



Maple Lodge Conservation Society

Registered Charity No. 1153157
www.maplelodgenaturereserve.org

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16th August 2021

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

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Re-Statement Of Case

Dear Claire

We have noted the contents of the Hydrogeological Impact Assessment and GQRA, recently submitted by the applicant. This report does not provide satisfactory answers to any of the points we raised in our letter dated 29th April 2021, especially under Section 4 – Water Framework Directive.

We are therefore obliged to re-state our case with reference not only to the submitted report, but also to UK Law and the Planning Inspectorate's guidance on these matters. This includes reiterating points we have made previously. We have sought legal advice before submitting this letter.

Our comments are as follows:

1. Water Framework Directive (WFD)

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, which implement Directive 2000/60/EC of the European Parliament and of the Council (the Water Framework Directive), continue to apply post-Brexit.

One of the overall objectives of the WFD is:

- to enhance the status and prevent further deterioration of surface water bodies, groundwater bodies and their ecosystems

In this instance, Clubhouse Lake and Marsh Lake are surface water bodies; the reserve's two UK BAP Priority Habitats, reed bed and wet woodland, are Groundwater Dependent Terrestrial Ecosystems (GWDTE). They are protected by UK Law, namely 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.

2. TRDC Statutory Duty

TRDC has a statutory duty to observe the objectives of the WFD.

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.

TRDC must ensure that any decisions that are made meet the environmental objectives listed in WFD Regulation 13. To enable such a decision to be made requires the completion of a WFD Compliance Assessment.

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.

3. Planning Inspectorate Guidance

The Planning Inspectorate's Advice Note 18 – The Water Framework Directive gives very clear guidance on this matter.

First of all, it clarifies the responsibilities of public bodies under WFD Regulation 33:

'Having regard to' river basin management plans includes taking account of and considering the environmental objectives and summary of measures contained within the plan when exercising any functions and the effects of those functions on the objectives and measures within the plan

It also states:

... the Inspectorate supports the preparation and submission of separate WFD assessment reports by applicants, which clearly explain how the requirements of WFD have been met

The applicant's Hydrogeological Impact Assessment and GQRA report does not do this. In fact, the report contains just one passing reference to the WFD. It does not "clearly explain how the requirements of the WFD have been met".

The Hydrogeological Impact Assessment and GQRA report submitted by the applicant is not a WFD Compliance Assessment.

Therefore, TRDC is not in a position to confirm that this planning application meets the WFD objectives. On this particular point the legal guidance we have received is as follows:

Per Recital 11 of the WFD and without any evidence to demonstrate compliance, the precautionary and prevention principles apply. The WFD is underpinned by the precautionary and prevention principles of Article 191 of the Treaty on the Functioning of the European Union. It is also one of the key environmental principles enshrined in the new Environment Bill.

So, in this situation, where a WFD Compliance Assessment has not been completed and the outcome is unknown or may cause harm then, in accordance with the WFD the precautionary and prevention principles should be invoked and planning permission should not be granted.

4. Hydrogeological Impact Assessment and GQRA

4.1 This report is not a WFD Compliance Assessment

It does not refer to the WFD objectives at all. It does not state how or if the applicant will meet them. It is therefore unlikely that this report would withstand judicial examination.

It is a "generic" quantitative risk analysis. This is not sufficient to meet WFD objectives.

On page 11 it states:

The lakes in the valley of the River Colne are not listed as water bodies in the Environment Agency catchment planning website; these are not thought to be monitored as Water Framework Directive water bodies.

Whether the lakes are listed or monitored is immaterial. No developments should cause the deterioration of the status of any watercourse or waterbody. All water bodies are covered by the Water Framework Directive. This is because they are all interconnected. In many cases it is the larger water bodies that have a defined WFD status and many smaller tributaries are not individually designated. However, all smaller water bodies eventually discharge into larger water bodies which eventually discharge into the sea. In this particular case water flows from Maple Lodge Nature Reserve via the outlet stream into the River Colne, which is a tributary of the River Thames.

The applicant has not carried out any of the practical surveys required in order to complete a WFD Compliance Assessment.

The Hydrogeological Impact Assessment and GQRA is a desk-based study which makes use of a conceptual model.

4.2 The report misrepresents Maple Lodge Nature Reserve

Information about Maple Lodge Nature Reserve is widely and publicly available via the Maple Lodge Conservation Society (MLCS) website and elsewhere. However, the applicant has chosen to present very limited and selective information about the reserve.

