

LPA: Three Rivers District Council

Officer: Claire Westwood

Development: Comprehensive redevelopment to provide 2 no. warehouse Class E

Site: Development Site Maple Lodge Maple Lodge Close Maple Cross

Application number: 21/0573/FUL

Dear Claire

Objection.

Botanical survey needs to be resubmitted with an NVC assessment, in light of new evidence. Biodiversity net gain has not been objectively measured by reference to the Defra biodiversity metric and therefore has not been proven.

Two developments have occurred since the previous application was refused at appeal, which materially affect this proposal.

1. The first of these is that evidence has come to light that there is more botanical interest on the site than indicated in the Greengage report. Photographs from the site recorded at the optimum time for botanical surveys (MLCS 16/06/2020) show that there is a strip of what appears to be priority grassland habitat running down the centre of the site. This has not been reflected in the ecological report, which records homogenous habitat, bringing its accuracy into question. Greengage have not actually conducted botanical surveys on the site at the correct time of year, either to support this application or the previous one. In their latest report, they acknowledge in 3.27 that botanical survey timings were sub optimal and recommend that a an NVC survey is conducted to provide a definitive assessment of the grassland in 5.2 and 5.15, yet this has not been undertaken.

An NVC survey is a botanical survey but to a higher degree of accuracy than the sub optimal (their words) botanical surveys that have been submitted to date. HMWT concur with the need for an NVC survey because there is obviously some discrepancy between their survey and what MLCS have observed on site. In light of the photographic evidence supplied by the MLCS, this survey must be completed and verified independently by TRDC, before a decision can be made on this site. The quality of the grassland fundamentally affects the application, and the conclusions reached in the Inspectors report, so this must be undertaken before making a decision.

It should be noted that when the Greengage floral species list is added to the species seen in the photographs in the MCLS survey, the number of Herts Local Wildlife Sites grassland indicator species reaches 12. The number required to designate a site as a Local Wildlife Site is 8. This significantly elevates the ecological status of the site.

It should also be noted that although Greengage reference a 2014 NVC survey in their report, this has never been produced as evidence, and more pertinently is out of date.



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2. Since the previous submission, two new documents have come to light that reinforce the need for a 'measurable' biodiversity net gain, by reference to the Defra Biodiversity Metric.

Firstly, at the appeal hearing, the requirements of the Three Rivers Validation Checklist (revised 2018) were not referred to.

<https://www.threerivers.gov.uk/download?id=42730> This document is clear that in certain situations, the Defra biodiversity assessment metric must be used to assess ecological impacts. This is TRDC policy. It states:

11) Biodiversity Assessment:

The Natural Environment and Rural Communities Act 2006 places a duty on Local Authorities to have regard to the conservation of biodiversity in exercising their functions, and includes the planning process. This is also reflected in the NPPF and accompanying NPPG, highlighting the need for the planning system to minimise impacts on biodiversity and provide net gains in biodiversity where possible, based on adequate ecological information. Natural England's Standing Advice on Protected Species is important and the British Standards Institution has published a detailed Code of practice for planning and development, Ref BS 42020:2013. Biodiversity Offsetting is another means of assessing impacts and delivering enhancement opportunities and may be appropriate in certain situations, which includes the DEFRA biodiversity assessment metric.

Development Management therefore requires sufficient information to enable this process to operate successfully, which should be relevant, necessary and material to the proposals. Information provided by professional ecologists should be submitted with an application when it is likely to affect:

- *Internationally and nationally designated sites*
- *European and nationally protected species*
- *Non-statutory designated sites*
- *Priority habitats and species*
- *Non-priority habitats impacted by major development and*
- *Significant populations of national or local red list or notable species*

Work associated with ecological surveys, impact assessments and measures for avoidance, mitigation or compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. In order to fulfil the NPPF requirement for no net loss or net gain in biodiversity, the DEFRA biodiversity metric calculation should show a net positive score.

In this situation, there is more than enough justification for this mechanism to be used. Its inclusion in local policy means that it must be considered a mandatory requirement for assessing net gain in situations such as this one. In her report the inspector stated:

100. I agree with Mr Dodds that the benefits arising from the proposal are not measurable and that it may be beneficial to use a metric such as that produced by DEFRA. However, the use of a metric is not mandatory.

The inspector was not shown this validation checklist requirement and therefore drew her conclusion without sight of the document. Its contents refute the 'not mandatory' judgement of the statement above and must be revisited.

