# HS1.6

Dr Chris Gibson

14/04/2024

Dear Sirs

**Tending/Colchester Borders Community Garden Development Plan Examination**

Further to your email consultation dated 04/03/2024, please find below my headline comments on **Main Matter 1 – Legal Requirements and Overarching Issues Does the DPD meet all its legal requirements**, specifically the fourth bullet:

• *Have the requirements for appropriate assessment under the Habitats Regulations been met? Have the results of the Habitats Regulations Assessment been carried forward in the DPD?*

The comments below are entirely consistent with my arguments and submissions at previous stages in respect of this development proposal, dated **23/06/2023**; **26/09/2019**; and **15/01/2018** (the latter including main submission, summary and subsequent rebuttal). The previous documents provide much more detail regarding my concerns that the legal requirements of the Habitat Regulations have not been met, and I respectfully request that the Inspector reads and takes full account of all my past submissions. Those submissions also detail justification in the way of professional experience whereby my advice can be seen to be founded in legal and policy practice.

Unfortunately, I now have no window of opportunity to attend the forthcoming hearing in person, but I am reassured by the Inspector's emphatic statement that 'I shall have equal regard to views put orally or in writing'.

I shall deal separately with the two sub-questions of bullet 4 of MM1:

***Have the requirements for appropriate assessment under the Habitats Regulations been met?***

The requirement for appropriate assessment has been met, in that one was undertaken, and concluded rightly that it is not possible to exclude an adverse effect on integrity of the international site(s) without mitigation, largely – but not exclusively – on the basis of increased recreational disturbance arising from so many new residents in close proximity to the international site. That increased disturbance will arise from pedestrians, dogs and river users.

***Have the results of the Habitats Regulations Assessment been carried forward in the DPD?***

No, the results of the HRA have not been carried forward satisfactorily into the DPD, as absolute reliance is placed upon the mitigation associated with the Recreational Access Management Scheme, an approach with no empirical evidence that it will work to offset harm to the international site. As a reminder, the legal test is that mitigation can only be considered mitigation under the Habitats Regulations if the mitigation proposals WILL work (not 'might' work, or 'could' work – the appropriate level of certainty is at or around the legal test of 'beyond reasonable doubt'). There is no published evidence to show that this level of certainty is available, nor anything to suggest that it will have mitigation effects IN PERPETUITY (necessary as the impacts would kick in particularly once full occupancy is achieved).

**Given this lack of evidence regarding mitigational success, the only conclusion that can be drawn is that it would be UNLAWFUL to allow the Development Plan to proceed in its current form.**

Thank you for reading this document; as I have stated already, it should be viewed in the context of my previous submissions, the details of which remain unmodified by the passage of time.

**Dr Chris Gibson FBNA**
chrismothman@btinternet.com