On page 3 the report quotes from the MLCS website:

Membership of the Society is open to anyone with an interest in conservation and natural history. Before joining the Society all prospective members must be given a guided tour of the reserve by a Committee Member or authorised guide. This can be arranged by contacting the Society.

After completing the tour the prospective member can join the Society by paying the annual subscription and completing the appropriate membership forms. This includes reading and agreeing to abide by the Rules of the Society.

However, it doesn't include other quotes from the website such as:

The Society organises open days and other events throughout the year when members of the public can visit the reserve.

Or:

Anyone who wishes to visit the reserve must make an appointment with the Society for a guided tour.

Or:

The Society welcomes visits from interested groups and individuals.

Access is managed for safety reasons, but anyone can visit the reserve. Indeed hundreds of people do just that and enjoy visits to the reserve every year. These include members and their guests, individual visitors, and groups including wildlife associations, U3A groups, schools, scout and guide associations and disability organisations.

It is a reserve that is treasured by the local community, as has been borne out by the number of objections to this planning application. As shown by the examples listed above, the following statement from page 26 of the report is an example of being economical with the truth:

The Maple Lodge nature reserve is not a registered Local Nature Reserve but a privately owned site with access to members only

Maple Lodge Nature Reserve is a designated Local Wildlife Site, a fact acknowledged by the applicant on page 10 of their own ecology report, but not mentioned in this report.

So, one has to ask the question why, in this particular report, the applicant has chosen to misrepresent the reserve in this way? It certainly raises questions about the objectivity and reliability of this report.

4.3 The report is selective in its choice of evidence

As part of their assessment of conditions at Maple Lodge Nature Reserve, the applicant relies on a report produced by Mott McDonald on behalf of Affinity Water, which documents the results of surveys carried out 8,9 and 10 years ago.

This information is not up-to-date and the applicant has been selective in the choice of evidence presented. Several examples of this are given below.

i) Clubhouse Lake

The report quotes from the Mott McDonald report:

Clubhouse is a very shallow lake (c. 0.5 m) where prolonged low water level periods have naturally caused pools to dry and habitat use has succeeded as it would naturally to more marsh land with some terrestrial species such as willowherbs present in the lake margins. Water levels are thought to be influenced by fluctuations in the level in the River Colne, via flow in the RTD aquifer. Algae was characteristic of the lake in the survey periods, and macrophyte communities were sparse.

However, it does not quote other relevant passages from the Mott McDonald report such as:

Amongst other lakes, Clubhouse Lake ranges in the middle to higher ranks of abundance of macroinvertebrates. Diversity index calculations shows that Clubhouse Lake has one of the highest macroinvertebrate diversities in autumn and a relatively high diversity score in spring. Equitability is moderately high in both seasons indicating there is a good evenness in the families present.

And:

... there are fish present and species include common roach, common rudd and pike

Surveys of macroinvertebrates and fish should be included in any WFD Assessment. Neither have been done.

Also, the Mott McDonald surveys were undertaken during particularly dry years, when Clubhouse Lake levels were low. Since 2014 the average lake level has increased to c 1.0 m with it being as high as c 1.3 m in winter, with some areas of the lake even deeper.

ii) Marsh Lake

The report quotes from the Mott McDonald report:

Marsh Lake is a very shallow lake, mostly less than 0.2 m at the time of the survey. The shallow depth of the lake can contribute to the suspended solids concentration in the water column. The lake has been completely dry on occasions. Marsh Lake is likely to be fed by flow through the superficial deposits from the River Colne and upwelling from the Chalk aquifer as well as direct rainfall. Marsh Lake supported a species-poor community of macrophytes with only duckweed recorded in the open water. Marginal vegetation has been colonised by marsh and terrestrial vegetation such as the wet willow woodland.

When quoting “*Marsh Lake supported a species-poor community of macrophytes with only duckweed recorded in the open water*” the applicant has omitted the continuation of the sentence which says:

.... but with a richer shoreline community, spaced out between heavily shaded banks with dense vegetation.

The report also does not include the results of the shoreline surveys which include:

In 2012, nine macrophyte species were recorded; great willowherb, orange balsam, common duckweed, water mint, water forget-me-not, water figwort, bittersweet, branched bur-reed and blue water-speedwell

And:

In 2013, ten species were recorded, with water mint the most frequent

Similarly to Clubhouse Lake, the passages covering macroinvertebrates and fish have not been quoted which include:

Amongst other lakes, Marsh Lake is very similar to Clubhouse and ranks middle to high in abundance of macroinvertebrate families present compared to the other lakes in the study. The diversity index is much higher in spring than in autumn.

And:

... there are fish present, including common roach, common rudd and pike