

**Planning Inspectorate Appeal Reference - APP/P1940/W/21/3289305**

**Statement of Case on behalf of Rule 6 group:**

**Maple Cross Residents Environment Group**

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## 1. INTRODUCTION

This Statement of Case has been prepared on behalf of the residents of Maple Cross, Maple Cross and West Hyde Residents Association, the Maple Lodge Conservation Society and Springwell Residents & Conservation Association (“the Rule 6 Party”), in relation to the appeal by BCL (“the Appellant”) against the non-determination by Three Rivers District Council (“the Council”) for development of land to the north of Maple Cross Lodge, Maple Cross (“the Site”).

- 1.1. These groups collectively represent a substantial proportion of local residents. The proposals for the development at the Site have met significant objection from the local community. Online documented objections for the 2019 Application (19/1179/FUL) records a total of 318 objections whilst petitions added an extra 747 signatures; this totals 1,065 objections. Objections received regarding the current Application records a total of 302 and still counting.
- 1.2. Our prime issues and context:
  - 1.2.1 Noise: to ensure the protection of residents’ current good standard of amenity, their health and well-being.
  - 1.2.2 Maple Lodge Nature Reserve & Maple Lodge Marsh: ensure the protection and sustainability of their Section 41 habitats.
  - 1.2.3 Biodiversity and the Forester Moth: Should the development be sanctioned then Biodiversity Net Gain must be demonstrated to be achievable using a recommended tool.
- 1.3. We also consider that the approach taken by the Council and other bodies to essentially say that conditions and an S106 agreement can mitigate harm is fundamentally flawed given the legal tests. Harm will result where mitigation is not possible.

## 2. **SITE AND SURROUNDINGS DESCRIPTION**

### **SITE LOCATION**

- 2.1.1 The Appeal site comprises approximately 3.4 hectares. The majority of the land is covered by grass, meadowland and has a mixture of shrubs and mature trees situated along the boundaries.
- 2.1.2 South of the Site is the Thames Water cricket ground and Maple Lodge Nature Reserve. To the south east is another nature reserve, Maple Lodge Marsh, and beyond that the Thames Water Sewage Treatment Works. To the west is the Maple Lodge river, the residential properties of Longmore Close and their communal green. To the north west is the Rivers Office Park, Hertford Place and the area that gained planning permission for the building of the Crowne Plaza.
- 2.1.3 To the east of the access road is an area which housed the former sludge beds and this area is bound by the River Colne, Springwell Lake, Springwell Reedbed and Springwell Lock Conservation Area.
- 2.1.4 Beyond the access road to the north of the site there are many companies that continue to operate on Green Belt land despite planning permission being refused by the Council.

#### Retrospective Planning Applications:

23.02.'21 Refused 21/0424/RSP

31.03.'21 Refused 20/2827/RSP

28.01.'21 Refused 20/2774/RSP

28.10.'21 Refused 20/2659/RSP

#### Planning Inspectorate:

06.10.'21 Appeal rejected by PINS 21/0015/REF – concrete works – still there.

#### Outcome Awaited:

20/0068/ENFNOT (17/0045/COMP): unauthorised material change of use of land to open storage – awaiting decision.

With the exception of the two hangars all of the land is Green Belt with no plans to change its designation in the next Local Plan 2025. Sadly, the current incumbents have dramatically degraded this area.

### **SURROUNDING CONTEXT**

- 2.2 The wider area is predominantly agricultural and residential land with the exception of the aforementioned offices to the north west of the site, the sewage treatment works to the south east and the land to the north which is illegally occupied and will return to open Green Belt when it is vacated by the current incumbents. The Site is located within the Colne Valley Regional Park.

### **ACCESSIBILITY**

- 2.3 The existing access road runs north/south along the eastern boundary accessed from Denham Way to the north and joins the narrow roadway Maple Lodge Close to the south. The latter is a private road owned by Thames Water and is accessed either directly from the Denham Way (A412) at the set of traffic lights or from the

access road. Maple Lodge Close has a height restriction placed close to the cricket pitch to prevent HGVs accessing Thames Water. However, despite signage, tankers and other vehicles from businesses operating from the north of the Site frequently use Maple Lodge Close.

