

From: [REDACTED]
Sent: 21 September 2026 09:45
To: Planning
Subject: Planning Application DC/25/2114 Serious Concerns related to EEC Planning
Categories: Comments Received

**Planning Application DC/25/2114
Serious Concerns related to EEC Planning**

Dear Mr Holmes

Whilst I appreciate that I have written to you previously on the subject of access for maintenance of the Swale and the Habitat Management Plan I specifically respond to a letter by EEC Planning dated 11th September 2026.

EEC Planning claim that:

'A significant amount of additional technical information has now been provided over the course of the application. In our view, the Council has sufficient information to reach a planning judgement on the principle and effects of the development, with appropriate conditions available to secure the detailed mitigation and management measures referred to by consultees where these pass the relevant tests for planning conditions as set out in the NPPF.'

In my view the Council does not have sufficient information to reach a planning judgement.

I remain unconvinced that any viable technical information regarding access for maintenance of the Swale or The Habitat Management Plan has been provided over the course of the application other than a casual comment, despite HDC having asked for details, that ***'access will be from the north'***.

Within the letter it also tells the Council that:

Policy DM6 of the National Planning Policy Framework confirms that planning conditions should be kept to a minimum and should only be imposed where they are:

- a. Necessary to make the development acceptable in planning terms;***
- b. Relevant to the development and to planning considerations generally;***
- c. Sufficiently precise to make them capable of being complied with and enforced;***
- d. Reasonable in all other respects***

The applicant is not seeking to avoid appropriate ecological safeguards. On the contrary, we are positively offering to accept conditions where they are necessary to make the development acceptable.

While the applicant's advisors are correct in their interpretation of Policy DM6, the development scheme they are representing it fundamentally fails to meet these very legal tests.

Not only have these critical issues been overlooked but the suggestion that it could merely be deferred to a post-determination planning condition directly breaches national planning policy and established case law.

1. The Access Route

The developer's submission asserts that maintenance access to the swale will be gained from "***the north***." However, this route is functionally questionable.

- **Ecological Harm:** The route '***from the north***' would require vehicles to drive directly across a designated **Local Wildlife Site**. Securing a permanent maintenance route through a protected habitat introduces a direct conflict with local and national ecological protection policies.
- **Physical Queries:** The land in question is prone to winter flooding and according to The Drainage Strategy report it says:
- ***'there is always a residual risk that flooding may occur for example due to more extreme events or blockage of structures. Under these conditions, exceedance flows will be designed to follow the existing preferential surface water flow paths towards the north of the Site,'***

and...

'Flooding from the swale would spill into the field to the north, which would already be inundated due to the fluvial event.'

Attempting to traverse this terrain with operational vehicles during wet periods requires explanation. A SuDS system requires reliable, year-round access to manage emergency blockages or structural failures.

2. Legal Impermissibility of Deferring via Planning Condition

Because the developer's advisors have explicitly highlighted the strict legal parameters of Policy DM6, they must accept that a condition cannot legally be imposed here. Deferring the maintenance access issue fails at least three of the tests they quoted:

- **Failure of the 'Reasonableness' Test (Policy DM6(1)(d)):** National Planning Practice Guidance (PPG) clarifies that a condition is unreasonable if it has '***no prospects at all of the action in question being performed***'. Case law established in *Grampian* principles dictates that a local planning authority (LPA) must not impose a negative condition unless there is a **realistic prospect** of the condition being delivered. Because the northern access is blocked by legal ecological designations and persistent winter flooding, there is no realistic prospect of compliance including the fact that as far as I'm aware there is no actual access route to even get to the northern field.

- **Failure of the 'Precision' Test (Policy DM6(1)(c)):** A condition requiring compliance with an "impossible" or "unachievable" access route lacks the required operational precision to be capable of being complied with or enforced.
- **Failure of the 'Necessity' Test (Policy DM6(1)(a)):** To make the development acceptable, a fully functioning, perpetually maintainable SuDS scheme is required. A condition that cannot be fulfilled means the development remains unacceptable in planning terms.

3. Failure to Validate the Management Plan

While the applicant has provided an extensive drainage management plan, and The Eco Co a comprehensive Habitat Management Plan.....a plan is legally meaningless if its physical implementation is blocked by unresolvable site constraints. A management plan without valid physical access is not a deliverable strategy.

Conclusion

Relegating a complex drainage strategy to a future condition—when current environmental regulations or practical constraints indicate it may be unachievable—places the validity of the final planning decision at risk.

By the developer's own admission and quotation of Policy DM6, the Council cannot make a condition unless it is shown to actually be achievable.

The Council must therefore reject the developer's assertions. If they cannot demonstrate a viable access route now, the application fails to satisfy basic sustainable drainage and ecological criteria and must be **refused**.

Yours faithfully



Oxcroft
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Sent from my iPad