

**THREE RIVERS DISTRICT COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY** BCL (Maple Cross) LLP

**SITE** Development Site, Maple Lodge, Maple Lodge  
Close, Maple Cross, Hertfordshire

**PINS REFERENCE**

APP/P1940/W/21/3289305

**LPA REFERENCE**

21/0573/FUL

**STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY**



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## 1 INTRODUCTION

- 1.1 This appeal has been lodged following the failure of the Local Planning Authority to give notice of its decision within the statutory time frame or any agreed extension of time.
- 1.2 The application, Local Planning Authority (LPA) ref. 21/0573/FUL is for the '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' at Development Site, Maple Lodge, Maple Lodge Close, Maple Cross, Hertfordshire.
- 1.3 The application was brought to Planning Committee on 21 October 2021 where it was recommended for approval by officers subject to conditions and subject to the completion of a Section 106 Agreement. At that meeting Members resolved to defer the application for the Council to instruct their own expert hydrogeologist or similar to review the application on grounds that Members were not satisfied that the risks of development to the Maple Lodge Nature Reserve had been fully understood or that the suggested conditions would meet overcome concerns. A copy of the 21 October Planning Committee report is included at **APPENDIX TR01**. A copy of the minutes of the meeting are included at **APPENDIX TR02**.
- 1.4 Following the October 2021 deferral, the Council instructed a Hydrogeologist to review the application and this work is ongoing. As the work is not yet complete, the outcome ("the report") of this review is not yet available to the Council.
- 1.5 Following notification from the Planning Inspectorate that an appeal had been lodged by the applicant against the failure of the Local Planning Authority to give notice of its decision within the appropriate period, the application was returned to the Planning Committee on 8 February 2022 in order that Members of the Planning Committee could consider how they would have determined the application had an appeal against non-determination not been lodged. A copy of the 8 February Planning Committee report is included at **APPENDIX TR03**. A copy of the minutes of the meeting are included at **APPENDIX TR04**.
- 1.6 At the 8 February Planning Committee meeting Members resolved that the Director of Community and Environmental Services is delegated to advise the Planning Inspectorate that the Council would have approved the application if the consultant hydrogeologist's report ("the report") is received prior to the deadline [24 February 2022] for service of the Council's Statement of Case and the report does not indicate that there would be an unmanageable negative hydrogeological impact on any interests of acknowledged planning importance and that such approval would have been subject to the conditions and S106 Agreement set out in the committee report but subject to amendments/additions to the conditions as discussed in the committee minutes (**APPENDIX TR04**).
- 1.7 If however "the report" were to indicate that the development would be likely to cause unmanageable negative hydrogeological impacts on any interests of acknowledged planning importance then the Director was to be delegated to advise the Planning Inspectorate that Members would have refused the application accordingly.

- 1.8 If the consultants' report ("the report") is not received before the Planning Inspectorate deadline [24 February 2022] for service of the Council's Statement of Case, then the Committee advised as follows: *"Members are not persuaded by the evidence submitted by the applicant with regard to the potential impact on water supply and the Council have commissioned its own independent advice which is still awaited. Accordingly, the Council are unable to support approval of the application as it stands for that reason."*
- 1.9 In the event that Members resolved that they would have refused planning permission (as per 1.7 or 1.8 above) they confirmed that additional reasons relating to the absence of a Section 106 Agreement to secure necessary contributions (as discussed at Section 8 below) would have been included as set out below. These objections would fall away following the completion of a S106 Agreement to secure the contributions.

*In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the application does not provide net gain for biodiversity or compensation for the Forester moth and therefore fails to meet the requirements of Policies CP1 and CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2021).*

*In order to maximize sustainable travel options, a financial contribution towards supporting the implementation, processing and monitoring of a full travel plan is required. In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the development fails to meet this requirement. The application therefore fails to meet the requirements of Policies CP1, CP8 and CP10 of the Core Strategy (adopted October 2011) and the NPPF (2021).*

- 1.10 "The report" has not been received before the Planning Inspectorate deadline of 24 February 2022 and as such, in the event that an appeal against non-determination had not been lodged, the Council would have refused planning permission on the following grounds:
1. *Members are not persuaded by the evidence submitted by the applicant with regard to the potential impact on water supply and the Council have commissioned its own independent advice which is still awaited. Accordingly, the Council are unable to support approval of the application as it stands for that reason.*
  2. *In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the application does not provide net gain for biodiversity or compensation for the Forester moth and therefore fails to meet the requirements of Policies CP1 and CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2021).*
  3. *In order to maximize sustainable travel options, a financial contribution towards supporting the implementation, processing and monitoring of a full travel plan is required. In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the development fails to meet this requirement. The application therefore fails to meet the requirements of Policies CP1, CP8 and CP10 of the Core Strategy (adopted October 2011) and the NPPF (2021).*

- 1.11 A draft Statement of Common Ground has been prepared by the appellant and submitted with the appeal. The Council is committed to working with the appellant in order that the Statement of Common Ground can be agreed in advance of the Public Inquiry.
- 1.12 The application has attracted significant third party representations. Copies of these have been provided to the Planning Inspector with the appeal questionnaire and the representations are also summarised in the Officer's committee reports (**APPENDICES TR01 and TR03**). The Council is aware that the Maple Cross Residents Environment Group have been granted Rule 6 Status.