- 2.3.1 Denham Way (A412) runs north to Rickmansworth and to the south it connects with Denham, the A40 to London and the M4. The M25 is accessed via Junction 17.
- 2.3.1 The nearest bus stops are sheltered and from 17 April 2022 they will be served by 321 and 724 buses together with the 951 when Thorpe Park is open. The R1 (3 days a week) and R2 (2 days a week commencing at 10.00am) provide a hospital access service. The closest rail station is Rickmansworth to the north and provides access to the Metropolitan Line (London Underground) and the Chiltern Railway to Marylebone; it is not considered to be within walking distance. Other bus services were cancelled last year and two others are in the process of being redirected away from Maple Cross.
- 2.3.2 Access to the Site by cycle is limited to very experienced cyclists or residents of the villages of Maple Cross and West Hyde, as from the Maple Cross roundabout heading north to Rickmansworth the A412 narrows and has various pinch points along its route. The alternative is to use the cycleway along the canal, but access is gained via Springwell Lane, a very narrow windy road used by fast moving tipper trucks.

## 2.4. **PLANNING HISTORY**

- 2.4.1 Council removed the Site from its Green Belt status in 2014, a decision made overnight regarding the 2014 Local Plan. There was minimal engagement with residents.
- 2.4.2 The NPPF (2012 current at the time) Paragraph 83 stated: 'Once established Green Belt boundaries should only be altered in exceptional circumstances through the preparation or review of the Local Plan'. No exceptional circumstances were ever cited.

### 3. **PROPOSED DEVELOPMENT**

- 3.1 This significant construction involves the driving of 3310 piles into the ground and the chalk aquifer. Just one of these piles could cause the contamination of the ground water. The residents from Longmore Close live within 25 metres from the closest proposed warehouse.

## 4.0 PROCEDURAL ISSUES

### Environmental Impact Assessment (EIA) Regulations

4.1 The Council adopted a Screening Opinion on 4<sup>th</sup> November 2019 (19/2106/EIA) and concluded that an EIA was unnecessary.

4.2 The proposal is a Section 2 project:  
'Industrial estate development projects(the area of the development exceeds 0.5 hectares').

4.2.1 Considerations of selection criteria in Schedule 3 as stated in the Council's Screening Opinion included:

'The development site is located immediately adjacent to a residential area, but this has a relatively small population and the majority of impacts would only affect this localised population.'

'The impacts regarding traffic would affect drivers passing through the area. Impacts on groundwater and the Groundwater Source Protection Zone would have implications for a wider area and larger population through the supply of public drinking water.'

'There is also the potential for impacts on ecology and biodiversity, given the location of the site, as there is potential for wildlife to be present on site. The site is located adjacent to a watercourse and Maple Lodge Nature Reserve, a Local Wildlife Site, is also located to the south of the site.'

'The proposal could result in impacts in respect of noise, not only during the construction phase, but also when the development is operational as the proposals include service yards to both buildings where lorries are likely to be manoeuvring and the units would be operational 24 hours per day.'

'With regards to contamination, in respect of both land and groundwater, the proposal could result in impacts. The planning application is accompanied by a site investigation and, while this did not identify concentrations of chemical contaminants, it did identify concentrations of asbestos in the soil. The site is in a Groundwater Source Protection Zone and the development must be carried out to ensure there is no risk of pollution to groundwater and thus local water supplies.'

4.3 In summary, the Council concluded that an EIA was unnecessary as 'the development is only considered to have local effects and is not a particularly sensitive or vulnerable site in EIA terms. The development is neither unusually complex nor likely to have potentially hazardous environmental effects therefore the Council do not consider that an EIA is required'.

4.4 Given issues highlighted in the Council's Screening Opinion, we believe that the conclusion should have been to conduct an EIA. It was recognised at that early stage that there were 'implications for a wider area' because of the risks to the supply of public drinking water; and there was 'potential for impacts on ecology and biodiversity' and the Maple Lodge Nature Reserve; and that the proposal 'could result in impacts in respect of noise' because the Site would be 'operational 24 hours per day'.

