

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: 21/09/2021

Dear Claire

**Addendum to previous comments to address Hertfordshire Ecology 14/09/2021 and Greengage 20/08/2021 comments:**

**1. No viable mitigation or compensation scheme has been proposed**

Greengage have put forward measures to compensate for the loss of the forester moth from the site. HE in Section 3.3 of their response of 14.9.21 state that ‘*appropriate conservation measures may be successful in providing new suitable habitat resources.*’

However, the measures proposed are speculative and are not evidence based, and should not be considered as a legitimate compensation strategy for the species for a number of reasons.

The examples provided do not demonstrate that habitat compensation could work. There is actually only one stated example of a potentially viable compensation scheme, from a site near Middlesbrough of an unplanned and accidental colonisation of a site. This is not a model for conserving and enhancing this critical forester population in Hertfordshire – as required by NPPF and the Local Plan. This is one example from hundreds of miles away in a very different landscape. No information is provided on this scheme to inform whether it is a valid source of information. More information must be provided on this scheme before it can even be considered as a concept for compensation. The failed Warwickshire experience is a far more valid model and should be the default position.

To address this lack of research upon which to base such an important decision, I contacted the Butterfly Conservation Officer for the Coatham site which is referred to by HE as a valid example of a viable compensation scheme. He responded and agreed that I can include his comments in this letter to you:

*‘The site at Coatham came about by happy chance as opposed to a deliberate attempt to create habitat for the species. The site is Forestry Commission owned and was created about fifteen years ago. I’m guessing that the sorrel was present anyway – it’s quite abundant in adjacent plantation rides – but maybe got a boost from ground preparation and it’s now really abundant within the created meadow. The moth found its own way there but may well have been present nearby.’*



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*As a side note, although this meadow creation has clearly been of benefit to forester moth, there are a great many sites here in the north that appear suitable but which are unoccupied – clearly there are aspects of the species' habitat requirements that are unknown – therefore there's no certainty that mitigatory habitat creation will prove successful. It's also probable that although the meadow holds the bulk of the population, it is in fact part of a much larger area of occupied habitat that extends for 100s of metres into neighbouring plantations which could be functioning as a reservoir in poorer years (such as 2021, when the highest daily count we recorded as part of our monitoring was three; in good years 50-100 would be more normal).*

*Basically, the minimum area of high quality habitat (even if we knew how to precisely define that term) might be high if the species is to survive the wide annual fluctuations it seems to experience.*

*There's a lot about this moth which we don't know so protection of the threatened site in Hertfordshire would be a far more reliable way to ensure its presence is retained than to try to replicate work undertaken at Coatham which might prove less successful on different soils etc.'*

Dr. Dave Wainwright, Senior Conservation Manager Northern England, pers com, 21/09/2021

Dr Wainwright's comments underline that the conceptual compensation scheme as proposed is not viable and is not appropriate. Planting the caterpillar food plant and associate wildflower species in one location is highly unlikely to be successful. Common Sorrel is already an extremely common plant in Hertfordshire. Sheep's Sorrel is very common in acidic areas of Hertfordshire. If forester conservation were as simple as sowing a meadow with lots of Sorrel or Sheep's Sorrel in it, forester would be a common and widespread species. It isn't.

In order to find out more about the example given of the population in Buckinghamshire I contacted the Bucks county moth recorder, who confirmed that that population in Buckinghamshire is associated with ancient hay meadows. He agreed that I can include his comments in this letter to you, as below:

*' 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.'*

D. Wilton 03/08/2021 pers com.

It should also be noted that the presence of forester supports the HMWT position that elements of priority habitat are present on the site. Forester needs these habitats to survive, as evidenced by its Bucks distribution.

The LPA cannot consider what has been put forward as a competent compensation scheme that, as HE suggest, *'would also ensure that TRDC has complied with its NERC Act obligations relating to its Biodiversity Duty and S41 species responsibilities'*

Both the county recorder for the neighbouring population and the recorder for the scheme they quote as providing a viable template, disagree with this judgement.

