Horsham District Council

The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref: DC/24/0848
Email: planning@horsham.gov.uk
Appeal ref: 6002643
Date: 07/04/2026

The below sets out the Council's response to the appellant's Unilateral Undertaking (UU) which seeks to secure significant on-site BNG. The Councils Ecologist (BNG Specialist) Officer's comments on the proposal at application stage clearly identifies the need for a legal agreement stating '*The habitats to be created/enhanced on site are considered as 'significant on-site BNG' as per the definition within the planning practice guidance and will therefore need to be secured via a S106 agreement.'* This comment has been publicly available on the council's website since the 15th of August 2024. It is unfortunate that the UU was provided the day before the hearing, thereby giving the Council no real time to consider and provide comments on the day of the hearing. The Inspector subsequently gave an extension of time, of five working days, to the Council and third parties to provide a response to the draft UU.

Following negotiations with Appellant's solicitor, the most recent version being attached to this email and awaiting response to minor amendments, the Council considers the content of the draft UU to suitably secure Biodiversity Net Gain on the site.

However, the Council has considerable concerns about the proof of ownership for the site. The Appellant's Legal Note explains the background to the complexity; however, provides no robust evidence-based assurance that the UU would be entered into. Regarding matters of ownership the Council cannot be certain as to the acceptability of the UU as a final document until the identity of the owner of the land in WSX266448 has been established. At this stage the Council consider there is no guarantee that the executor(s) and beneficiary(s) of this land would be willing to execute the deed, resulting in the potential for a sterile planning permission.

Due to the complexity of the site's ownership the Appellant is seeking to secure a condition which requires the signing of the UU prior to the commencement of development, rather than prior to a decision being issued by the Inspectorate. The Appellant's Legal Note suggests the following wording:

> *'No part of the development hereby permitted shall commence until a legal agreement on the same terms as [Appeal document xx] or in such other form as approved by the local planning authority, has been completed and executed containing the same terms and binding all legal estates and interests comprised in the planning application site (excluding the adopted highway) and has been submitted to and approved in writing by the local planning authority.'*

The Council notes the appeals the Appellant has provided within their Legal Note, referring to a similar condition being secured elsewhere. The PPG is clear that a negatively worded condition may be suitable in 'exceptional circumstances'. Out of the appeals provided that which reflects the situation most accurately, the most relevant appears to be APP/J1860/W/21/3267054 Land off Claphill Lane, Rushwick, where the inspector considered

the proposal to be of an exceptional circumstance *'due to the recent passing of one of the landowners*. [my emphasis]

The evidence provided to the Council by the Appellant, in the Legal Note, indicates the owner passed away recently; however, we understand from submissions that the landowner may have passed in 2022. If this is the case then it is unclear why this matter is being raised at such a late stage and leads the Council to question whether this truly qualifies as an 'exceptional circumstance'. There is, for instance, no indication as to why this matter could not have been identified much earlier in the process, noting that the application was determined in June 2025. Nevertheless, If the inspector considers in this occasion exceptional circumstances have been demonstrated then we would suggest the below condition wording:

> *No part of the development hereby permitted shall commence until a s106 legal agreement on the same terms as set out in the draft Unilateral Undertaking (RJA/Jack239L.Y411 dated 07/04/2026) or in such other form as approved by the local planning authority, has been completed and executed containing the same terms and binding all legal estates and interests comprised in the planning application site (excluding the adopted highway) and has been submitted to and approved in writing by the local planning authority.*

Please note that this condition wording refers to the Unilateral Undertaking most recently reviewed by the Council which was sent to the Appellant's solicitor on the 7th of April 2026. It is understood the Appellant's solicitor is on leave and their colleague is seeking approval on the UU from the Appellant. As such the most recent UU has been attached to this email for the Inspector to view.