- 4.5 Whilst the Screening Option recorded that 'The development is only considered to have local effects', it ignores the previous statement 'risks to the public drinking water', which is not restricted to the local area.
- 4.6 If the Council had taken all evidence into account for this application then we believe they would have concluded that it necessitated an EIA. This would have addressed many issues at an early stage, rather than them being drawn out in the protracted way they have been.

## 5. BACKGROUND TO THE APPEAL

5.1. A previous proposal was heard at a Virtual Hearing when an Appeal was made by the Appellant. The reasons for refusal by the Council at that time that are pertinent to our objections now are:

R4 It has not been demonstrated that the proposed development, particularly due to the piling, would not have an adverse impact on groundwater, which, in turn, has the potential to adversely impact the public water supply. Accordingly the development fails to comply with Policy CP1 of the Core Strategy 9 (adopted October 2011), Policy DM9 of the Development Management Policies LDD (adopted July 2013) and the NPPF (2019).

R5 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).

5.1.1 At the Virtual Hearing the Inspector identified 8 main issues that included:

### 5.1.2 **NOISE:**

We raised an objection regarding noise levels. We submitted actual ambient sound readings but the Inspector rejected them in favour of the Appellant's modelled levels (that had been accepted at that point by the Council's Environment Health Officer), because our readings had not been obtained by a professional noise consultant. Therefore, for this application, we have engaged a Senior Acoustics Consultant to measure actual (ambient) sound and produce a written report.

### 5.1.3 **AIR QUALITY:**

The Inspector stated that there was no evidence to indicate that the appeal scheme would have an adverse effect on the air quality as no alternative data had been provided. Subsequently we purchased a certificated air monitor and have been continuously monitoring PM10 and PM2.5 since April 2021.

### 5.1.4 **BIODIVERSITY:**

The Council and their consultants Herts Ecology were both satisfied with the Appellant's biodiversity submissions. However, Herts & Middlesex Wildlife Trust stated that, in order to achieve biodiversity net gain, a biodiversity metric should be used, in accordance with best practice. Herts Ecology were not confident of the DEFRA metric at the time of the application but did generally support its use. The Inspector agreed that the benefits arising from the proposal were not measurable and that it may be beneficial to use a metric.

### 5.1.5 **FLOODING:**

Residents were concerned that the proposed drainage strategy required a high degree of maintenance and that it was unclear who will be adopting the maintenance of these systems for the lifetime of the development. The Inspector noted that this will need to be submitted for approval and that details can be secured by way of a condition.

### 5.1.6 **PILING AND GROUNDWATER:**

Both the Appellant and the Council acknowledged that there is a potential risk to the public water supply from piling, but they differed as to the extent of the risk and

whether it could be adequately managed or mitigated by way of conditions. Having regard to the precautionary approach set out in 'Environment Agency's Approach to Groundwater Protection', the Inspector concluded that the proposed piling would have an unacceptable effect on groundwater and the quality of the public water supply. The Inspector also noted that the Environment Agency is generally concerned with wider environmental impacts in terms of contamination rather than the impact of the proposal on the public water supply.

#### 5.1.7 LAKES:

De-watering of the ground would be required by the Appellant when the interceptor and attenuation tank is being installed. Any water extracted **could** be discharged into the Maple Lodge Ditch via a silt buster to avoid contaminants from the ground entering the water.

## 5.2 PLANNING COMMITTEE MEETINGS

5.2.1 The current application was taken to Planning Committee on 21<sup>st</sup> October 2021 with a recommendation for approval. However, Members moved a motion to defer as there were conflicting reports on the issues predominantly surrounding water. The reason for referral was minuted as:  
'for the council to instruct an expert hydrologist, ecologist or similar in order to review the application and advise the committee'.

5.2.2. The Application was again taken to the Planning Committee meeting on 8<sup>th</sup> February 2022. A Councillor stated that the Chair was assuming that it was agreed that when they received the report from the 'Hydrogeologist would be quite conclusive and definitive on whether there was harm or no harm or risk or no risk.' 'There was a possibility that despite the work that goes into this report the conclusion may not be definitive or clear in which case where do we go'. A fellow Councillor stated 'surely at that point it becomes a reason for refusal that it had not been demonstrated to the satisfaction of the LPA and it was a clear answer to turn down the application'. The Chair agreed stating 'if they come back and say we are not sure then that would be grounds for refusal'.

