

Jason Hawkes
Horsham District Council

VIA EMAIL ONLY

9th January 2026

Ref: DF/LG/CL/JT01

Dear Jason,

RE: DC/25/1543 EMPLOYMENT LAND ROAD – FURTHER ECOLOGY INFORMATION

Further to our recent discussions, I have now had the chance to review the consultation responses received from Places Services (Their Ref: 10375) and Horsham District Council Ecology Officer. I have provided additional details below, which I hope provides sufficient information to answer the queries raised.

However, before I do so, it is important to understand the responsibility incumbent on developers when it comes to submitting sufficient information to inform a planning application. Within the still extant Defra Circular 01/2005, at paragraph 99 it places a requirement on a developer to establish:

“the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, before the planning permission is granted,”

However, it continues to state:

“bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.” [my emphasis]

This is re-iterated within the Judge’s summing up in what is commonly referred to as the ‘Morge’ case where he stipulates *“the risk of any impact on protected species should be ‘real’ (identifiable) rather than ‘hypothetical’ or ‘fanciful’* (Boggis V Natural England & Waveney District Council [2009] Ewca Civ 1061 and R (Morge) v Hampshire County Council [2011]).”



T: 0118 989 10 86
E: info@derekfinnie.com
W: www.derekfinnie.com

20 Soames Place, Mulberry Grove
Wokingham, Berkshire RG40 5AT



Even when a species may be present within the Site, the level of survey required should be proportional to the predicted level of impact, as stated in Section 5.5 of BS42020: 2013:

“The work involved in preparing and implementing all ecological surveys, impact assessment and measure for avoidance, compensation and enhancements should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision maker and their consultees should ensure any comments and advice made over that application are also proportionate.”

The onus is not on the developer to undertake a significant amount of surveys to demonstrate a species' absence from a site.

A final point, within the Places Services response, it states that appropriate mitigation measures to support the provision of any European Protected Species licence must also be outlined prior to determination to allow certainty to the LPA that a licence will likely be granted. However, this is an erroneous statement. Within *R (Woolley) v Cheshire East Borough Council and Millennium Estates Limited [2009] EWHC 1227* it states the competent authority must consider the need for a derogation licence and should refuse a project only if there is cause to believe that Natural England would be **unlikely to issue** a licence; they do not have to satisfy themselves that sufficient information is currently available to allow the grant of a licence.

However, subsequent Court rulings such as *Cheshire East Council v Secretary of State for Communities and Local Government, Rowland Homes Ltd [2014] EWHC 3536* highlights that a LPA is not required to consider the three derogation tests in any detail when deciding if a NE licence is or is not likely to be forthcoming; the function of deciding if a licence is necessary and should be granted is for the relevant licensing body not the competent authority

Turning to the specific comments, I have addressed each point in turn below.

European Protected Species – Bats

The removal of trees has been reviewed and an updated AIA submitted.

It has now been identified that only a limited number of immature trees will require removal to facilitate the construction of the Employment Land Road. Of these, only one, an oak, T356, was considered to be of sufficient size to offer the potential to contain Possible Roost Features (PRFs). However, no PRFs were noted during the ground inspection. The tree does, however, support a moderate ivy growth so as a precaution, it has been assessed as having Low potential to support roosting bats and should be inspected again and dismantled, with any major limbs left in place for 24 hours.

Update Species Survey Reports

These are now available and have been submitted to the Planning Officer.

BNG Metric Baseline

An updated Metric is attached which now addresses:

- River Corridor Assessment (RCA) and the River section of the Metric has now been completed. The RCA is completed online through a RCA portal and as such there are no results *per se*. However, an excel download of the raw data is provided. Means to achieve the necessary net gain will continue to be explored, however it is currently proposed that river credits will be purchased if alternative solutions cannot be found prior to the commencement of works;



- The 130m² of woodland is contiguous with Channell's Brook;
- As stated above, the AIA has been reviewed. The new AIA only identifies two individual trees (T273 & T356) as requiring removal;
- The mixed scrub mention in the LEMP was a general comment and has now been removed. There is no mixed scrub within the application boundary;

The post development scenario will be presented in a detailed Habitat Management and Monitoring Plan, which is likely to be required to discharge an appropriate condition, in line with Defra guidance.

The remaining points raised by HDC appear to relate to landscape issues, which have been addressed in an update LEMP.

I hope you find this useful, but if you require any additional information, please do not hesitate to contact me.

Regards,

For and on behalf of Derek Finnie Associates Ltd.

Derek Finnie CEnv MEnvSc MCIEEM
Managing Director

