



Maple Lodge Conservation Society

Registered Charity No. 1153157
www.maplelodgenaturereserve.org

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29th April 2021

Claire Westwood
Three Rivers District Council
Three Rivers House
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**Re: 21/0573/FUL - Development Site, Maple Lodge, Maple Lodge Close,
Maple Cross**

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Response To Hertfordshire Ecology

Dear Claire

I am writing in response to the letter you received from Hertfordshire Ecology, dated 13th April 2021.

Our comments are as follows:

1. Hertfordshire Ecology Comments

We are pleased that Hertfordshire Ecology have recognised the threats to Maple Lodge Nature Reserve and the fragile nature of its nationally important habitats. We have repeatedly made this case which Hertfordshire Ecology have now acknowledged as follows:

4.1 In respect of indirect impacts, the Maple Lodge Nature Reserve to the south is important as a wetland reserve and any significant impact on water supply into the reserve by the development would negatively impact on its ecology. It is clearly already vulnerable, with naturally shallow waterbodies and recent periods of low water if not drying out. This supply ... is considered to be dependant mainly on groundwater flow, as raised before and during the Hearing.

And also:

4.3 ... it is the long-term behaviour of the groundwater through and around the site in respect of the proposals which should be sufficiently understood, to demonstrate that the groundwater flow reaching the reserve is not reduced or otherwise unacceptably affected by the proposals

This is what could be lost:



2. Maple Cross Contaminated Land Assessment And DQRA Summary Report

Hertfordshire Ecology mention the Maple Cross Contaminated Land Assessment and DQRA Summary Report which has been produced by the applicant. However, this report does not address all the risks facing the nature reserve as a result of the applicant's activities. As far as the flow of groundwater is concerned, the focus of this report was limited to:

Understanding groundwater flow in Chalk from the site to three local PWS boreholes, and how the three PWS boreholes influence each other and the site

In fact, this report actually confirms a negative impact on the reserve and we repeat here some of the case we put forward in our submission dated 9th April 2021:

10 Changes In Groundwater Flow Due To Piling:

Piling below the site may reduce the ground permeability, as a proportion of the ground will comprise concrete piles. This may in turn reduce groundwater flow through the piled zone. The lower permeability zone will cause groundwater to 'back-up' behind the piling zone, creating an increased gradient across piled zone, and also creating a gradient to divert groundwater around the piled structure. There is the potential that changing flows in and around the piled zone could slow down flow towards a PWS abstraction, or slow down flows to a lake.

The impact of the piling zone on groundwater flow is not expected to be significant, however, calculations have been undertaken to estimate the volume of groundwater flow that would be affected.

The proposed pile design is for 250mm piles to be set at 2.5m spacing. The piling method is displacement piling, which will result in the materials around the pile being forced aside. The aquifer materials are therefore compressed, resulting in a loss of porosity. The pile spacing and dimension result in 10% of the volume being taken up by concrete piles. The hydraulic conductivity of the compacted zone is estimated by assuming a reduction in porosity from 30% to 20%.

Whilst these may be seen as positive points in preventing the transmission of turbidity, they are negative points as far as the nature reserve's water supply is concerned. The flow of water through the "compacted zone" will be reduced by a third.

12.2 *Densification of the piling zone:*

There will be a degree of densification of the piling zone, which has been predicted to have a negligible effect on groundwater flow to the PWS boreholes. Densification will provide protection against transport of turbidity within the piling zone, and it is therefore proposed to pile the down-gradient boundaries of the site to create a compacted zone which will mitigated against turbidity transport.

This will be yet another barrier to the flow of water towards the reserve.

So, the Maple Cross Contaminated Land Assessment and DQRA Summary Report does not address the risks facing the reserve and actually confirms that the applicant's activities will have a detrimental effect on the reserve, which is very sensitive to any changes in groundwater flow.

3. Maple Lodge Nature Reserve - Risk Assessment And NPPF

At no time, either with the previous application or this current one, has the applicant undertaken a risk assessment of the likely impact of their activities on Maple Lodge Nature Reserve, in particular the two Section 41 habitats (wet woodland and reed bed) and the numerous Section 41 species.

We have provided comprehensive information about this which the applicant has chosen to ignore. Therefore, NPPF paragraph 177 applies:

The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

The project is likely to have a significant effect on a site with nationally important habitats and an appropriate assessment has not been undertaken. The applicant has not shown that "the project will not adversely affect the integrity of the habitats site", and so the presumption in favour of sustainable development does not apply.

4. Water Framework Directive (WFD)

As explained in our previous submissions, Maple Lodge Nature Reserve and the ecosystem that supports it are afforded protection under the terms of the Water Framework Directive (WFD).

For the avoidance of any doubt, we will state the main points of our case relating to the WFD here.

4.1 Under UK Law, TRDC Has A Statutory Duty To Observe The Objectives Of The Water Framework Directive

This duty is not contingent on advice from other parties such as the Environment Agency or the Lead Local Flood Authority. It is an absolute statutory duty upon TRDC as a public body, as specified in WFD Regulation 33:

River basin management plans: duties on public bodies

The Secretary of State, the Welsh Ministers, the Agency, NRW and each public body must, in exercising their functions so far as affecting a river basin district, have regard to— (a)the river basin management plan for that district as approved under Regulation 31, and (b)any supplementary plan prepared under Regulation 32.