## 2 PROPOSED DEVELOPMENT

- 2.1 The appeal scheme seeks planning permission for the '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' at Development Site, Maple Lodge, Maple Lodge Close, Maple Cross, Hertfordshire.
- 2.2 In summary, the proposed development comprises:
- Erection of 2 no. warehouse Class E(giii)/B2/B8 units comprising:
    - Unit 1 totalling 8,827sqm (GIA) including 1,004sqm ancillary office space
    - Unit 2 totalling 7,289sqm (GIA) including 878sqm ancillary office space;
  - 141 car parking spaces, including 29 active Electric Vehicle Charging spaces and 43 passive Electric Vehicle Charging Point provision;
  - 38 HGV (lorry) parking spaces;
  - Up to 57 long-term cycle parking spaces;
  - Integrated landscaping works; and
  - Associated technical works including provision of relevant accesses.
- 2.3 Unit 1 would be located to the north of the site. It would have a maximum width of approximately 96 metres (west to east) and a maximum depth of approximately 83 metres (north to south). The south-west corner of the building would be sited approximately 7.5 metres off the western site boundary.
- 2.4 Unit 1 would have a haunch height of 12.5 metres. It would comprise two shallow pitched roofs running east-west with a central valley. The roof would have an overall maximum height of 16 metres to the ridge. The northern (front) elevation would include 2 level access operational doors and 6 operational doors with dock levellers. Rooflights are proposed within the shallow pitched roof. Glazing (over 3 floors) is proposed to the northern and eastern elevations, wrapping around the north-east corner (this would serve the office areas). Rooflights are also proposed in the southern and western elevations. Personnel access doors are proposed to all elevations.
- 2.5 Unit 1 would be accessed via a new vehicular crossover from the existing access road. This would provide access to a car park to the eastern flank of the building which would provide 75 car parking spaces (including 4 disabled) and a cycle shelter. The new vehicular crossover would also provide access to a car park to the north of Unit 1 which would accommodate 21 HGV parking spaces/loading bays and 4 car parking spaces. A refuse store is also proposed within this area.
- 2.6 Unit 2 would be located to the south of the site. It would have a maximum width of approximately 97 metres (north to south) and a maximum depth of approximately 66 metres (east to west). The northwest corner would be sited 27 metres from the western boundary and the south west corner would be sited 16 metres from this boundary. Unit 2 would be located approximately 11 metres from the western boundary at the closest point.
- 2.7 Unit 2 would have a haunch height of 10 metres. It would comprise two shallow pitched roofs running north-south with a central valley. The roof would have an overall maximum height of 13 metres to the ridge. The eastern (front) elevation would include 2 level access operational doors and 6 operational doors with dock levellers. Glazing (over 3 floors) is proposed to the

eastern and southern elevations, wrapping around the south-east corner (this would serve the office areas). Rooflights are proposed to the eastern, western and northern elevations. Personnel access doors are proposed to all elevations.

- 2.8 Unit 2 would be accessed via two new vehicular crossovers from the existing access road. The first would provide access to a car park to the front (east) of the building which would provide 15 car parking spaces, 17 HGV parking spaces/loading bays and a refuse store. The second crossover would provide access to a smaller car park to the south-east which would provide 47 car parking spaces (including 4 disabled) and a cycle shelter.
- 2.9 Both Units are proposed to be finished in a mix of different insulated metal cladding, with a grey pallet with the main entrances emphasised by full height glazing systems. Three shades of grey are proposed to the elevations, with the darkest at the base and getting lighter as the building increases in height. The colours proposed are 'anthracite' to the base, 'merlin or pure grey' to the mid-section and 'hamlet' to the upper section. The roofs are to be finished with a profiled insulated metal cladding. Doors and windows will have a polyester powder coated finish.
- 2.10 The application proposes the removal of three category C trees and four category U trees and one category C and two category U groups to facilitate the proposed works, these are identified within the Tree Survey and Arboricultural Impact Assessment and are predominantly located to the west site boundary. A number of trees are also proposed to be retained, and these will be supplemented by additional planting, with soft landscaping proposed around the Units and perimeter of the site. 46 new trees are proposed to the perimeter of the site to supplement the retained vegetation.
- 2.11 Highways works proposed include the widening of the existing access road to provide a new footpath and provision of three vehicular crossovers to access the site.