5.2.3 The Council has to date been unable to produce any reports following the 21<sup>st</sup> October, 2021 meeting and we have been advised that they will not be produced until the beginning of March 2022.

5.2.4 It was further resolved at this February meeting that 'Conditions need to be strengthened in order to protect residents'. Members particularly referenced:

C5 Buffer Zone: 'could be increased to something more substantial'

C6 Drainage Scheme: 'could this say the same as C7 that the scheme had to be submitted and approved because there could be something which came up when work commenced and the scheme was not up to scratch'.

C11 Dust Management Plan: 'What would happen if the Plan does not work could we require a change in the plan post permission .."What would be the air quality they are measuring against – would there be a measure and if the dust rises above that level would there need to be a change in the plan or some mitigation. This did not seem to be adequately covered'.

C19 Noise: This 'should reference what is acceptable' as a sound level. 'There

needed to be more certainty so that if noise levels rise we have a measure against which Enforcement Officers can target their investigation'. Impose additional condition regarding limits on operating hours i.e. not 24 and 'weekend hours should be curtailed'.

C28 Landscape Management Plan: 'to be extended beyond 15 years to life of development'.

C29 & C30 Lighting Design and External Lighting: mentioned 'nocturnal animals but did not talk about residents'

C37 Refrigerated HGVs or tug units: 'should somehow reference what is acceptable under C19 – the noise assessment scheme'.

5.2.5 The subject of groundwater was raised by a Councillor quoting the Case Officer's Report:

7.14.19 Affinity Water considers that the risks to the public water supply still remains due to the proximity of the development to the pumping station but that these risks can be managed.'

The Councillor said:

'I do not think that managing a risk is the same as negating a risk or overcoming a risk and it is not sufficient to say that the risk can be managed. This is the biggest flaw in the report and in the Officer's recommendation. I don't think we can risk public health by allowing this to go ahead with the current provisions when the consultee acknowledges that the risks remain'.

The Case Officer's response was that 'it can be managed through Conditions'.

## 6 **PLANNING POLICY, GUIDANCE AND OTHER MATERIAL CONSIDERATIONS**

### **EMERGING PLANNING POLICY**

- 6.1 The Local Plan Regulation 18 Preferred Policy Options and Sites for Potential Allocation underwent consultation from 11 June 2021 to 20 August 2021.
- 6.2 Its failure to achieve sufficient land for housing has resulted in a further Local Plan Regulation 18 Preferred Policy Options and Sites for Potential Allocation that will be held circa November 2022.
- 6.3 The draft Local Plan is unlikely to be approved until mid-2025 at the earliest

### **GUIDANCE**

Hertfordshire Water Framework Directive Guidance – November 2013

PINS Advice Note 18 – The Water Framework Directive – June 2017

### **OTHER MATERIAL CONSIDERATIONS**

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

Natural Environment and Rural Communities Act 2006

Environment Act 2021

The Environmental Information Regulations 2004

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

NPPF: 2021

## **7. THE RULE 6 CASE**

### **7.1 Introduction**

- 7.1.1. Since June 2019 we have been reviewing the Appellant's documents and with frustrating regularity found flaws in the evidence provided, many of which were simply due to the consultants' reliance on desk top surveys and modelling rather than real world data.
- 7.1.2 The Council, its Officers and Consultees relied heavily on the accuracy of the Appellant's reports without sufficient scrutiny. This resulted in a to and fro between those that did examine the documents and the Council.
- 7.1.3 Some points were taken on board for the 2019 application eg comparing our village at night to that of a city – classification subsequently downgraded; tugs and refrigerated HGV's were not mentioned within the application so we raised the issue and finally a condition was added to the application in order to prevent noise creep.
- 7.1.4 For the current application whilst the Appellant notes that 'new issues' that were previously 'agreed' were re-introduced, they were for good reason. Vehicles were not taken into account for all existing and planned businesses and the Appellant was asked to amend the traffic count accordingly. This was to ensure the Site's traffic would not impact badly on existing traffic either on the A412 or the M25. There were justifiable grounds for other issues to be re-evaluated including noise, biodiversity and groundwater in response to the Inspector at the Appeal Hearing (5.1.2, 5.1.4 & 5.1.6).
- 7.1.5 Despite the 24/7 365 day operation being raised as an issue in the Council's Screening Opinion, this was not raised again until the October 2021 Committee Meeting, and it was finally addressed as a proposed condition at the 8<sup>th</sup> February 2022 Committee Meeting.

