

# HERTFORDSHIRE ECOLOGY

Providing ecological advice to Hertfordshire's Local Authorities and communities

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Ask for: Martin Hicks  
Tel: 01992 588483  
Date: 26/07/2021

Dear Claire

**Application.** Comprehensive redevelopment to provide 2 no. warehouse Class E(giii)/B2/B8 units comprising a total of 16,115 sqm including 1,882 sqm ancillary E(gi) office space, access, landscaping and associated works  
**Address:** Development Site Maple Lodge Maple Lodge Close  
**Reference** 21/0573/FUL

1. Further to our comments on the above, we have received a further species list (as requested) from the Consultant Ecologists Greengage. This was based upon an NVC survey in June of this year undertaken by Greengage which provided a rather superficial NVC description of the site with no supporting information such as any quadrat species data which would also reflect frequency of occurrence. When asked whether there were *any species lists to support the NVC suggestions*, we were sent a single list of species recorded from the site. Whilst this does provide an update to the understanding of the site during the optimum survey period, as an evidence-base needed to generate an NVC description it is remarkably limited. However, this data may yet exist, whilst Greengage may have considerable experience in making accurate NVC assessments from what appears to be a simple list of species. It was therefore considered that the NVC should be taken on its own merits, as provided to Herts Ecology. They are attached to this letter.

2. However, Herts Ecology had also taken the opportunity to visit the site to inform our own independent assessment of the existing grassland. The results of this are also attached to this letter and have been sent to Greengage. This has enabled HE to update its own understanding of the site, upon which to advise TRDC accordingly.

3. In very broad terms, the surveys have similar results. The single most acidic area was very localised and limited in extent; much of the remaining grassland was characterised by greater or lesser abundance of false oat grass, where in places a more species-rich community was present. It would appear to be largely natural grassland on natural soils, other than the north-east section

which has previously been dumped on and disturbed. This did not support any established grassland at the time of the survey. The hydrology influences the presence of a moderately sized damp area now mainly dominated by a single sedge species but otherwise also species-poor. In summary the site is a mosaic of grassland communities, frequently rather coarse and species poor but with scattered better patches with very locally abundant indicator species, reflecting underlying differences in hydrology, soil depth and superficial gravel deposits.

4. Whilst the HE survey does not purport to be an NVC survey, it is capable of being used to assess the site against Local Wildlife Site criteria and the likely UK Habitats Classification. Clearly the threshold for LWS indicator species is reached for both neutral and mixed grasslands, requiring 8 and 12 species respectively. However, a large proportion are only rare to occasional and it is therefore considered the site would be of borderline quality. That said, better management would undoubtedly improve the botanical composition. Consequently, the site does support a large grassland of at least moderate intrinsic interest, with clear potential for LWS status. However, we do not consider that the abundance of many indicator species and general coarse grass character, meets the status expected of a Priority Grassland habitat. This is also consistent with the view taken over 20 years ago, when LWS criteria had not been established.

5. At the Inquiry in 2020, it was accepted that Biodiversity Net Gain proposals had been made and were acceptable to the LPA. These were not based upon use of the Biodiversity Metric as BNG was (and remains) not a requirement of planning, and no updated DEFRA metric had been published at the time of the original comments on this application. Since then, in July 2019 and July 2021, Natural England have updated the Biodiversity Metric twice and now Version 3 is available. It was recognised by the Inspector - a year later - that use of such a metric would have provided a quantitative assessment of the site and its impacts. At the Inquiry this was also acknowledged by Herts Ecology, given the published Metric V2 update and the weight clearly given to its use and BNG by Govt in the Environment Bill. If providing comments again in 2020, HE stated they would advise using the NE metric to assess BNG impacts and requirements. However, the Inspector did not request this was undertaken to inform the appeal decision.

6. Provision of a Biodiversity Metric is not a requirement of planning law; NE state this will not become law until autumn 2023 when the TCPA is amended. However, we consider that for a site of this size, nature and impacts, it is now reasonable for the LPA to consider assessing the current application proposals using a Biodiversity Metric, consistent with the comments made at the Inquiry.

7. Consequently, HE have completed the Biodiversity Metric V2 to provide a view on this. In terms of quality we have considered that two thirds of the grassland (the most disturbed and species-poor sections) should be scored as 'Modified grassland' to reflect their lower and disturbed quality, but around one third and the sedge bed as 'Other neutral grassland' to reflect the higher quality areas and more distinctive habitats. The results of this metric are attached.