**Therefore, the application cannot be approved because no viable mitigation or compensation has been proposed.** The local plan is clear on this matter:

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.*

NPPF is also clear that the application must be refused:

*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 local extinction of a Section 41 priority species is a significant harm and therefore planning permission should be refused.**

Greengage also make unsubstantiated and incorrect statements in their report which need to be addressed. They state:

*'UK Butterfly Conservation indicate that the Forester moth is often found feeding on flowers such as those of Devil's-bit Scabious, Field Scabious and Marsh Thistle, which are not recorded at Maple Cross. However, whilst it is likely that it will feed on other flowering plants, the absence of those species favoured by adults potentially reduces the value of the habitat at the proposed development site.'*

This is an extremely misleading statement. Forester moths do not favour these plants. They use them in their adult phase for nectar as they do lots of other flowering plants, but they are not a necessary part of their life cycle as the caterpillar food plant (Common Sorrel and Sheep's Sorrel) is. They are merely a component of the habitat they frequent, as referred to by the Bucks county recorder above. Indeed, the picture of the forester which has been provided as evidence for this application from the site shows the individual feeding on Yarrow, and pictures from the Chorleywood sightings show individuals on Ragwort and Harebell. They will nectar on a range of available and flowering species of plant when they are in their flight period. These may include Devil's-bit Scabious, Field Scabious and Marsh Thistle because these species are present in the habitat they depend on.

Greengage also state:

*'It should also be noted that the site had previously been mown annually, and usually towards the end of the summer months. As such Common and Sheep's Sorrel would be cut and therefore not available for the Forester moth larvae to overwinter. It has only been in the last 18 months or so that the annual mow has not been carried out which could potentially allowed Forester moth larvae to overwinter'*

This is not correct. Forester occurs almost exclusively in hay meadows in Bucks which are cut in July and then grazed – the traditional system. Foresters are adapted to cope with this management because they utilise the base of their larval food plants.

These Greengage statements shows a lack of understanding of the basic ecology of the species, which does not provide the LPA with the confidence that a mitigation or compensation strategy designed by them would be successful.

## **2. Biodiversity net gain assessment**

We welcome that HE recognise the NE biodiversity metric as the means to calculate the financial sum required to deliver biodiversity net gain.

However, we consider that the ecological compensation reasoning provided by HE would by its own evidence fail to provide a biodiversity net gain.

HE have advised TRDC that the sum of £142,800 is the correct compensation figure to compensate for the damage to the site and secure a biodiversity net gain, as required by govt policy in NPPF. They have evidenced this by reference to the NE biodiversity metric and used generic govt unit cost estimates to justify the figure. Whilst we support the use of the metric, HMWT dispute the figures in the HE metric as set out in our previous submission, where we show that the assessment was not based upon the correct habitat assessment and categorisation.

The proposed 'compromise' approach set out in Section 4.4 and Section 4.5 is not appropriate.

HE states:

*'A compromise between any one of these. Such a figure cannot be directly justified as it simply reflects the weight attached to a planning judgement which takes into consideration the different contributions currently assessed through different methodologies. However, whilst each of these could be justified on their own merits, the latest approach to BNG by using a metric would be more consistent with the current expectation of Govt should BNG be applied to this new proposal.*

Biodiversity net gain is not a compromise option to be negotiated. It is a requirement of govt planning policy. Irrespective of the consideration of the forester moth, sufficient habitat must be provided to offset the impacts of development and deliver a biodiversity net gain. This is govt planning policy:

NPPF para 1.

*1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied*

174. *Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*d) minimising impacts on and providing net gains for biodiversity*

Of the 'options' provided by HE, the only figure with legitimacy is the sum that is supported by a NE biodiversity metric and unit cost estimate (although HMWT have demonstrated that it needs correcting). The LPA has a NPPF planning obligation to achieve a biodiversity net gain. If it accepts a lower figure than is estimated by its ecological advisors as necessary to achieve that biodiversity net gain (for habitats), it has not fulfilled its planning function.

The final option suggested by HE states:

*'5. To reflect the changing circumstances, it is suggested a compromise between 2 (the agreed proposed figure) and 3 (the metric V2 figure) may be appropriate. This would amount to £54,195.'*

HE estimate that £142,800 is required to deliver a biodiversity net gain yet are willing to advise the LPA that £54,195 is acceptable. There is no basis provided for the calculation of this very specific figure and this underlines that the option would mean that the money provided will not be enough to deliver the required biodiversity net gain which HE have calculated using the metric.

The application cannot be approved on this basis or the LPA will be knowingly passing a planning application that does not accord with govt policy.

This application must be refused.

Yours sincerely

Matt Dodds  
Planning and Biodiversity Manager  
Herts and Middlesex Wildlife Trust