### **7.2 Effect on Maple Lodge Nature Reserve**

- 7.2.1 The proposed project may have an adverse effect on the quality or quantity of groundwater flowing into the reserve and the protected Section 41 Groundwater Dependent Terrestrial Ecosystem habitats within.
- 7.2.2 The Appellant has not undertaken a WFD Compliance Assessment and therefore not produced evidence confirming that the application meets the WFD environmental objectives.
- 7.2.3 The Appellant has stated "it has been demonstrated that the proposed development would have a negligible impact on groundwater levels" but the Appellant's case is partly based on estimates, assumptions and modelled data.
- 7.2.4 The Appellant has not provided, for example, actual readings of flow of groundwater into the reserve, nor of flow from the input stream. Given the sensitivity of the reserve's water levels, there needs to be robust analyses of water flow over a period of up to 12 months in order to cover all conditions. We accept that this could be resolved by the Environment Agency's requested groundwater monitoring condition in their letter dated 15<sup>th</sup> February 2022.

- 7.2.5 Also, there has been no consideration of the potential impact on Maple Lodge Marsh, the adjacent nature reserve which includes wet woodland, a Section 41 habitat. The groundwater monitoring requested by the Environment Agency should be expanded to include this site as well.
- 7.2.6 No mitigation has been proposed by the Appellant in the event that their activities do have an adverse effect on the quality or quantity of groundwater, causing potential harm to either of the two reserves' Section 41 habitats. We would expect this to be covered by condition.

### 7.3 **Noise**

- 7.3.1 In the Appeal Decision for the previous application the Inspector stated:

29. 'Residents were also critical of the modelling inputs to the noise assessment, and were concerned that some of the modelled noise levels were lower than those they recorded.'

31. ...'the methodology and assumptions within the noise assessment were reviewed by the Council's Environmental Health Officer and found to be satisfactory. Some residents questioned the Council's expertise in this area, but no evidence was submitted to suggest that the Environmental Health Officer's views could not be relied upon'.

39. 'The Council confirmed both at the time of the application and during the course of the hearing that it was satisfied with the submitted noise assessment. On the basis of the submitted evidence I have no reason to reach a different conclusion.'

- 7.3.2 However, the Environmental Officer on 18.08.21 after receiving Cass Allen's report stated 'assessing this from the point of the local authority I would argue that the primary focus of a noise assessment is to protect our residents and ensure that any potential impact on the environment is considered'. 'Ultimately this proposal is for the development of industrial units in a currently predominantly residential area which is relatively quiet when compared to other parts of the district'. 'BS4142 should be taken as a whole in the context of its purpose, highlighting particular sections can result in that part being taken out of context'.
- 7.3.3 A detailed independent review of the acoustic assessment in support of the proposals has been undertaken. Subsequent to submission of that review, comments in response to the items raised were provided by the author of the supporting acoustic assessment. A further review of that response was then provided. These are presented in Appendix B.
- 7.3.4. Based on the results of the review and in accordance with the relevant standards and guidance, it was found that with the operations as currently proposed (in both proposed hours and activities) long term adverse impact on the amenity of the nearby residents to the west of the site was likely. Insufficient information was provided to establish the likely impact on the residents to the east of the site.
- 7.3.5 A noise related planning condition was provided in the appellant's supporting acoustic assessment however this was not considered sufficiently robust to ensure the amenity of the local residents will be suitably safeguarded. An alternative condition was proposed in the review of the appellant's assessment. This alternative condition was considered more robust by TRDC's Environmental Health Officer.

However it was suggested to be amended by the TRDC Development Management Team. This amendment is considered to leave the local environment open to background noise creep from commercial noise and subsequently the potential for increasing adverse impact on the local residents over time.

