

### **Further representation on DC/2021/00417**

I wish to bring to the planning departments attention some issues with the recent additional ecological documents provided to yourselves regarding the above planning application. This seems to be a clear case of the developer attempting to side step the clear requirements laid out by Natural England, along with failing to follow the proper procedures as per case law from the European Court of Justice. (People Over Wind and Peter Sweetman V Coillte C-323/17.)

Natural England have unequivocally stated in their comments received on 21/05/2021 that *'there is currently not enough information provided in the application to determine whether the likelihood of significant effects can be ruled out.'* They have stated that the current wintering birds survey is insufficient, as the surveyors needed to carry out 2 surveys per month instead of 1, extend the survey period to include September, and make more use of historical recording data from additional sources. Instead of providing this additional information and proceeding with a full appropriate assessment before proposing mitigative measures, as per the Sweetman case, the recently updated overwintering birds report by Rachel Hacking Ecology directly contradicts Natural England without providing any of the required additional data and surveying. (Quote from Rachel Hacking Ecology- *'It is considered that the future development of the site will not have a significant effect on the statutory designated sites in the wider area in relation to autumn passage and wintering birds, following the implementation of the mitigation strategy.'*) I have highlighted the end of the preceding quote, as the report also proceeds to introduce supposed mitigative measures of providing supplementary food for overwintering birds, attempting to offset perceived harm before the proper process of appropriate assessment has been undertaken to determine the full nature and extent of the actual harm the development could cause. This strategy goes directly against the Sweetman case law, which states that where significant harm cannot be ruled out, the next step is to undertake a full appropriate assessment, followed by agreement of mitigative measures at a later stage if required. By their very introduction of mitigative measures at this stage in the process, Rachel Hacking Ecology is admitting that they cannot rule out significant harm from this project, meaning they should proceed directly to the appropriate assessment stage. Their direct contradiction of Natural England's assessment with no new supporting evidence is entirely speculative and completely unjustifiable. In this case the appropriate assessment includes but is not limited to the additional survey data requested by Natural England, and a study of the effects of the proposed development in combination with other projects in the area. If the application was approved in it's current state it would open up the approval to legal challenge via judicial review, either from Natural England or another interested party. For this reason I would implore you to compel Forth Homes to follow the full and proper process before bringing this application to the committee, consulting with Natural England at each stage to ensure the information provided is sufficient and accurate.

Regards

Cllr Andrew Donegan (Thornton Parish Council)