The Defra metric must now be used to quantify the existing value of the grassland so that it can be meaningfully, and more importantly, measurably, compensated, as required by NPPF. The application cannot be determined without this, in accordance with the TRDC validation checklist.

During the appeal, Hertfordshire Ecology represented TRDC. In the appeal they stated that were the application to be resubmitted they would request the use of the Defra metric but at the time of making their submission, they said;

99. Hertfordshire Ecology explained that while it generally supported the use of the DEFRA metric, at the time at which the application was assessed they were not confident of it, and therefore it was assessed based on their expert judgement.

In the intervening time Herts Ecology appear to have developed confidence in the Defra metric, advocate its use to other Hertfordshire local planning authorities, and insist on its use to determine biodiversity net gain. e.g.

Dacorum 20/02519/MFA. Herts Ecology advise the LPA that;

'No formal proposals for demonstrating or delivering Biodiversity Net Gain (BNG) have been provided in the planning statement. Whilst this is currently not a mandatory requirement, the weight that should now be attached to this emerging Government policy is quite clear, as is the process to demonstrate that it can be achieved (a Biodiversity metric; NE v2 is recommended). For major developments of this nature and given the impact it will have, BNG should now be considered as a necessary expectation of any such planning proposal. This is consistent with other similar development proposals in and around Hemel Hempstead'

Herts Ecology cannot possibly now maintain the position that they have no confidence in the metric and that it is not required. If they are offering differing advice to one Herts LPA than to another, then their advice cannot be considered consistent, professional or competent. Is Three Rivers biodiversity worth less than Dacorum's? Is national policy different in Three Rivers than it is in Dacorum?

The answer of course is no.

In accordance with the views of their own ecological advisors, TRDC must require a Defra biodiversity metric assessment to quantify the ecological impact of the proposal. This is required to measure the necessary mitigation and compensation in an objective way without the recourse to the entirely subjective 'expert judgement'. This application cannot be determined without this information because it materially affects the measurement of the impacts and the compensation required.

Secondly, on the 8th of March 2021, the Three Rivers Climate Emergency and Sustainability Strategy was approved by the Policy and Resources Committee. In this document it states:

Page 28:

"Biodiversity

Aim: To plan for net gains in biodiversity to address the ongoing Ecological Emergency, protect and enhance precious habitats and species, and utilise nature to build climate resilience

Page 29:

“Require all new development in TRDC to result in a 10% net-gain for biodiversity (preferably within the District) and avoid the fragmentation, damage and isolation of existing habitats.”

The only way to measure a 10% net-gain in biodiversity is by reference to the Defra biodiversity metric. Therefore, in accordance with the stated Climate Emergency and Sustainability Strategy, a Defra metric assessment must be made of this application to determine if it reaches the 10% net gain level. I should also draw to your attention the gov own national planning guidance on the natural environment <https://www.gov.uk/guidance/natural-environment>

This states:

What is biodiversity net gain?

The National Planning Policy Framework encourages net gains for biodiversity to be sought through planning policies and decisions. Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development.

How can biodiversity net gain be achieved?

Care needs to be taken to ensure that any benefits promised will lead to genuine and demonstrable gains for biodiversity. Discussions with local wildlife organisations can help to identify appropriate solutions, and tools such as the Defra [biodiversity metric](#) can be used to assess whether a biodiversity net gain outcome is expected to be achieved.

Conclusion

When all these points are considered, it is clear that TRDC must request a better botanical survey from the applicant (as advised by their ecological advisors) that includes an NVC assessment. This must be used to accurately identify the presence or otherwise of priority grassland habitat, and be verified independently.

When this information has been approved, it must be used to populate a Defra biodiversity metric assessment of the site. This information should then be used to assess whether the site achieves a biodiversity net gain of 10%, and if not, to quantify (in habitat units) exactly how much compensation will be required to achieve a measurable biodiversity net gain.

Once this figure is known, a biodiversity offset must be offered to TRDC or an acceptable, defensible, fully costed financial agreement to deliver the shortfall number of habitat units in perpetuity (30 years). The grassland offset habitat must be better in quality than that which was lost, i.e. it must be a trade up in quality – as per the Biodiversity Offsetting guidelines.

If you wish to discuss any of these comments please do not hesitate to get in touch.

Best wishes

Matt Dodds

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