7.3.6 It is therefore considered that the proposed operations are likely to result in long-term adverse impact on the local residents' amenities and that impact is not sufficiently controlled by the proposed planning condition.

7.3.7 Key Policy and Material Considerations: Three Rivers District Council Local Plan Policy DM9(d)

#### 7.4 Forester Moth and Biodiversity Net Gain

7.4.1 The development will result in the local extinction of a species of principal importance for the conservation of biodiversity in England, the Forester moth.

It cannot be contested that the development as currently presented will result in the loss of this species, last recorded in 1976 in Hertfordshire. This is a rare species with complex habitat requirements. Its tentative recolonisation of the area is a hugely significant development. Simply planting its already common food plant in another site is not a compensation strategy. If it was credible the Forester would already be common in Hertfordshire.

7.4.2 Both the local plan and NPPF are clear on this matter:

##### *Local Plan - DM6*

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 (2021)*

180. 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.**

7.4.3 Biodiversity net gain has not been adequately or accurately assessed.

7.4.4 Biodiversity net gain is a requirement of NPPF (2021). It states:

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

179. 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.

7.4.5 The Appellant has not put forward a measurable assessment of BNG. Herts Ecology have attempted to do this but have demonstrably incorrectly categorised the value of the grassland in the biodiversity metric. An accurate assessment of the biodiversity value of the site, using the Natural England biodiversity metric, must be submitted by the Appellant and approved before this application can be approved.

**It is not compliant with NPPF without this and must be refused.**

7.4.6 The suggested compensation payment is not based on any costed compensation plan.

Irrespective of the inaccuracy of the biodiversity metric, the money that has been suggested as sufficient to compensate for the significant biodiversity losses identified is not based on any data, other than a generic government estimate for a habitat unit put forward during the consultation on the Environment Act. It is in no way a legitimate sum. It is not supported by any evidence or costings. All the information to do this is readily available and should have been produced to justify this calculation. It is inexplicable and utterly unacceptable that it has not. It is 'finger in the air' biodiversity offsetting at best.

**It has not been evidentially demonstrated that the NPPF requirement for biodiversity net gain can be delivered for this sum, and therefore the application must be refused.**

## 8. **PLANNING BALANCE**

The Appellant states they will deliver significant planning benefits as they will:

- a) Deliver the overall objectives of national, local and site specific policy
- b) Meet the objectives of the South West Herts Economic Study
- c) Result in the creation of a significant number of jobs 108 direct and 98 indirect during construction and 292 direct and 179 indirect jobs during the operation phase
  - Speculative warehousing therefore uncertainty regarding number of jobs
- d) Business rates and £9.9m indirect GV per annum for the local economy
- e) Remediation of identified contaminated land
  - Part of the Site's contamination will be addressed.
- f) Proactively addressing drainage through the upgrade of Thames Water's access road.
  - Our understanding is it is addressing drainage to a part of the road.
- g) Improve safety and accessibility of the local highway network & junction improvements.
  - This is dependent on a Grampian condition which is unclear whether it can be delivered.
- h) Provide biodiversity net gain through onsite and offsite contributions
  - This provision has not been met.
- i) Sustainable development exceeding relevant policy requirements and proactively responding to the District's wider strategic climate change policy.

Therefore we agree that the Appellant would deliver some economic/planning benefits however they fail to outweigh the significant harm to both the social and environmental objectives.

## **9. PROCEDURAL MATTERS**

### **Documents**

- 9.1 A schedule of documents that Rule 6 will refer to at the inquiry is Provided at Appendix A.