### 3 SITE DESCRIPTION

- 3.1 The site comprises an undeveloped open grassed area of approximately 3.4 hectares. Mature trees and vegetation align the eastern, southern and western site boundaries, some of these are protected. The site is accessed via an existing access road leading from the A412 (Denham Way). There is informal pedestrian access to the site but no existing vehicular crossovers. The access road serves the Thames Water Treatment Works which lie to the south east beyond a further undeveloped site. Further south, there is a locally designated nature reserve and wildlife site, Maple Lodge Nature Reserve.
- 3.2 To the north of the site is an area of land which fronts the A412 (Denham Way) which benefits from an extant planning permission which has been implemented (but not built out) for the erection of a hotel. To the east are open fields while to the north east there are two hanger style buildings which are established commercial premises and land which is used for vehicle storage which is subject of an open enforcement investigation/appeal. There are residential and commercial properties to the west of the site.
- 3.3 To the north and west of the site is Maple Cross/Maple Lodge Employment Site, a designated employment area within the Site Allocations Local Development Document (adopted October 2014) (site ref. E (d)) and of which the application site forms part.
- 3.4 The A412 (Denham Way) runs north to south through Maple Cross connecting Rickmansworth to the north and West Hyde to the south. It also provides access to Junction 17 of the M25 (approximately 1.5km north of the application site).
- 3.5 Whilst the majority of the site is outside of the Metropolitan Green Belt, the Green Belt does overlap the eastern site boundary and a narrow strip which is outlined in red on the submitted site location plan linking to Maple Lodge Close to the south. The Green Belt adjoins the southern and eastern site boundaries. The majority of the site is located within Flood Zone 1, however, a narrow strip to the eastern and southern boundaries lies within Flood Zone 2. The site lies within Groundwater Source Protection Zone 1. Maple Lodge Farm Ditch Main River runs along the west boundary of the site. The site is located within the Colne Valley Regional Park.



## 4 PLANNING HISTORY

4.1 19/2106/EIA - Request for Screening Opinion. Not EIA development.

4.2 19/1179/FUL - Comprehensive redevelopment to provide 2 no. warehouse Class B1c/B2/B8 units comprising a total of 16,140 sqm including 1,986 sqm ancillary B1a office space, access, landscaping and associated works. Refused 19.11.2019 for the following reasons;

1. (Trees) *The development would result in the loss of protected trees and fails to demonstrate that other protected trees would not be harmed as a consequence of the proposal. The development therefore fails to comply with Policies CP1 and CP12 of the Core Strategy (adopted October 2011), Policies DM1, DM6 and Appendix 2 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

2. (Sustainable Transport) *In order to maximize sustainable travel options, a financial contribution towards supporting the implementation, processing and monitoring of a full travel plan is required. In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the development fails to meet this requirement. The application therefore fails to meet the requirements of Policies CP1, CP8 and CP10 of the Core Strategy (adopted October 2011) and the NPPF (2019).*

3. (Drainage) *It has not been demonstrated that surface water run-off can be adequately handled within the site, and that the development will not result in flooding of adjacent properties and within the site itself. Accordingly the development fails to comply with Policy CP1 of the Core Strategy (adopted October 2011), Policy DM8 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

4. (Groundwater) *It has not been demonstrated that the proposed development, particularly due to the proposed use of piling and the dewatering of the site, would not have an adverse impact on the amount and quality of groundwater, any impacts on which has the potential to adversely impact the public water supply and adjacent Local Wildlife Site. Accordingly the development fails to comply with Policies CP1 and CP9 of the Core Strategy (adopted October 2011), Policies DM6 and DM9 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

5. (Biodiversity Net Gain) *In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the application does not provide net gain for biodiversity and therefore fails to meet the requirements of Policies CP1 and CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).*

6. (Residential Amenity) *The proposed development by virtue of its mass, bulk, height and design, and proximity to the western site boundary would result in an overbearing, visually intrusive and unneighbourly form of development to the detriment of the residential amenities of occupiers of No. 19 Longmore Close. The development would therefore be contrary to Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and the NPPF (2019).*

7. (Heritage) *The proposed development, by reasons of scale and design with block-like appearance, would detract from the overall appearance of the wider landscape and result in less than substantial harm to the setting and significance of the Grade II Listed Maple Lodge Farm and Maple Lodge Barn. The harm is not considered to be outweighed by public benefits and the proposed development is therefore considered to be contrary to Policy CP1 of the Core Strategy (adopted October 2011), Policy DM3*

*of the Development Management Policies DPD and paragraph 196 of the NPPF (2019).*

- 4.3 An appeal was subsequently lodged against the refusal of planning application 19/1179/FUL and was dealt with by way of an Informal Hearing.
- 4.4 The appeal was dismissed on 19.12.2019. A copy of the Appeal Decision is attached at **APPENDIX TR05**.

