

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

Date: 05/08/2021

Dear Claire

Objection.

1. Greengage NVC survey is not consistent with NVC survey methodology as set out in NVC users handbook, Rodwell, J., JNCC, 2006, indicator species evident and abundant in photographs not recorded in limited species list, no quadrat data supplied, no photographs supplied, botanical data therefore not sufficient.
2. Herts Ecology Defra metric assessment not correctly populated. Photos demonstrate more LWS indicator species present than recorded during assessment survey, thus elevating its status.
3. No strategy for ensuring conservation of priority species, Forester moth.
4. NPPF requirement for net gain not demonstrated.

Since the previous comments of HMWT on this application several pertinent submissions have been received by the LPA. An NVC survey submitted by Greengage, A site survey, botanical assessment and Defra metric assessment from Herts Ecology, revised comments from Herts Ecology incorporating new Greengage information, the discovery of the species of principal importance or the purpose of conserving biodiversity in England, the Forester moth. These comments are intended to address these submissions for the LPA to consider.

1. Greengage submitted a species list and summary NVC assessment on the 7th July 2021. This survey contained no quadrat data, no relative abundance data, no maps, no photographs of the site or communities, and missed several important indicator species as seen in quadrat photos of the site provided by the Maple Cross Conservation Society, some of which were abundant. The correct methodology for conducting an NVC survey is described in NVC users handbook, Rodwell, J., JNCC, 2006. The survey has not provided evidence to suggest it is consistent with this methodology, i.e. quadrat data, relative abundance etc. The survey cannot be considered a reliable botanical survey or NVC assessment because it does not provide the evidence that sits behind its evaluation of the NVC communities present, and indeed which are refuted by the photographs.

In several of these photos, abundant Bird's-foot Trefoil (*Lotus corniculatus*) is recorded. It is recorded in conjunction with abundant Black Knapweed (*Centaurea nigra*) and Red Fescue (*Festuca rubra*) amongst other significant forbs and herbs. The significance of this is that if these species occur together (as they do) they indicate that elements of the grassland most



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closely resemble NVC community MG5, which is a priority habitat i.e. lowland meadow. This is also recognised in the botanical assessment made by Herts Ecology and their comments in the Defra metric spreadsheet which says in the A1 Site Habitat Baseline line 1;

Other Neutral Grassland was chosen as a medium value distinctiveness, to reflect the mix of small areas of lowland acid grassland (g1a) with characteristic species and the areas with a species mix more characteristic of lowland meadow (G3a) and a LWS.

HE go on in their site description to state that they do not think there is enough of this habitat to warrant categorisation as lowland meadow. I disagree with this assessment and will further discuss this later. But by this statement they acknowledge that this community is present.

The issue is, how could an assessment of NVC communities miss the abundant presence in a large swathe of the site (the most species rich swathe of the site) of an obvious and significant species in terms of defining the NVC community? Herts Ecology recorded it, so did Maple Lodge Conservation Society, indeed it can be seen from the road. The absence of this plant from the species list (and several others such as Tufted Vetch (*Vicia cracca*) seen in the photos and also a LWS indicator species) cast considerable doubt on the veracity of the botanical survey and NVC assessment. It should not be accepted without quadrat data, quadrat locations, maps and photographs.

2. Herts Ecology have helpfully attempted to populate a Defra metric to give some indication of the baseline value of the site. However, they have miss populated much of the habitat as 'modified grassland'. This significantly affects the baseline value of the grassland. The UK Habs definition of modified grassland is:

G4 Modified grassland

Definition: Vegetation dominated by a few fast-growing grasses on fertile, neutral soils. It is frequently characterised by an abundance of Rye-grass and White Clover.

This is an agricultural mix in origin not a semi-natural one. Modified grassland is not what has been described in their site description. What is described in their site description is a False Oat-grass dominated sward. The majority of the site is described by them as:

Overall, a general abundance of Arrhenatherum elatius gives the impression of rough rather species-poor grassland. In several areas – particularly to the north and west, Arrhenatherum does indeed become largely dominant giving rise to rank, species-poor communities

This community fits with the UK Habs definition for other neutral grassland sub category c5.

G3c5 Arrhenatherum neutral grassland

Definition: Neutral grassland with False Oat-grass dominant

When the metric is adjusted to reflect this the baseline increases to 24.18 habitat units.

In the comments section of the metric for line 1 and an area of other neutral grassland HE state:

Other Neutral Grassland was chosen as a medium value distinctiveness , to reflect the mix of small areas of lowland acid grassland (g1a) with characteristic species and the areas with a species mix more characteristic of lowland meadow (G3a) and a LWS.