### **Conditions**

- 9.2 We will wish to comment on the following draft conditions:

#### Section 106

- C6 Drainage Scheme – Final Design (LLFA)
- C7 Groundwater Levels (Environment Agency)
- C8 Land Affected By Contamination (Environment Agency & Watford Environmental Health)
- C9 Long Term Monitoring and Maintenance Plan for Groundwater (Environment Agency)
- C11 Dust Management Plan (Watford Environmental Health)
- C15 Piling Method Statement (Affinity Water, Thames Water, Environment Agency)
- C17 Dewatering Method Statement (Affinity Water)
- C19 Noise Assessment (TRDC Environmental Health)
- C34 SuDS Management & Maintenance (LLFA)
- C35 Unidentified Contamination (Environment Agency and Watford Environmental Health)
- C36 Infiltration of Surface Water onto the Ground (Environment Agency)
- C37 Noise – no refrigerated HGVs or use of tug units (TRDC Environmental Health)

## 10. CONCLUSIONS

Section 106:

Biodiversity Net Gain has not been accurately assessed by the Appellant or the Council's consultees – absence of evidence is not evidence of absence. It has also not been evidentially demonstrated that biodiversity net gain can be delivered for the sum proposed. The development will result in the local extinction of a species of principal importance for the conservation of biodiversity in England, the Forester moth (Section 41). It neither complies with the Local Plan (DM6) nor the NPPF.

The groundwater to the Maple Lodge Nature Reserve's lakes has been based on modelling whilst the Maple Lodge Marsh would appear to have been omitted from any of the Appellants data. It is not sufficient to make declarations based solely on modelling that could cause a significant impact on these Section 41 habitats. The Environment Agency's condition alleviates our concerns by insisting on a monitoring programme and we believe that providing that this is fully adhered to should prevent the Section 41 habitats from harm since any impacts will be formally identified. To protect the Reserve from harm we would request mitigation be placed within a condition.

The impact on local residents, who currently reside in a quiet unlit village, will be unacceptable if this Site is industrialised due to the adverse impacts of noise on health and quality of life, not only from the Site itself but from its associated traffic. Should the hours of operation be reduced from 24/7 in line with the proposed conditions made at the Council Planning Meeting (8.2.2022) the night time noise would be eliminated enabling residents to enjoy their amenity and prevent sleep deprivation at night.

Hypothetical employment claims are based solely on floorspace since it is a speculative warehouse and the classification that a tenant or buyer would propose to use these for is still unknown.

The proposal is heavily dependent upon a vast swathe of conditions and should this development be sanctioned it is imperative that the Council ensures they are enforced as prescribed by all parties. We do have reservations that the Council has the expertise or the manpower to ensure their enforceability and clearly a general tick box exercise will not suffice in this instance.

<b>INQUIRY REF:</b>	<b>PAGE NOS</b>	<b>DATE PUBLISHED/ONLINE:</b>	<b>DOCUMENT TYPE</b>
TR01	1	21-Oct-21	Officer Recommendation - Permission to be granted
TR02	199	21-Oct-21	Committee Meeting Minutes
TR03	219	08-Feb-22	Meeting Decision to be delegated to officers.
TR04	420	08-Feb-22	Committee Meeting Minutes
TR05	438	Sep-20	Planning Inspectorate 19/1179/FUL: Decision
			<b>GOVERNMENT:</b>
1		2012	NPPF
2		2021	NPPF
3		2006	Natural Environment & Rural Communities Act
4		2021	Environment Act
5		2000/60/EC	Water Framework Directive
			<b>HUMAN RIGHTS ACT:</b>
6		1998	Article 1 and Article 8
			<b>TRDC:</b>
7		2013	Development Management Policies LDD:
			<b>PLANNING OFFICER'S REFUSAL:</b>
8		2019	Officer Refusal
			<b>PLANNING COMMITTEE MEETING MINUTES:</b>
9		14-Nov-19	
			<b>EIA SCREENING OPINION:</b>
10		Nov-19	19/2106/E.I.A. Screening Option
11		Feb-22	Screening
			<b>BIODIVERSITY:</b>
12		08-Mar-21	Part D: Biodiversity Check List
13		23-Apr-21	Herts Ecology: Further NVC request
14		07-Jul-21	Greengage: NVC Survey
15		07-Jul-21	Greengage: NVC Species List
16		Jul-21	Herts Ecology: Biodiversity Metric
17		26-Jul-21	Herts Ecology: Site Description
18		26-Jul-21	Herts Ecology: Comments
19		11-Aug-21	Herts & Middx Wildlife Trust: Missing species, etc.
20		16-Sep	Herts Ecology: Review of Costings, etc.

