planning permission for the erection of 9 no. employment units comprising circa 69,744 sq.m./750,714 sq.ft. (GIA) of floorspace within Class B2 or B8 uses of the Town and Country Planning Use Classes Order 1987, with ancillary Class E(g)(i) offices and E(g)(ii) research and development, together with a Country Park, ground re-profiling in the Country Park, provision of Flood Storage Area through ground re-profiling which, by definition, is subject to the provisions of the Reservoirs Act 1975, new vehicular access from the A508 and associated site infrastructure including lorry parking. Application accompanied by an Environmental Statement. (“The Development”)

Furtho Pits Old Cosgrove Road Old Stratford (“the Site”)

1. We are instructed by Furtho Development Opposition Group and have previously made representations on their behalf in this matter on 6th August 2024. Separately, our clients along with Cosgrove Parish Council, Old Stratford Parish Council and Stony Stratford Town Council have commissioned and submitted several detailed reports covering areas of transport impacts (Velocity and Railton Ltd) heritage harm (Dr Richard Hoggett), ecology (Bioscan), flood risk (Dr Harvey Rodda at Water Resource Associates) and landscape (Peter Radmall).
2. We are writing now as there are serious deficiencies in the Officer’s Report (“**OR**”) in particular in the way the planning officer has approached (i) heritage harm in the overall planning balance and (ii) the failure to give weight to material departures from the development plan. If determination proceeds on the basis of the OR a grant of planning permission could give rise to a judicial review. In summary:

- (i) The officer's planning balance fails to give great weight to the agreed heritage harm to the Grand Union Canal Conservation Area in breach of planning law; and
 - (ii) The officer's justification for the departures from the development plan in the planning balance erroneously applies the test set out in paragraph 11(d)(ii) of the National Planning Policy Framework.
3. These fundamental problems are exacerbated by the fact that: -
- (i) The officer departs from Historic England's statutory consultee advice on heritage without providing a compelling reason to do so. This is in breach of existing case law and in doing so, the officer cannot reasonably have understood the nature and extent of the Development's departure from the development plan or how the proposed mitigation would reduce the harm;
 - (ii) the OR fails to identify the material change in circumstances arising from the designation of part of the site as a Local Wildlife Site in December 2025 and this warrants a departure from the AL5 allocation; and
 - (iii) the OR treats mitigation and compensation measures (country park and ecology enhancements) as benefits when in reality these are measures intended to try and make the development acceptable.

Legal principles applicable to Officer Reports

4. We appreciate that members will want to make a lawful decision that can withstand judicial scrutiny. In R. (on the application of Lowther) v Durham County Council [2001] EWCA Civ 781 the Court of Appeal gave the following guidance on the duty of a planning officer in reporting to a committee:

"That duty is broader than a duty not actively to mislead. It includes a positive duty to provide sufficient information and guidance to enable the members to reach a decision applying the relevant statutory criteria. In the end, it is a matter of fact and degree for the members. However where, as in the present case, the decision-making body is required to apply a legal test to the facts as the members find them, it includes a duty to provide guidance as to what legal test is appropriate." (Pill LJ at [98]).

5. Where a planning committee follows an officer's recommendation, in the absence of other evidence which indicates otherwise, it is to be assumed that the committee agreed with the recommendation for the reasons given in the relevant officer's report along with any oral update given at the meeting: Sullivan J (as he then was) in R v Mendip District Council, ex p Fabre (2000) 80 P & CR 500. It follows that if the reasoning in the officer's report is flawed, this then contaminates the committee's decision too.

Legal principles application to departures from the development plan

6. Section 38(6) Planning and Compulsory Purchase Act 2004 requires the application to be determined in accordance with development plan unless material considerations indicate otherwise. The National Planning Policy Framework ("**NPPF**") is a material consideration.
7. In R. (Hampton Bishop Parish Council) v Herefordshire County Council [2014] EWCA Civ 878, Richards LJ stated that in order to discharge the duty under section 38(6) of the 2004 Act, a decision-maker must "*understand the nature and extent of any departure from the development plan in order to consider on a proper basis whether such a departure is*

justified by other material considerations”.

8. This “*is an essential part of the decision-making process*”: see Tiviot Way Investments Ltd v Secretary of State for Communities and Local Government [2015] EWHC 2489 (Admin) at [27].