## 5 RELEVANT POLICY

- 5.1 The relevant policies against which the application was considered are set out in full at Section 6 of the Officers' Committee Reports (**APPENDICES TR01 and TR03**). Copies of all referenced policies were sent to the Planning Inspectorate with the appeal questionnaire and are therefore not all reiterated in full in this statement.

### National Planning Policy Framework and National Planning Practice Guidance

- 5.2 In July 2021 the revised NPPF was published, to be read alongside the online National Planning Practice Guidance. The 2021 NPPF is clear that "existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework".

### Three Rivers Local Plan

- 5.3 The Core Strategy was adopted by the Council on the 17 October 2011 having been through a full public participation process and Examination in Public. Relevant Policies include Policies PSP3, CP1, CP6, CP8, CP9, CP10, CP11 and CP12.
- 5.4 The Development Management Policies Local Development Document (LDD) was adopted by the Council on the 26 July 2013 having been through a full public participation process and Examination in Public. Relevant policies include DM2, DM4, DM6, DM8, DM9, DM10, DM13 and Appendix 5.
- 5.5 The Site Allocations Local Development Document (LDD) was adopted by the Council on 25 November 2014 having been through a full public participation process and Examination in Public. Policy SA2 Site E(d) employment allocation is relevant.

### Other

- 5.6 Planning Practice Guidance (NPPG) (updated 2019).
- 5.7 The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).
- 5.8 The Localism Act received Royal Assent on 15 November 2011. The Growth and Infrastructure Act achieved Royal Assent on 25 April 2013.
- 5.9 The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2017 and the Natural Environment and Rural Communities Act 2006 may also be relevant.
- 5.10 South West Herts Economic Study (2018) and Update (2019).
- 5.11 Hertfordshire's Local Transport Plan (adopted 2018).

## 6 THE COUNCIL'S CASE

- 6.1 The majority of the site is located within Flood Zone 1, however, a narrow strip to the eastern and southern boundaries lies within Flood Zone 2. Maple Lodge Farm Ditch Main River runs along the west boundary of the site. The site lies within Groundwater Source Protection Zone 1 and within close proximity to an Affinity Water potable groundwater abstraction. Maple Lodge Nature Reserve (MLNR), a Local Wildlife Site (LWS) and Groundwater Dependent Terrestrial Ecosystem (GWDTE) is located to the south-east of, but not immediately adjacent to, the appeal site. It extends to approximately 40 acres and consists of lakes, a marsh, hedgerows and a wooded plantation.
- 6.2 The Council is not persuaded by the evidence submitted by the applicant with regard to the potential impact of the proposed development on water supply.
- 6.3 The evidence submitted by the applicant includes:
- a) Maple Cross Contaminated Land Assessment and DQRA – Summary Report (ref. 30422R1.5 ES) attached at **APPENDIX TR06**.
  - b) Maple Cross Contaminated Land Assessment and DQRA – Detailed Quantitative Risk Assessment for controlled waters (ref. 30422R1D1.5). Having signed an NDA on receipt of this document, it cannot be provided by the Council.
  - c) Flood Risk Assessment and Drainage Strategy Issue 1.6 (ref. T/17/1999/FRA, dated 25/02/2021) attached at **APPENDIX TR07**.
  - d) Piling Method Statement and Risk Assessment Issue 1.4 (ref. TL1177PMSRA1.2, dated 02.03.2021) attached at **APPENDIX TR08**.
  - e) Hydrogeological Impact Assessment and GQRA (ref. 30422R3, dated 07.06.2021) attached at **APPENDIX TR09**.
  - f) Hydrogeological Impact Assessment – December 2021 Update (ref. 30422R3.1 dated 16/12/2021) attached at **APPENDIX TR10**.
  - g) Letter from Tier Consult (ref. T1999/PJB/EJJ) dated 19 May 2021 to the Environment Agency attached at **APPENDIX TR11**.
- 6.4 The Hydrogeological Impact Assessment and GQRA (**APPENDIX TR09**) suggests that the reduction in the flow through the piling zone is approximately 4% of the inflow to the lake and that the risks to the Maple Lodge Nature Reserve are considered to be negligible. The GQRA sets out that water inputs to the lake system have been estimated as an average of 1079 m<sup>3</sup> /d, with 75% derived from a stream which flows from the western boundary of the site to the reserve, 11% from direct rainfall and 14% from groundwater flow. The report estimates that less than 3% of this input comprises groundwater that would be diverted around the piling zone.
- 6.5 The Hydrogeological Impact Assessment – December 2021 Update (**APPENDIX TR10**) advises that the assessment of impacts arising from a proposed warehouse development on water levels at the nearby Maple Lodge nature reserve has been updated in the light of additional interim monitoring data and maintains the position that the potential impacts of piling on water levels have been shown to be negligible

