[redacted]

From: Planning
Sent: 20 April 2026 13:34
[redacted] [redacted]
Subject: FW: New Revised Draft Unilateral Undertaking - App ref: 6002643 Hearing - land west of Whites Copse Rowhook FAO Neil Devereux
Attachments: ResponsetoAppellantonUUviaPlanningcondition.pdf

[redacted]
Sent: 08 April 2026 14:33
To: [redacted]
Cc: Alice. [redacted]
Subject: New Revised Draft Unilateral Undertaking - App ref: 6002643 Hearing - land west of Whites Copse Rowhook FAO Neil Devereux

Dear Mr Devereux

I email again on behalf of the Rowhook & Clemsfold Amenity Society [redacted]. I do so only because a revised draft Unilateral Undertaking has been posted on the Council's website and in order to maintain a fair procedure it appears reasonable to be able to comment on this in a very brief fashion- as follows.

1) The Third Parties maintain the representations made in relation to the first draft UU (attached). Those include that there are no exceptional circumstances for using a planning condition which in turn requires a draft Unilateral Undertaking to be executed.

2) There remains a significant lacuna in the information provided in the draft UU and with the draft UU. If there is a Will why is a redacted version not produced for all parties and the Inspector to see in order to support the UU ? [redacted] The fact that they have not raises considerable doubt that the Planning Inspectorate is not being given the full background to the difficulties there are in relation to the succession of the Drainage Land. There has been about a 3.5 year period, so far, in which to distribute the estate of the deceased and yet on the face of it very little has happened.

3) In summary, it is necessary for the Inspector to have sufficient surety that whomever eventually owns the Drainage Land will be willing to permit the installation of the drainage works. Clause 11.3 of the latest draft UU makes it clear that that person or persons could be entirely different to the beneficiary under the will. They may be wholly unwilling to entertain the Drainage Works in the Ancient Woodland. There is insufficient surety in this case that they would enter into the draft UU. The Inspector is respectfully asked to conclude that he cannot put any weight on the draft UU and should not entertain the inclusion of a planning condition which purports to secure the proposed UU.

Please let me know this email has been received – thank you.

Yours sincerely

[redacted](counsel for the Third Parties)

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SIX PUMP COURT | Temple | London EC4Y 7AR | [redacted]
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Barristers regulated by the Bar Standards Board.

[redacted]
Sent: 30 March 2026 15:37
To: [redacted]
>
Subject: App ref: 6002643 Hearing - land west of Whites Copse Rowhook FAO Neil Devereux

Dear Mr Devereux

I attach the Response of Rowhook and Clemsfold Amenity Society [redacted] in the above appeal.

The Inspector Mr Dyer set a timetable for further reps on the question of a planning condition securing the execution of a draft Unilateral Undertaking. The appellant's representations came through to us this morning and our reply is attached.

I would be grateful to you, Miss Johnson and Mr McLoughlin for a return email indicating safe receipt.

Kind regards
[redacted]

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V3

Appeal ref: 6002643

Response to Legal Note from Planet Law for Appellant from Rowhook and Clemsfold Amenity Society [redacted] (Third Parties).

1. First, it is reiterated that there is a problem at the site with surface water drainage and the proposed drainage scheme in the Ancient Woodland is the only potential scheme put forward for solving this problem if the site is to be used for a development such as a Forest School.

2. The Third Parties do not consider that there is sufficient certainty for the Inspector to be sure that the owner of the east parcel of land (the Ancient Woodland Drainage Land Title Number WSX266448) would in the future be legally bound by an obligation to allow those works to take place.

3. The land could be sold [redacted] to a third party via an assent from the beneficiaries. The Inspector would have to be certain that the beneficiaries would first enter into a unilateral obligation to secure the drainage works.

4. However, even the background to the above scenario is not evidenced. The Inspector has no proof of precisely who the beneficiaries of the land are in the Will. [redacted]

5. The Third Parties do not consider that there are in this case exceptional circumstances (as required by the PPG) to use a planning condition of the type proposed by the Appellant. The full text of the PPG extract is relevant and states as follows (with most relevant parts underlined):

"A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met.

Where consideration is given to using a negatively worded condition of this sort, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency.

Paragraph: 010 Reference ID: 21a-010-20190723"

6. It is therefore the case that these types of condition are usually NOT appropriate. Simply because the landowner is deceased is not an exceptional reason to use such a condition. The landowner died in October 2022. To whom the land will pass is entirely unevidenced (other than hearsay) and unclear. The Appellant has had ample time since she amended her application (to include the Ancient Woodland drainage scheme in the application site) to put forward documentation and evidence to support the need for a condition. It is too late to do so now.

7. Furthermore, the Appellant should have been far more transparent in disclosing the circumstances pertaining to the draft Unilateral Undertaking, which on its face appeared to show a landowner who was not deceased. It is regrettable that this information came to the Inspector's attention via the Third Parties and not via the Appellant and her representatives.

8. The PPG extract also makes it clear that using a planning condition to attempt to secure an eventual s.106 obligation is typically envisaged in particularly complex development schemes. This proposed Forest School scheme cannot reasonably be described as a particularly complex development scheme.

9. The appeal decision dated 8/9/2021 (ref. 3267054) is cited in support by the Appellant where the Inspector found the circumstances there were sufficiently exceptional to allow a planning condition requiring a draft obligation to be entered into. However, other than knowing that a landowner was recently deceased there is no record in the decision of what evidence he had to give him certainty that the new landowner would be willing to enter into the draft UU. The fact remains that in the current appeal there is nothing to give the sufficient level of certainty that a decision-maker could reasonably expect.

10. There is a high court decision referred to (*Tiwana Construction*), but this is not relevant as the Inspector in that case was found to have not taken into account an executed unilateral undertaking securing affordable housing. It is a case limited by its own facts and does not take the current Appellant's arguments further.

11. A further difficulty for the Appellant is that neither title includes the nibs of land to the north west and south west ends of the application site. It appears that the BNG metric has been calculated on the full area of land (2.27ha) and if those parts of the site are not included then there cannot be a 30 year period secured by the s.106 obligation on those parts of the land and no BNG can be secured on them either. This is a further uncertainty with the arrangements proposed for this appeal site.

30/3/2026 [redacted]