

## FOB Statement

We would like to thank those who have supported us and who have campaigned to protect Betteshanger Country Park (BCP) from destructive development. It has been greatly appreciated. Friends of Betteshanger (FoB) have been working with our lawyers to see if Dover District Council's (DDC) decision to grant planning permission for a hotel and surf lagoon can be challenged legally. Our lawyers have written a number of letters questioning several aspects of the process by which DDC decided the applications. DDC conceded another screening of the environmental impact but concluded that an Environmental Impact Assessment (EIA) was not needed. This is apparently enough to comply with legal requirements and our lawyers have advised that this and the other grounds they have suggested will have little chance of success at Judicial Review (JR). FoB have decided to continue our campaign using other means which we discuss further below. In particular we will be aiming to ensure that the developer carries out all planning conditions and legal obligations.

JR is one type of challenge to a planning decision and what can be questioned by the courts is shockingly limited. JR concerns the procedural fairness, lawfulness and rationality of decision making by government representatives. Judges do not want to intervene in the operation of powers granted by elected parliaments through statute law. This means the acceptable standard is set very low. The NPPF allows huge scope for interpretation and 'weighting' of its regulations. Very little is open to legal challenge.

FoB strongly questions DDC's planning procedures. For example, DDC agreed to designate the park as a Local Nature Reserve (LNR), in a section 106 agreement made in 2004, but didn't carry this through. They could provide no reason for this since the relevant paperwork was lost. FoB questioned the adequacy of the screening DDC made for an EIA. FoB submitted detailed and, we thought compelling, arguments to DDC about why an EIA was necessary. Few of these arguments were considered in their re-screening which repeated their original screening decision. Nevertheless, according to our lawyers, they had done enough to show they had considered whether an EIA was required. Planning decisions need to be rational but the standard of rationality is set very low, much lower than the 'reasonable person' usually relied upon in law. For JR to succeed, on grounds of irrationality, there needs to be 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.' We are disappointed because our cause is just but believe that there are other ways to protect the unique ecology of the park.

The protection of the park means continuous public pressure on our elected politicians and the council officials to get them to fulfil their duty to engage with rational arguments and act accountably, with good faith in the public interest. The 'planning conditions' imposed on the developer, Quinn Estates, are a partial success for the public campaign and objections made by the public, NGOs and experts. The planning conditions concerning 'mitigation' of harms, toxic materials in the spoil heap and water management must not be diluted or the problems brushed aside. We will look at some potential harms that need to be faced up to next.

The site is not designated a Site of Special Scientific Interest (SSSI) as are a number of neighbouring sites but there is no dispute that the site could qualify. We believe it would now be an SSSI and protected from development if DDC had declared it a Local Nature Reserve as promised in 2004. We will discuss individual species below but really the whole ecosystem is threatened and it makes little sense to only focus on individual species. We believe the development will fatally degrade the ecology of the park. We will restrict our remarks below to Turtle Doves, Lizard Orchids, Fiery Clearwing moths and Water Voles. We will not discuss bats, reptiles, fungi etc. to avoid too long a discussion.

Turtle Doves are a protected species whose numbers have declined by 98% and are threatened by the development of BCP. There were between three and four nesting pairs present in the pit head site which was given planning

consent for 210 houses in 2021. Mitigation areas were set up in BCP to compensate for the loss of territory at the pit head site. Then in 2022 when the surf lagoon/hotel applications were submitted for BCP, the pre-existing and newly proposed Turtle Dove territories in the park were further threatened. How exactly the Turtle Doves can work out how to move to their new 'home' is unclear but that it seems is not the concern of DDC or the developer. The 'mitigation' proposed involved allocating two arable fields as new habitat, one was several miles away, near Eastry and one is adjacent to the park. The ecology of these arable fields will need to be modified to make them suitable for Turtle Doves, a process that can take up to 20 years. Increased visitor numbers and noisy nighttime events are likely to add further pressure. Monitoring of Turtle Dove numbers in the park in 2023 has noted a decline in numbers. This indicates that the mitigation is already failing and this is before the hotel and surf lagoon have even been built. DDC specified that the mitigation for Turtle Doves at BCP should maintain and increase their numbers.