- 6.6 The Council is not persuaded by the evidence submitted by the applicant with regard to the potential impact of the proposed development on water supply. The Council, accordingly, has commissioned its own independent hydrogeological advice. However, the outcome of this hydrogeological review (“the report”) is currently awaited. As such, the Council is not currently satisfied that the risks the development may pose to the Maple Lodge Nature Reserve have been fully understood or that they could be adequately addressed by conditions.
- 6.7 It is the Council’s intention, therefore, following receipt of “the report,” to submit to the Planning Inspectorate, at the earliest opportunity, an addendum Statement of Case to confirm whether its concerns with regard to the impact of the proposed development on water supply remain.
- 6.8 In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the application does not provide net gain for biodiversity or compensation for the Forester moth and therefore fails to meet the requirements of Policies CP1 and CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2021). The Council acknowledges that it is the appellants’ intention to agree a S106 Agreement during the appeal to overcome this objection.
- 6.9 In order to maximize sustainable travel options, a financial contribution towards supporting the implementation, processing and monitoring of a full travel plan is required. In the absence of a signed agreement under the provisions of Section 106 of Town and Country Planning Act 1990, the development fails to meet this requirement. The application therefore fails to meet the requirements of Policies CP1, CP8 and CP10 of the Core Strategy (adopted October 2011) and the NPPF (2021). The Council acknowledges that it is the appellants’ intention to agree a S106 Agreement during the appeal to overcome this objection.

## 7 RESPONSE TO THE APPELLANT'S STATEMENT OF CASE

- 7.1 At paragraph 1.5 of the Appellant's Statement of Case (ASC) it states that the appellant wrote to the Council on 26 October offering a further extension of time until 19<sup>th</sup> November 2021. A copy of the email is enclosed at **APPENDIX TR12**. The email refers to no appeal against non-determination being lodged until after 19 November 2021, however, the email does not offer a further extension of time. It states; *"Therefore, we are prepared to hold off on lodging an appeal on the Council's failure to determine the application, until 19th November 2021"*.
- 7.2 Paragraph 1.5 of the ASC also states that; *"we understand at the time of writing that the Council are yet to instruct an expert hydrologist or similar as per the reason for deferral"*. The appellant's SOC is dated December 2021. It should be noted that the Council wrote to the appellant's agent on 3 December 2021 requesting permission to share the full DQRA report with the Council's instructed hydrogeologist. This was agreed by the appellant's agent on 6 December 2021 subject to agreement to a NDA which was confirmed by the Council on 8 December. A copy of the email trail is enclosed at **APPENDIX TR13**. The Council therefore contends that the appellant was aware that the Council had instructed an expert hydrogeologist at the time their appeal statement was written.
- 7.3 The ASC at section 6.2 states that; *"...the Council's management of the Application has been unreasonable with unnecessarily protracted negotiations in resolving new issues (particularly those relating to highways, noise, biodiversity and ground water in relation to the nature reserve)..."* The Council disagrees with this assertion as indicated by the following chronologies in relation to the specific points referenced by the appellant, namely highways, noise, biodiversity and groundwater. Please note that all consultee comments referenced below are included in full at section 4 of the Officer's Committee reports at **APPENDICES TR01 and TR03**.

### 7.4 Highways

05.03.2021	Application 21/0573/FUL received as valid
10.03.2021	Consultation sent to Hertfordshire County Council as Highway Authority (HCCHA), a statutory consultee on the application.
31.03.2021	Initial response from HCCHA raising no objection subject to conditions.
07.04.2021	Supplementary response from HCCHA received by the Council, requesting additional clarification/information.
12.05.2021	Additional clarification/information (Transport Technical Note Rev V02) submitted to the Council.
12.05.2021	Consultation sent to HCCHA following receipt of additional information.
<sup>1</sup> 09.06.2021	Further comments from HCCHA raising no objection subject to conditions.

- 7.5 Hertfordshire County Council as Highway Authority are a statutory consultee on the application. The above chronology demonstrates that the Council did not act unreasonably

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<sup>1</sup> It is noted that the Officer's Committee Reports (**APPENDICES TR01 and TR03**) incorrectly refer to this response having been received on 12.05.2021.

or cause unnecessary delays. HCCHA requested further clarification following further consideration of the likely traffic and transport impacts of the adjacent permitted hotel development. This was a reasonable request and the information was provided by the appellant and subsequently reviewed by HCCHA.