<b>INQUIRY REF:</b>	<b>PAGE NOS</b>	<b>DATE PUBLISHED/ONLINE:</b>	<b>DOCUMENT TYPE</b>
			<b>BIODIVERSITY continued</b>
21		28-Sep-21	Maple Lodge Conservation Society: Refuting HE
22		28-Sep-21	Herts & Middx Wildlife Trust: Addendum
23		05-Oct-21	Maple Cross & West Hyde RA: HE using metric
24		14-Oct-21	Herts & Middx Wildlife Trust: Dispute Compensation
			<b>ENDANGERED SPECIES:</b>
25		2006	Natural Env. & Rural Communities Act (NERC)
26		23-Apr-21	Herts Ecology
27		20 August. 21	Greengage
28		26-Aug-21	Greengage to Herts Ecology
29		16-Sep-21	Herts Ecology
			<b>NOISE:</b>
30			BS4142
31		08-Mar-21	Cole Jarman: Superseded Noise Assessment
32		08-Apr-21	Springwell Residents and Conservation Society
33		20-Apr-21	Longmore Close: Objective Proof 24/7
34		21-Apr-21	Updated Noise Assessment
35		22-Apr-21	Environmental Health Officer
36		23-Apr-21	Cole Jarman
37		01-Jun-21	Maple Cross & West Hyde RA: Noise Report
38		01-Jun-21	Maple Cross & West Hyde RA: TRDC's DM9 & NPPF
39		16-Jun-21	Environmental Health Officer
40		28-Jun-21	Longmore Close: Petition
41		07-Jul-21	RSK Acoustics: Noise Response
42		26-Jul-21	Cass Allen
43		26-Jul-21	Longmore Close: Response to Cole Jarman
44		18-Aug-21	Env. Health Officer
45		19-Aug-21	Longmore Close
46		24-Jan-22	Officer's Recommendation
			<b>WATER:</b>
47		15-Jul-19	Planning Comment
48		08-Mar-21	DQRA Summary Report
49		11-Apr-21	Affinity Water
50		19-Apr-21	Maple Lodge Conservattion Society: Grndwater
51		18-May-21	Environment Agency: Objection remains

<b>INQUIRY REF:</b>	<b>PAGE NOS</b>	<b>DATE PUBLISHED/ONLINE:</b>	<b>DOCUMENT TYPE</b>
			<b>WATER continued</b>
52		19-May-21	Tier Ref T1999/PJB/EJJ
53		01-Jul-21	Fraser: Hydrological Impact Assess. & DQRA report
54		01-Jul-21	Environment Agency: Condition recommendations
55		12-Jul-21	Maple Lodge Conservation Society
56		18-Aug-21	Maple Lodge Conservation Society
57		24-Sep-21	Maple Cross & West Hyde RA
58		28-Sep-21	Maple Lodge Conservation Society
59		17-Dec-21	H Fraser Consulting: Impact Assess. Update
60		01-Jan-22	Maple Lodge Conservation Society
61		20-Jan-22	H, Fraser: Update
61		18-Feb-22	Environment Agency
			<b>TRAFFIC:</b>
63		08-Mar-21	Transport Assessment
64		08-Mar-21	Framework Travel Plan
65		26-Mar-21	Email from Agent
66		31-Mar-21	Herts County Council: traffic
67		01-Apr-21	Highways England: Proposed Condition
68		07-Apr-21	Herts CC Highways
69		19-Apr-21	Maple Cross & West Hyde RA
70		23-Apr-21	Appellant Email
71		12-May-21	BWB: Technical Note
72		09-Jun-21	Herts Highways
			<b>APPELLANTS CORRESPONDENCE:</b>
73		30-Mar-21	Amended Planning Statement
			<b>PILING:</b>
74		08-Mar-21	Method Statement & Risk Assessment
			<b>APPLICATIONS TO THE NORTH OF THE SITE:</b>
75		23-Feb-21	21/0424/RSP: Refused
76		31-Mar-21	20/2827/RSP: Refused
77		28-Jan-21	20/2774/RSP: Refused
78		28 Oct '21	20/2659/RSP: Refused
79		14-Dec-20	20/0068/ENFNOT & 17/0045/COMP
80		06-Oct-21	21/0015/REF: Inspector Rejected Appeal