The OR Planning Balance

9. The officer’s planning balance is recorded at OR 11.5:

11.5 Having regard to the above, conflict has been identified with parts of the development plan. Whilst the proposal has regard to the guidance contained within the Employment Allocations SPD, it does not fully align with all aspects of that guidance, particularly in respect of building height and scale. Harm has also been identified in relation to the loss of OMHPDL and the associated invertebrate assemblage (for which mitigation success remains uncertain). Additional harm arises from minor impacts on visual amenity, the loss of best and most versatile agricultural land, and less than substantial harm to the setting of the Grand Union Canal Conservation Area. The absence of a roundabout also represents a departure from elements of Policy AL5 of the LPP2.

10. At OR 11.6 the officer explains how members should deal with the departures from the development plan in terms of the benefits of the scheme:

11.6 Notwithstanding this, the proposal would deliver a number of significant benefits, including the provision of a publicly accessible country park, biodiversity net gain,¹ and substantial economic benefits through job creation and the delivery of high-quality employment floorspace. Taking these benefits into account and having regard to the development plan as a whole, it is considered that the identified harm does not significantly and demonstrably outweigh the benefits of the proposal.

11. Officers will know that NPPF 212 requires that *great weight* be given to conserving the heritage assets from harm including designated conservation areas. This is recorded at OR 9.149. Inexplicably, the OR planning balance fails to do so. Instead the OR records “*it is considered that the identified harm does not significantly and demonstrably outweigh the benefits of the proposal.*”

12. With respect to officers, testing if the identified harm significantly and demonstrably outweighs the benefits is not the correct legal test. As is (correctly) recognised in paragraph 11.3 of the OR, paragraph 11(d)(ii) of the NPPF does not apply in this case. That is because the application falls to be considered against paragraph 11(c) of the NPPF. As a result, there is no requirement for the harm to significantly and demonstrably outweigh the benefits of the proposal in order for permission to be granted. That is the relevant test to be applied under paragraph 11(d)(ii) – which simply does not apply in this case.

¹ See below at paragraph 37, t h e B N G f i g u r e s a r e d i s p u t e d .

13. As such, the OR is in clear error in justifying the grant of planning permission on the basis that the harm does not “significantly and demonstrably” outweigh the benefits, when that test does not apply.
14. Further, in adopting this erroneous approach, the OR has failed to give the identified heritage harm the “great weight” required under national policy. This harm must still be applied in the overall planning balance (and considered together with the other identified harm), even if the heritage harm taken in isolation is outweighed by the public benefits of the proposal.
15. Members are urged to revisit the planning balance in their assessment of the application at committee and in doing so to give great weight to the harm to the designated Conservation Area and find that the benefits do not outweigh the heritage harm.

Departure from the Development Plan

16. The development plan is the starting point for decision-making. As NPPF 12 records:

*Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should **not** usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.*

17. At 11.5 the OR records the application is a departure from the development plan (site allocation policy requirements and LPPF2 policies) in a number of very significant ways including failure to deliver specific road infrastructure for “commercial reasons”.
18. The OR fails to expressly recognise the recently designated Furtho Pit Local Wildlife site as a designated ecological site and then fails to fully treat its destruction as a policy plan conflict under policy NE5.
19. These conflicts, many of them very serious departures from the policy requirements, indicate that the development is unacceptable in principle.
20. However, officers have not correctly applied weight in the overall planning balance to these departures from the development plan. This is an error of law, or at minimum a plain failure to explain what weight was given to the identified conflicts with the development plan.
21. From our reading of the OR, the recommendation may well have been different had the officer correctly advised members to give significant or even moderate weight to the departures from the development plan since discharge of the section 38(6) duty is a fundamental stage in the decision-making process.

Mitigation and compensation measure as benefits

22. A further concern is that OR 11.6 accords weight to benefits that are in reality mitigation and/or compensation measures to deal with the planning harm arising by inter alia (i) identifying the country park as an improvement when it is compensation for the ecological, landscape and visual impact harms and (ii) citing professionally disputed and (in the wake

of the LWS designation) out of date BNG figures as a benefit when BNG in this case is at best mitigation/compensation for the loss of important ecological assets.

Heritage harm and departure from Historic England Statutory advice

23. The ES records that the development would result in a moderate adverse effect to the setting of the Grand Union Canal Conservation Area, which is considered significant in EIA terms (OR 9.155). The Council's conservation officer and Dr Hoggett agree with this assessment.