#### 7.6 Noise

05.03.2021	Application 21/0573/FUL received as valid
10.03.2021	Consultation sent to Environmental Health
22.05.2021	Initial response from Environmental Health raising no objection subject to conditions.
01.06.2021	Independent Noise Assessment (Cass Allen) commissioned by Maple Cross and West Hyde Residents Association was submitted to the Council and passed to Environmental Health to review. Following this review additional clarification was sought from the applicant.
06.07.2021	A response to the Cass Allen report was submitted by the applicant (19/0333/M02 Revision 1).
13.08.2021	Further comments from Environmental Health raising no objection subject to amended conditions.

7.7 The Council were reasonable in their request of additional information from the applicant to ensure that the impact of the development on neighbouring amenity could be fully considered.

#### 7.8 Biodiversity

05.03.2021	Application 21/0573/FUL received as valid
10.03.2021	Consultation sent to Hertfordshire Ecology (HECO)
13.04.2021	Initial advisory comments received from HECO who advised that an updated National Vegetation Classification (NVC) survey be undertaken. HECO noted that this was a recommendation of the applicant's own ecology report ( <b>APPENDIX TR14</b> ) and the request was therefore not unreasonable.
06.07.2021	NVC survey and species list submitted to the Council.
July 2021	The Council were notified that a Forester moth has been recorded on the application site.
26.07.2021	Further advisory comments from HECO following review of the NVC survey and species list ( <b>APPENDIX TR15</b> ).
26.08.2021	Email from Greengage to HECO ( <b>APPENDIX TR16</b> ) regarding compensatory approach in relation to Forester moth.
14.09.2021	Further advisory comments from HECO ( <b>APPENDIX TR17</b> ) following review of proposal from applicant's ecologist (Greengage) regarding compensatory approach in relation to Forester moth including a NEV2 metric calculation for BNG of £142,800.
07.10.2021	Email from the agent to the Council confirming a BNG contribution of £142,800 ( <b>APPENDIX TR18</b> ).

7.9 As set out above, the applicant's own ecology report (**APPENDIX TR14**) at Table 5.2 on page 17 of that report, recommended that an updated NVC survey be undertaken and therefore it was not unreasonable for the Council to request this. Similarly, the Council were not aware until July 2021 that the Forester moth had been recorded on the application site. This is a rare moth which is understood to have not been recorded in Hertfordshire since 1947 and as such was considered extinct within the County. The Forester moth is listed under Section 41 of the Natural Environment and Rural Communities Act (NERC) 2006, which identifies it as a species of principal importance in England. The LPA, accordingly, must 'have regard' to its conservation when performing any of its functions in accordance with its duty to conserve biodiversity under S40 of the Act (see Defra explanatory note on s.41). As such it was wholly reasonable for the Council to require to seek further information to ensure that it had fulfilled its duties under the NERC Act.

7.10 Ground Water

05.03.2021	Application 21/0573/FUL received as valid
10.03.2021	Consultation sent to Environment Agency (EA), a statutory consultee on the application.
08.04.2021	Initial response from the EA raising an objection to the application due to insufficient information, the EA not having had sight of the full DQRA report.  The Council was required to sign a NDA which meant that they were not able to share the full DQRA report with any party. As such the applicant shared the full DQRA report directly with the EA. Whilst the frustrations of the applicant that the EA stated they had not seen this are recognised, this cannot be said to be of any fault of the Council who were required to comply with the NDA.
12.05.2021	Further comments received from the EA, following their review of the full DQRA and Contaminated Land report, to the effect that "due to the absence of the Maple Lodge Nature reserve as a receptor we are currently unable to remove this objection." And further "we also wish to object due to the risk to a priority habitat which we have a role in protecting, in this case Maple lodge."
19.05.2021	Additional information (letter from Tier Consult dated 19 May 2021) concerning likelihood of impacts on the Maple Lodge Nature Reserve was provided by the applicant to the EA. Copy at <b>APPENDIX TR11</b> .
June 2021	Hydrogeological Impact Assessment and GQRA ref. 30422R3 dated 07/06/2021 was provided to the EA. Copy at <b>APPENDIX TR09</b> .
<sup>2</sup> 01.07.2021	Further comments received from the EA raising no objection subject to the imposition of 9 conditions on any planning permission granted.

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<sup>2</sup> It is noted that the Officer's Committee Reports (**APPENDICES TR01 and TR03**) incorrectly refer to this response having been received on 12.05.2021.