The hotel site was designated a receptor area for reptiles from the pit head site but this has already been made into an overflow car park by the developer without planning consent. The hotel will also affect the habitat of Water Voles whose numbers have declined by 90%. Both the hotel and surf lagoon development will result in the removal of the habitat of Fiery Clearwing moths. The suggested 'mitigation' will involve the 'translocation' of their larval food plants. According to Butterfly Conservation, the only example of translocation of the dock plants that the moths rely on was carried out on the Isle of Sheppey and resulted in the entire colony being lost. Fiery Clearwing moths are protected and Natural England has made it clear that it won't issue licences unless the 'translocation' can be proven to be successful. DDC has allowed the developer 7 years to try to achieve this.

The surf lagoon is to be built over the site of the second most important lizard orchid colony in the UK. The 'mitigation' proposal by the developer is to 'translocate' them elsewhere in the park. The problem is that Lizard Orchids require the presence of specific fungi to survive and they have never been translocated successfully. Like the Fiery clearwing moths, they are protected by law and to dig them up requires a licence from Natural England.

Natural England has made it clear to DDC and the developer that, as regards both the moths and orchids, it will only give licences if it is proven that the 'translocations' are successful and result in self-sustaining populations which are able to thrive under various weather conditions. They have 7 years to experiment and see if they can achieve this. There is a strong likelihood that the translocation will fail, or have a 'success rate of zero', despite the confident assertions made by the DDC 'planning consultant' at the planning committee meeting who, unlike Natural England, isn't an expert in Lizard Orchid or Fiery Clearwing moth translocation.

No start should be made on the surf lagoon or hotel unless the translocation has proven to be successful. The planning consent will lapse after 7 years otherwise. We, together with our supporters, will work to do what we can to ensure there is no pressure to get around these conditions imposed by the elected planning committee.

The huge number of objections raised by Natural England, NGOs, FOB, local bodies like Parish and Town councils and local people were reflected in worries expressed in the planning committee and the conditions imposed on the planning agreement. There are serious concerns about making sure the planning conditions are followed through as intended and aren't modified.

DDC then has agreed the Betteshanger Park planning applications but many crucial planning issues have been left for later and made into 'planning conditions'. It is uncertain whether these planning issues, which were not resolved in the submitted applications, are soluble. DDC has specified 47 planning conditions for the surf lagoon and 45 for the hotel. The NPPF requires that planning conditions be kept to a minimum and made 'enforceable, precise and reasonable'. Many of the conditions on the hotel/surf lagoon seem unclear and open ended as to how and if they

can be successfully achieved. How and whether a planning condition is discharged will not be referred to the planning committee for examination, it will be left up to the head of planning and the developer to agree and sign it off as discharged. There is a public interest in adequate scrutiny and ensuring that meeting the conditions is not an exercise in rubber stamping. Progress on the conditions will be sent to 'consultees' like the KWT, RSPB and KCC Biodiversity and posted on the planning portal. They should be open to the public for comment before they are signed off and we need to ensure maximum pressure to prevent the conditions from being diluted. It is another example of the huge leeway given to Local Planning Authorities and the careless way changes to the built environment with a significant environmental impact, are made.

FoB and other local people have tried to engage with the planning process through representations and rational objections but their concerns have been brushed aside by DDC planners. The weakness of administrative law to provide redress puts into sharp relief the lack of empowerment of local people or the natural world in the face of the building/property lobby. It wouldn't be this way if politicians were more open to public participation and protecting the natural world or if there were effective laws protecting the environment. In Ecuador for example, the natural world has legal rights recognised by the constitution and put into effect by the courts. It is clear to anyone who has campaigned to protect the park that our situation is very different. DDC lacks transparency, openness and accountability. We need continuous political pressure on politicians and changes in law. We will continue to do what we can, there is too much at stake to give up. We hope you will continue to support us and campaign to protect Betteshanger Country Park.

Friends of Betteshanger 11.11.24