Lowland meadow is a priority habitat and should be recorded as such in the metric and properly accounted for. This further elevates the habitat unit score of the metric.

I understand that the HE population of the metric was designed to be helpful – and is to a degree, but it is a long way from being acceptable in terms of how it has been populated. Similarly, the valuation of the unit price for compensation is misleading. HE have based this score on national generic estimates. HMWT have created an offset cost calculator for different habitats and for Hertfordshire. The cost for compensating this habitat (other neutral grassland) is much more than 12k per habitat unit. It is much closer to 30k per unit to create and maintain for 30 years – but this would reduce if the offset area was greater. The point is that the figure offered by HE whilst well intentioned is not close to the actual figure required. This is much greater and should be established and legitimised before planning is decided because it fundamentally affects the financial viability of the scheme.

3. The discovery on site of the priority species Forester moth also fundamentally affects the decision. TRDC have a legal responsibility to conserve this species. It is also a requirement of the planning process.

This is the first record of Forester from Herts since 1976 at Albury Nowers. The Herts State of Nature Report consider it a Herts Species of Conservation Concern as they were thought to be extinct in the county – until now. They are currently listed on Section 41 of the 2006 NERC Act and the UK BAP 2007. This means that if this development were to go forward as proposed it would result in the extinction in Hertfordshire of a Species of Principle Importance for Biodiversity Conservation in England.

NPPF states:

174. To protect and enhance biodiversity and geodiversity, plans should:
b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

175. 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;

The Three Rivers Local Plan states:

DM6: Development should result in no net loss of biodiversity value across the District as a whole.

a) Development that would affect a Site of Special Scientific Interest, Local Nature Reserve, Local Wildlife Site or protected species under UK or European law, or identified as being in need of conservation by the UK

Biodiversity Action Plan or the Hertfordshire Biodiversity Action Plan , will not be permitted where there is an adverse impact on the ecological, geological or biodiversity interests of the site, unless it can be demonstrated that:

i) The need for the development would outweigh the need to safeguard the biodiversity of the site, and where alternative wildlife habitat provision can be made in order to maintain local biodiversity; and

ii) Adverse effects can be satisfactorily minimised through mitigation and compensation measures to maintain the level of biodiversity in the area.

Given that no actual physical mitigation or compensation has been put forward to safeguard against the local extinction of this Species of Principle Importance for Biodiversity Conservation in England, this development cannot be considered compatible with NPPF or the Three Rivers Local Plan. It is irrelevant whether the site has been allocated or not, NPPF and the Local Plan still apply. Three Rivers have an obligation not just to their district but to the county of Hertfordshire to conserve this species.

This is not just a planning duty but a legal duty. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on public authorities to have regard for the conservation of biodiversity when delivering their functions. Leaving aside all the other issues with this application and the ecological information supporting it, if NPPF and the Local Plan are applied, and indeed NERC, this application must be refused.

Theoretically if compensation were feasible for this species it may be possible to design such a scheme. However, this is a species of such rarity and specific habitat requirements that it is highly unlikely to be possible. The Bucks county moth recorder commented thus:

' what is noticeable here in the Bucks/Oxon border area, where we still have quite a few small colonies, is that by far the majority are on ancient ridge-and-furrow meadows where the flora has remained undisturbed for centuries. I don't know what type of habitat the Maple Cross example was found in but I would have thought trying to recreate that kind of site as part of any mitigation for the species would be next to impossible.'

HMWT would be open to review any mitigation or compensation scheme but this must be verified and endorsed by acknowledged and independent entomological experts before being accepted. Without an approved scheme this application must be refused.

4. Net biodiversity gain. The NPPF requirement for biodiversity net gain is a requirement of both local and national planning decisions (as set out in my previous comments 15 April 2021). This applies to species and habitats and must be measurable. Since these comments, the following appeal ruling has come to light to demonstrate this: APP/M2270/W/18/3215766
Land at Common Road, Sissinghurst, Cranbrook, Kent TN17 2JR

This appeal contains the statement:

32. An empirical means of measuring whether the mitigation listed by the appellant would result in a net gain in biodiversity has not been submitted. Therefore, I cannot be certain the measures would result in a net gain, as required by Paragraph 170 of the National Planning Policy Framework.

This ruling is significant in 2 ways. Firstly, it reaffirms the need for a measurable assessment of ecological value i.e. the Defra metric, and secondly it clarifies that NPPF requires planning decisions to result in net gain. This

planning application does not contain a measurable assessment of net gain and is therefore not compliant with national or local policy. It must be refused without this information.

Best wishes

Matt Dodds
Planning and Biodiversity Manager
Herts and Middlesex Wildlife Trust