- 7.11 In relation to groundwater, the Environment Agency, a statutory consultee on the application, raised an initial objection to the application and requested further information be provided. It was not unreasonable of the Council to request that this be provided.
- 7.12 It is evident from the above that the Council were not unreasonable in requesting additional clarification or information be provided in order that they could fully assess the planning application. The Council worked positively and proactively with the applicant in the spirit of the NPPF and allowed the applicant opportunity during the course of the application to submit additional information in response to comments received, including from statutory consultees. This was reasonable behaviour on the part of the Council.
- 7.13 It is acknowledged that the Council were not in a position to take the application to their Planning Committee until 21 October 2021. The above chronologies, specifically that relating to biodiversity, show that matters relating to the Forester moth, a Section 41 protected species, were still being discussed in August 2021 evidenced by the email from Greengage to Hertfordshire Ecology on 26 August 2021 and Hertfordshire Ecology's subsequent consultation response to the Council on 14 September 2021. This was received by the Council after the committee deadline for reports for the September 2021 Planning Committee meeting and therefore the 21 October 2021 meeting was the first meeting to which the application could be taken by officers.
- 7.14 An extension of time until 29 October 2021 was agreed between the appellant and the Council to accommodate the 21 October 2021 Planning Committee meeting. The appellant states at paragraph 6.3 of their SOC that the Council did not respond to the appellant's further proposed extension of time to 19 November 2021. As set out at paragraph 7.1 above and with reference to **APPENDIX TR12**, the email refers to no appeal against non-determination being lodged until after 19<sup>th</sup> November 2021, but does not expressly offer a further extension of time.

## 8 CONCLUSION

- 8.1 In the light of the foregoing and for the avoidance of doubt the Council:
- agrees the 'Site Description' set out in section 2 paragraphs 2.1 – 2.12 of the ASC;
  - agrees 'The Proposed Development' as described in section 3 paragraphs 3.1 – 3.9 of the ASC;
  - agrees 'The Background to the Appeal' described in section 4 paragraphs 4.1 – 4.14 of the ASC. As regards paragraphs 4.15 and 4.16, to the extent that it is alleged otherwise, the Council disputes that it acted other than constructively in the processing of this complex application or that its actions have 'forced' the applicant to submit this appeal;
  - agrees 'Planning Policy Context and Material Considerations' set out in section 5 paragraphs 5.1-5.19 of the ASC;
- 8.2 In respect of the ASC section 6 'The Grounds of Appeal' paragraphs 6.2 -6.4 (and ASC paragraph 8.1) as noted above, the Council will contest the allegation that it has 'been unreasonable ' or necessitated 'protracted negotiations in resolving new issues (particularly those relating to highway, noise, biodiversity and groundwater in relation to the nature reserve).' The Council's evidence will address the chronology of relevant events, including the submission of reports, the receipt of informed technical and other objections, the acknowledgement by the applicant of the necessity to deal with issues arising, the extensions of time granted by the applicant to allow the Council to address responses and the timetable of Planning Committee meetings available to enable the Planning Committee to determine the application prior to the appeal being made.
- 8.3 As regards ASC 'The Planning Case' paragraph 6.5, the Council acknowledges that there is significant common ground between it and the applicant's case for planning permission; and, that as at the date of this Statement of Case the principal unresolved matter relates to the impact on groundwater in relation to the Maple Lodge Nature Reserve. In this connection, the Council does not dispute the factual content of the ASC paragraphs 6.6-6.26, 6.28.
- 8.4 As noted in ASC 6.15, Affinity Water recognises that a risk remains that the proposed development would harm water supply and in respect of ASC 6.21 and 6.27 the withdrawal of the Environment Agency's objection was subject to conditions being imposed on any planning permission including Condition 2 – 'Groundwater Levels,' the reason for which was to ensure that the development does not cause "undue detriment to groundwater levels upon which the Maple Lodge nature reserve relies..." The Council is awaiting the imminent report of its hydrogeologist in respect of harm or undue detriment, if any, to water supply.
- 8.5 The Council does not seek to challenge ASC section 6 'Other Matters Not In Dispute' paragraphs 6.31 – 6.116 nor take issue with the technical reports referred to therein. The Council will not, accordingly, submit proofs of evidence relating to these other matters and, in so far as may be necessary, will refer to the Council's report to the Planning Committee 21 October 2021 as addressing its case in respect of all such matters.
- 8.6 With regard to ASC section 7 'Procedural Matters' paragraph 7.1, the Council considers that the 'Other Matters Not In Dispute' need not be part of the public inquiry but may be addressed, so far as it is necessary, by the making of written representations. The draft

conditions and S.106 agreement are reasonably anticipated to be agreed by or at the inquiry.  
(ASC 7.4-7.8).