24. Historic England ("HE") identified deficiencies in the heritage impact assessment information in relation to heritage assets including the Old Wolverton Scheduled Ancient Monument (the SAM) in 2022 (OR at 7.1 under the ref to HE and at OR 9.159). This has not been remedied (See Dr Hoggett at 4.118.) HE raises specifically the ability to mitigate impacts on the heritage assets including the Scheduled Ancient Monument at Old Wolverton:

In its most recent consultation response, Historic England raised concerns that the submitted information had not fully addressed its earlier advice. In particular, it considers that further clarity is required in relation to the assessment of impacts on the Scheduled Monument at Old Wolverton and other heritage assets, and that these matters must be addressed for the proposal to meet the requirements of the NPPF

25. As Dr Hoggett explains at paragraph 2.2.3.4 of his report, Policy HE2 relates to Scheduled Monuments and Archaeology and creates a presumption against harm to the setting of monuments. Policy HE2 is as follows:

Development that would harm nationally important Scheduled Ancient Monuments or archaeological remains or their settings, whether scheduled or not will not be permitted except in wholly exceptional circumstances where a clear and convincing justification can be demonstrated.

26. The OR relies on the ES assessment of effects on heritage assets which it records would be indirect and arise through changes to their setting.

Due to distance, intervening vegetation and topography, the proposed development would not result in harm to the setting or significance of the Scheduled Ancient Monument at Old Wolverton, Cosgrove Conservation Area, Old Stratford Conservation Area, and nearby listed buildings, including those at Old Wolverton Mill and Cosgrove Hall.

27. Officers record that they are "satisfied that the application site does not form a meaningful part of the setting of these heritage assets including Old Wolverton Mill." HE disagrees because a large sway of the site has not been assessed as Dr Hoggett explains in his 2025 report at 4.01-4.06.

28. Dr Hoggett identified errors in the heritage impact assessment in terms of proximity to the SAM (Hoggett, 4.118).

As noted above, the original and updated Heritage Statements on which the assessment presented in the Environmental Statement is based are fundamentally flawed, as they do not consider the land which lies to the east of the Grand Union Canal, i.e. that which is

closest to the Scheduled Monument, and erroneously states that the distance between the Scheduled Monument and the site is 2km, whereas in fact the two are 850m apart at their closest extents. As such, the conclusions set out in the Environmental Statement regarding the intervisibility between the two sites and the contribution which the agricultural land within the site makes to the significance of the Scheduled Monument is based upon a false premise and its conclusions cannot be relied upon.

29. By disregarding the errors that Dr Hoggett has identified, the OR objectively downplays the significance of the concerns raised by HE on the setting of the SAM. The OR fails to explain why the information HE said was needed to fully assess the proposal is not provided to ensure a robust assessment of heritage harm and possible mitigation measures.
30. The OR gives no compelling reason why it has departed from the statutory consultee's advice as is required under Shadwell Estates v Breckland DC [2013] EWHC 12 (Admin).
31. At 9.5 the OR records the importance of a thorough agreed assessment *with HE input* of the impacts of the SAM at Old Wolverton is to comply with the site allocation policy requirements to the mitigation strategy. The short point is that HE input said that information is incomplete. Where information is incomplete the Council cannot determine whether a mitigation strategy is capable of addressing the harm, and the extent to which the harm can be reduced through mitigation. In short, this information is needed now prior to the determination of the application (as correctly identified by HE).
32. While there can be a degree of subjectivity and disagreement with experts when HE identifies deficiencies, the council should pause determination of the application and require the applicant through a Reg 25 request to provide the missing information.
33. Members are urged to reject the officer recommended balance and reach an independent view based on the professional report of Dr Hoggett that the heritage harm outweighs the benefits, or in the alternative defer to determination of the application to require the applicant to comply with the information requested by HE.

Ecology

34. The western part of the site was officially designated as Furtho Pits Local Wildlife Site ("LWS") in December 2025 as a rare example of Open Mosaic Habitat, a nationally important habitat type, plus rare plants and insects.² The site is the only known location across Buckinghamshire and Northamptonshire for five nationally scarce or rare insect species.
35. Bioscan has identified that the development would completely destroy the LWS and the Council's professional ecologist has objected to the development. The development clearly breaches adopted Local Plan Policy NE5, which prohibits development causing significant harm to sites of local biodiversity significance.
36. Destruction of a local wildlife site also breaches NPPF paragraph 193(a), which requires refusal where significant harm cannot be avoided, adequately mitigated, or compensated for. The OR does not assess whether harm could be avoided by using an alternative site, or simply by excluding the LWS from the development area — as the NPPF requires.

² This is a reference to *Open Mosaic Habitat on Previously Developed Land*.