The river basin management plans are the mechanism through which the WFD objectives are delivered. The Thames River Basin Management Plan, which applies in this case, clearly spells out the responsibilities of local government in meeting the WFD objectives.

4.2 The Water Framework Directive Is A Material Consideration In Planning

The Environment Agency's Guidance for Local Authorities - Engaging with the Water Framework Directive states on page15:

In legal terms, the WFD is a material consideration in the planning process.

4.3 A WFD Compliance Assessment Is Required

In order to meet the environmental objectives listed in WFD Regulation 13, a WFD Compliance Assessment is required.

This is because the WFD requires any proposed developments with the potential to impact the water environment to carry out a risk assessment to demonstrate that the proposed development will not result in deterioration of status or prevent the water body from meeting the WFD objectives.

In the judgement passed by the Court of Justice of the European Union (CJEU) for Case C-461/13 (Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland), known as the Bund case, it was established that decision makers must refuse consent to developments that would result in non-compliance with the WFD.

4.4 The Precautionary Principle Applies

The WFD is underpinned by the precautionary principle. It is also one of the key environmental principles included in the new Environment Bill.

In a situation such as this, where a WFD Compliance Assessment has not been done and the outcome is unknown or may cause harm then, in accordance with the WFD and the new Environment Bill, the "precautionary principle" should be invoked. This means that

planning permission should not be granted until it is established that there is no unacceptable impact on the environment.

4.5 The WFD Compliance Assessment Cannot Be Conditioned

The precautionary principle also means that if the WFD Compliance Assessment were to show that the outcome of the applicant's activities is unknown or would cause harm, then the development could not go ahead.

Therefore, the WFD Compliance Assessment cannot be attached as a condition to a planning permission.

To attach a condition for a WFD Compliance Assessment would be to attach a condition which could contradict the permission being granted. So, if the development not going ahead is a possible outcome (and the Maple Cross Contaminated Land Assessment and DQRA Summary Report has already shown that there will be negative impacts on the reserve), then planning permission should be refused.

4.6 TRDC Has A Duty To Protect Maple Lodge Nature Reserve

Maple Lodge Nature Reserve and its Section 41 habitats are covered by WFD Regulation 10 (2):

(b) an area or body of water for the time being designated or otherwise identified as requiring special protection under any EU instrument providing for the protection of surface water and groundwater or for the conservation of habitats or species directly depending on water, or any enactment implementing such an EU instrument, including, in particular—

(iv) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in the protection of the habitats or species.

As has been explained above, TRDC has a statutory duty to observe the WFD objectives.

It therefore has a duty to protect the reserve. This duty is acknowledged in TRDC's Development Management Policies Local Development Document, paragraph 8.2:

Authorities are obliged to conserve and enhance wildlife and landscape under the Natural Environment and Rural Communities Act 2006, the Water Framework Directive and the Natural Environment White Paper.

4.7 The Burden Of Proof Lies With The Applicant

The precautionary principle states that the burden of proof for the proposition that an action is not harmful falls on those instigating that action – in this case the applicant. Therefore, the applicant has to prove that their actions will not cause harm to the ecosystem and consequently Maple Lodge Nature Reserve.

This is exactly the same ruling that applies to HS2, as documented in the HS2 Water Framework Directive compliance assessment review, page 14:

The legal interpretation of this element of the ruling (the Bund case) is that it results in a 'precautionary principle' approach being required, whereby if there is a risk of deterioration from a scheme element, the burden of proof that it does not cause deterioration falls on HS2 as the promoter of the scheme

The applicant has not proved that their activities will not harm Maple Lodge Nature Reserve. In fact, they have actually confirmed that their activities will have a negative impact.

Also, the applicant has not proposed any mitigation measures in the event that their activities have damaging effects. This is a required output from any WFD Compliance Assessment.

So, the applicant has to propose mitigation measures for the scenario where, whether by accident or design, their activities result in the loss of Maple Lodge Nature Reserve's Section 41 habitats and species.

This has not been done.

4.8 Planning Permission Must Be Refused

The Hertfordshire Framework Directive Guidance, page 21, states:

LPAs - must consider the requirements of the WFD when determining planning applications for development. As a statutory consultee in the planning process, the Environment Agency as the Competent Authority will raise objections if they feel that the objectives of the WFD have the potential to be compromised by development proposals; however, the LPA has overall responsibility to ensure that permission is not granted to development which could compromise the WFD objectives

Clearly, this development could compromise the WFD objectives, as has already been proved by the evidence submitted by the applicant.

Also, because a WFD Compliance Assessment has not been undertaken, the proposed development does not comply with NPPF paragraph 170:

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

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans;

It also does not comply with TRDC Policy DM6:

g) Watercourses

Any development adjacent to, over or in a watercourse needs to take into account consideration of the Water Framework Directive requirements and opportunities outlined in the Thames River Basin Management Plan.

Purely from the WFD perspective, TRDC must refuse this application because:

- it does not comply with the Water Framework Directive
- the precautionary principle applies
- it does not comply with NPPF paragraph 170
- it does not comply with TRDC Policy DM6

Yours sincerely



Chairman
Maple Lodge Conservation Society