## 9 CONDITIONS & S106

### Conditions

- 8.1 Having regard to the above submissions the Inspector is invited to dismiss the appeal. However, without prejudice, if the Inspector is minded to allow the appeal it is requested that regard is had to the conditions set out in full at **APPENDIX TR19**.
- 8.2 It is noted that the pre-commencement conditions as set out in the 21 October 2021 committee report (**APPENDIX TR01**) were agreed in writing by the appellant's agent during the course of the planning application (**APPENDIX TR20 a-c**). However, there have been some amendments/additions to the suggested conditions (**APPENDIX TR19**) following the 8 February 2022 Planning Committee meeting and it is acknowledged that these have not been agreed between the Appellant and Council at this time. The Council is aware that there will be a discussion regarding conditions during the Inquiry. The Council is also working with the Appellant to agree a Statement of Common Ground ahead of the Inquiry and it is hoped that planning conditions can be agreed as part of this.

### Section 106 Unilateral Undertaking

- 8.3 A Section 106 Unilateral Undertaking is being prepared between the parties and will be submitted as part of the appeal. The UU will secure:
1. 10% Biodiversity Net Gain (BNG)
  2. Travel Plan Monitoring

### Biodiversity Net Gain

- 8.4 A financial contribution of £142,800 to achieve 10% BNG in line with the NPPF and Development Management Policies LDD and the CIL Regulation 122 tests. The Heads of Term (HOT) would be expressed as: (1) Developer to pay the Council £142,800 ("the Biodiversity Net Gain Contribution") prior to Commencement; (2) The Biodiversity Net Gain Contribution to be used to provide and thereafter maintain for 25 years an area of species rich grassland in a location within close proximity of the Site which in the opinion of the Council will deliver 11.90 Biodiversity Units (BU) applying the NE Metric V2; (3) The Council to spend the money itself or at its absolute discretion, provide the monies to an identified third party following receipt of details of a scheme proposed by the third party which would accord with the purpose for which the contribution has been given, and which would include a commitment to utilise the monies to protect, manage and maintain the agreed area of species rich grassland for at least 25 years; (4) In the event that the Council elects to provide the area of species rich grassland which will deliver 11.90 BU itself, to protect, manage and maintain that land for not less than 25 years from the date of its first establishment; and (5) Contribution to be repaid to the Developer if either: 1) the Council has not provided an area of species rich grassland in a location within close proximity of the Site which in the opinion of the Council will achieve 11.90 BU, or 2) not paid the monies to a third party for them to

provide, protect, manage and maintain the area of species rich grassland within 5 years of the date of payment of the contribution.

*Travel Plan Monitoring*

- 8.5 A financial contribution of £6,000 towards supporting the implementation, processing and monitoring of a full travel plan including any engagement that may be needed.

## **10 LIST OF APPENDICES**

**APPENDIX TR01**– Committee Report (21 October 2021 meeting)

**APPENDIX TR02** – Minutes of the 21 October 2021 Planning Committee meeting (PC 70/21 paged 3 – 10 are relevant)

**APPENDIX TR03** – Committee Report (8 February 2022 meeting)

**APPENDIX TR04** – Minutes of the 8 February 2022 Planning Committee meeting

**APPENDIX TR05** – Appeal Decision (19/1179/FUL)

**APPENDIX TR06** – Maple Cross Contaminated Land Assessment and DQRA – Summary Report (ref. 30422R1.5 ES)

**APPENDIX TR07** – Flood Risk Assessment and Drainage Strategy Issue 1.6 (ref. T/17/1999/FRA, dated 25/02/2021)

**APPENDIX TR08** – Piling Method Statement and Risk Assessment Issue 1.4 (ref. TL1177PMSRA1.2, dated 02.03.2021)

**APPENDIX TR09** – Hydrogeological Impact Assessment and GQRA ref. 30422R3 dated 07/06/2021

**APPENDIX TR10** –Hydrogeological Impact Assessment – December 2021 Update (ref. 30422R3.1 dated 16/12/2021)

**APPENDIX TR11** – Letter from Tier Consult to the Environment Agency (29 May 2021)

**APPENDIX TR12** – Email from Agent (26 October 2021)

**APPENDIX TR13** – Email chain between Council and Agent

**APPENDIX TR14** – Preliminary Ecology Appraisal (Greengage), January 2021

**APPENDIX TR15** – Hertfordshire Ecology comments (26 July 2021)

**APPENDIX TR16** – Email from Greengage to Hertfordshire Ecology (26 August 2021)

**APPENDIX TR17** – Hertfordshire Ecology comments (14 September 2021)

**APPENDIX TR18** – Email from Agent to Council (7 October 2021)

**APPENDIX TR19** – Suggested Conditions

**APPENDIX TR20 (a)** – Email from Council to Agent requesting agreement to conditions

**APPENDIX TR20 (b)** – Copy of conditions sent with email

**APPENDIX TR20 (c)** – Email from Agent confirming agreement to pre-commencement conditions