8. Based on the above and the existing habitat map, the attached NE V2 metric shows the following:

- The existing site scores 20.40 Biodiversity Units (BU)
- The BU lost due to development = 16.98 BU
- Retained onsite BU = 3.42
- The proposed landscape plan shows BU gained on site = 7.12 BU
- This leaves an on-site score of 10.54 BU.
- This results in a net loss of 9.86 BU, or a net loss of 48.35%.

9. To achieve a measurable net gain in biodiversity of at least 10% as stated in the Environment Bill, this will require achieving a net total of 22.44BU, which would need an offsite contribution of 11.90 BU. At £12,000 per BU (the average DEFRA consultation figure HE have advised LPAs apply in Herts) this would amount to a cost of £142.8k.

10. This represent a significant increase in BNG monies compared to the previously agreed sum, based not on a metric but a potential conservation project to restore an adjacent LWS. This option is no longer available. However, whilst there is still no legal requirement to complete a metric, it is not possible to measure net gain objectively as proposed by Govt. without using one; the existing site value, impacts and gains are now only measurable and calculated by the scores generated by use of a metric. Consequently, the LPA will need to consider how to determine what sum may now be appropriate in the circumstances given the position reached at the Inquiry, as against the determination of a new application to which a metric has been applied. The applicant will be expected to have a view on this, as well as a view on the way the metric has been completed, but I am satisfied it represent a reasonable approach to assessing the existing value of the site and BNG requirements based upon the information now available.

11. In addition to BNG, we have been informed that a rare Forester moth, not recorded in Hertfordshire since 1947 and now considered to be extinct, has been recorded from the site. Photographic evidence has been provided and it has been confirmed by the County Moth Recorder, who states it is unlikely to have migrated to there. However, there is no evidence of breeding, although the foodplant – Common and Sheep’s sorrel – are frequent / one patch respectively within the site. It used to occur in the west of the county on clay soils, although there is no suggestion it is limited to river valleys. Habitats used as described by Butterfly Conservation include damp neutral grassland (as here) to chalk downland, heathland, sand dunes and woodland clearings – i.e. a very wide range. Common sorrel - an indicator of old grassland where it survives moderate change - is relatively common throughout most of Hertfordshire.

12. However, the Forester is also listed in Section 41 of the Natural Environment and Rural Communities Act (NERC) 2006, which identifies it as a Species of Principle Importance in England for the purpose of conserving biodiversity. It therefore needs to be taken into consideration by the LPA when performing any of its functions, in order to fulfil its Biodiversity Duty under S40 of that Act to ‘have regard’ to the conservation of biodiversity in England.

13. The presence of this moth now means that:

*Local Planning Authorities will use it [the S41 list] to identify the species and habitats that require specific consideration in dealing with planning and development control, recognising that under PPS [now NPPF] the aim of planning decisions should be to avoid harm to all biodiversity [NB NPPF states minimising impacts on and providing net gains for biodiversity]. (Ref DEFRA explanatory note on S41.)*

Paragraph 180 NPPF states: *When determining planning applications, local planning authorities should apply the following principles:*

*a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*

14. The Forester moth was also a UK Biodiversity Action Plan Priority Species, added to the UK BAP list in 2007, when it was reported as declining, but it was not subject to any Species Action Plan.

15. However, in determining this application, the LPA must now be satisfied that this species can be adequately dealt with. This will require a specific proposal to be provided by the applicant prior to determination, sufficient to demonstrate how this species and its assumed breeding habitat can be reasonably and effectively compensated. Currently no such proposals exist due to the recent record, but this does not affect the LPA's duty under S40 to ensure it is adequately considered. If this is not provided to the satisfaction of the LPA, it cannot adequately discharge its duty under the NERC Act, and the application should be refused on the basis of insufficient information on ecology.

16. Consequently, the current situation ecologically which the LPA needs to address relates to the extent to which determination of this new application needs to consider any greater weight and mechanism now expected of BNG, and its duty under NERC in respect of the S41 species.

17. We suggest that in any event the compensation for loss of the habitat should be increased, which will also contribute to the need to address the S41 moth species now known to be present within the site. Opportunities for this should be found locally if possible, to secure any population of the moth with its foodplants and sufficient habitat resource to maintain a viable population.

18. The LPA must now be satisfied that these issues can be satisfactorily addressed to enable an approval of this application, consistent with NPPF and TRDC Policy.

I trust these comments are of assistance,

Yours sincerely

Martin Hicks

Senior Ecology Advisor, Hertfordshire Ecology