37. Officers rely on the existence of a compensation scheme as adequate to justify the loss of the LWS. Multiple experts have raised serious objections to the proposed compensation strategy's adequacy. The Officer's core reasoning is flawed. The recommendation to approve rests almost entirely on the principle of development being established by allocation AL5. But that allocation was made without knowledge of the site's biodiversity value.
38. In legal terms the LWS designation is a material change of circumstances after the AL5 site allocation was confirmed. It is the type of planning harm that warrants refusal despite the allocation.
39. Bioscan has also criticised the BNG calculations (note at OR 7.3) resulting in a net loss of biodiversity. Those BNG calculations are also rendered out of date by the LWS designation. As with heritage, the information is incomplete and the Council cannot determine whether a mitigation strategy is capable of addressing the harm, and the extent to which the harm can be reduced through mitigation.
40. Members are urged to refuse the application on the basis it would sacrifice irreplaceable natural capital and cause biodiversity harm at a county level of significance on the basis of an outdated allocation, in direct conflict with both national policy and your own adopted Local Plan.

Transport harms and safety risks

41. The failure to deliver the roundabout to address transport impacts of this very significant distribution centre as required by the policy when the site was allocated is a complete denial of the true scale of transport impacts. As Railton records in the executive summary to their report:

The proposed site access is not a roundabout as is required by Policy AL5. The applicant cites commercial reasons for proposing a priority junction. Modelling of this junction suggests that vehicles leaving the site would be subject to delays of up to 2 minutes. These delays would be greater if representative trip generation rates were used and the modelling correctly specified the proportion of HGVs leaving the site. Such long delays raise serious concerns about highway safety since frustrated drivers will seek to pull out when it is not safe to do so. The problem arises as a result of the applicant failing to provide the policy compliant roundabout.
42. The Site location is not within 15 km of a long-distance haul route or a rail line contrary to the 2022 study commissioned by the South East Midlands Economic Partnership *Warehousing and Logistics in the South East Midlands* (Iceni, September 2022). The expert study recommended that large warehouse sites should be located within 3km and up to 5km from a long-distance dual carriageway suitable for HGVs. The site is 15km from the M1. The study also emphasised the importance of rail to carry freight. No rail facility is available for the proposed development.
43. Members are urged to refuse the application on the basis (i) there are other better placed sites for HGV Warehouse and Logistics in South Midlands and (ii) the transport mitigation is not policy compliant and will cause safety risks on the local road network due to junction queuing.

Flood Risk

44. The development would be built in an acknowledged flood zone. The site floods regularly as does the river Great Ouse at the foot of the site, with flooding upstream into Stony Stratford and downstream in Newport Pagnell.
45. Our clients' professional hydrologist has very serious evidence-based concerns supported by the Environment Agency (who say the site is not a sustainable location in terms of flood management) which is not a surprise as the developers need to build a reservoir so large it triggers the Reservoirs Act and regulations. Further the LLFA who maintains a holding objection because information is inadequate to assess compliance with the relevant local plan policy BN7 of the West Northamptonshire Joint Core Strategy on flood risk.
46. The hydrologist also considers the outdated IH124 method from the 1970's should not be used to assess greenfield runoff rates and that overall there is serious issue with potential flooding.
47. Members are urged to refuse the application on the basis that (i) the EA has said this is an unsustainable location and (ii) the rates of greenfield runoff are not reliable and the LLFA has serious unresolved concerns with the applicant's hydrological information.

Summary

48. The officers have made serious legal errors in setting out the legal tests members need to lawfully determine the application. When the correct tests are understood and applied there are strong reasons to refuse the application including:

Heritage

49. Members are urged to reject the officer recommended balance and reach an independent view based on the professional report of Dr Hoggett that the heritage harm outweighs the benefits, or in the alternative defer the determination of the application to require the applicant to comply with the information requested by HE.

Ecology

50. Members are urged to refuse the application on the basis it would sacrifice irreplaceable natural capital and cause biodiversity harm at a county or regional level of significance on the basis of an outdated allocation, in direct conflict with both national policy and their own adopted Local Plan, or in the alternative to defer determination until updated information is available to resolve the Bioscan criticisms of the applicant's information so that full assessment of the harms and scope for mitigation can be properly understood.

Transport

51. Members are urged to refuse the application on the basis (i) there are other better placed sites for HGV Warehouse and Logistics in South Midlands and (ii) the transport mitigation is not policy compliant and will cause safety risks on the local road network due to junction queuing.

Flooding

52. Members are urged to refuse the application on the basis that (i) the EA has said this is an unsustainable location and (ii) the rates of greenfield runoff are not reliable and the LLFA has serious unresolved concerns with the applicant's hydrological information.

53. For these reasons our clients respectfully invite the Council to refuse the application.

Yours faithfully

A handwritten signature in black ink, appearing to be 'RB' or similar initials, written in a cursive style.

RICHARD BUXTON SOLICITORS