

**s.78 of the Town and Country Planning Act 1990 (as amended)**

**Appeal against the non-determination of planning application ref.  
21/0573/FUL**

**Employment Land to the north of Maple Cross Lodge, Maple Cross,  
Rickmansworth**

**Proof of Evidence of Tim Sturgess BA (hons), Msc, LRTPI on behalf of  
BCL (Maple Cross) LLP**

March 2022

## Contents

1.	Introduction.....	1
2.	Site Context .....	4
3.	Planning History .....	6
4.	The Planning Application .....	7
5.	The Key Issues.....	10
6.	Planning Policy Framework.....	16
7.	Planning Assessment – Need for the Development .....	21
8.	Planning Assessment – Groundwater.....	30
9.	Planning Assessment – Biodiversity.....	31
10.	Planning Assessment – Noise .....	32
11.	Planning Assessment – Highways .....	33
12.	Planning Assessment – Air Quality.....	34
13.	Planning Assessment – Heritage .....	35
14.	Condition Matters.....	36
15.	S106 Matters .....	39
16.	Public Benefits .....	42
17.	Conclusions and Overall Planning Balance.....	43

## Appendices

Appendix I	Aerial Plan
Appendix II	Summary of Statutory Consultee Responses
Appendix III	Summary of Other Consultee Responses
Appendix IV	Summary of Third Party Responses
Appendix V	Green Belt Overlay Plan
Appendix VI	Transport Proof of Evidence
Appendix VII	Air Quality Proof of Evidence
Appendix VIII	Cultural Heritage Proof of Evidence
Appendix IX	Economic Benefits Assessment
Appendix X	Market Commentary

# 1. Introduction

## Qualifications and Experience

- 1.1 My name is Tim Sturgess and I am employed as a Director within the planning consultancy team at Avison Young.
- 1.2 I hold a degree in Geography and a Master's in Town Planning and Sustainability from Kingston University. I have been a town planning practitioner and Licentiate Member of the Royal Town Planning Institute (RTPI) since 2008.
- 1.3 I joined GVA Grimley Ltd in 2014 which merged with Avison Young in 2019. The firm provides real estate advisory, transactional and management services across the world. In the UK it has offices in London, Birmingham, Manchester, Bristol, Cardiff, Leeds, Newcastle, Liverpool, Edinburgh and Glasgow. It employs approximately 1,500 staff in the UK, including over 100 Town Planners. The planning consultancy team is part of the Planning, Development & Regeneration department and is involved in a number of significant development, regeneration and infrastructure schemes across the UK.
- 1.4 My role is focussed on statutory planning work. That is: planning appraisals; promotion of sites through the development plan process; and planning applications. My clients are principally landowners, developers, and investors spread across both the private and public sectors. My experience has been focussed in inner/suburban London and South East England, advising on mainly large-scale mixed use development.
- 1.5 I have acted as the Appellant's planning adviser in respect to the Appeal Site since 2019 and was responsible for the preparation of the planning application being considered at this inquiry.

## Scope of Evidence

- 1.6 The Appellant's case is set out in its Statement of Case (**CD5.1**). This Proof of Evidence follows and expands upon the Statement of Case.
- 1.7 This Proof of Evidence is submitted by me as a planning expert. It addresses what I consider to be the main planning matters associated with the Appeal and is structured as follows:

- **Section 2** – I describe the site and its context;
- **Section 3** – I explain the site’s planning history, with reference to the previous appeal;
- **Section 4** – I describe the proposed development, and explain the approach taken to the preparation of the application. I also summarise the timeline of events following the submission of the application up to the Appeal being lodged;
- **Section 5** – I summarise the consultation responses and set out matters that are agreed/not agreed with the Council and Rule 6 Party (with reference to the Statements of Common Ground). I then identify what I consider to be the key issues of relevance to determining this case;
- **Section 6** – I outline the framework of planning policy documents and guidance of relevance to the determination of the Appeal, provide my opinion of the appropriate weight to be afforded to each document, and identify the principal policies relevant to the key determining issues;
- **Sections 7-13** – I consider the principal relevant planning policies associated with the key determining issues and assess the extent to which the application accords with these policies, having regard to other material considerations;
- **Section 14** - I consider the conditions that are in dispute;
- **Section 15** – I consider the relevant Section 106 matters;
- **Section 16** – I consider the public benefits which are relevant in weighing the overall planning balance, particularly economic benefits and employment land supply matters; and
- **Section 17** – I conclude my evidence.

1.8 My evidence should be read alongside evidence submitted by the following experts which I refer to throughout:

- Mitch Cooke of Greengage, who covers biodiversity matters;
- Hannah Fraser of Hannah Fraser Consulting, who covers groundwater matters;
- Matthew Heyes of RSK Acoustics, who covers noise matters;
- Paul Wilson of BWB, who covers highways matters (enclosed at **Appendix VI** of this proof);

- Freya Hoyle of BWB, who covers air quality matters (enclosed at **Appendix VII** of this proof);
- Kathryn Sather of KSA Heritage Conservation Consultants, who covers heritage matters (enclosed at **Appendix VIII** of this proof).

- 1.9 My evidence makes reference to the Statement of Common Ground agreed with the Council on 1<sup>st</sup> March 2022 (**CD5.11**) alongside a Revised Statement of Common Ground with the Council on 29<sup>th</sup> March 2022 (**CD5.24**). It also makes reference to separate Draft Statements of Common Ground with the Rule 6 Party (currently being progressed at the time of writing); Affinity Water (**Appended to Evidence of Hannah Fraser**); Herts Ecology (**Appended to Evidence of Mitch Cooke**); and the Environment Agency (**Appended to Evidence of Hannah Fraser**). It also makes reference to a number of Core Documents and appendices attached to this document.
- 1.10 As a Licentiate Member of the RTPI acting as an Expert Witness in a Public Inquiry, I am bound by the RTPI Code of Professional Conduct (February 2016). I confirm that the opinions expressed are my true professional opinions.

## 2. Site Context

### The Site

- 2.1 The Site comprises an irregular shaped parcel of undeveloped land comprising 3.4 hectares (refer to Site Location Plan of Application Drawings **CD1.1.1**). It forms part of the Maple Cross/Maple Lodge Employment area in the secondary centre of Maple Cross.

### Surroundings

- 2.2 The wider surrounding area comprises a mix of employment (office, industrial and storage), residential uses, open space and agricultural land (refer to Aerial Plan at **Appendix I**).
- 2.3 Beyond the access road to the north is a large area occupied as storage. To the east of the access road is an area of land which comprises former landfill (sludge beds) /storage area which is bound by the River Colne/Springwell Lake and the Maple Lodge Marsh (MLM). These areas are both designated as Green Belt.
- 2.4 Adjacent to the south is open space (private Thames Water cricket pitch) and beyond this is the Thames Water Treatment Works, which occupies a significant land holding. Part of this landholding is leased to the Maple Lodge Conservation Society, which forms the Maple Lodge nature reserve (MLnr), located 150m south of the site beyond Maple Lodge Close. It is my understanding that whilst visitors are welcome by appointment, the MLnr is accessible by way of annual subscription to the Maple Lodge Conservation Society.
- 2.5 Adjacent to the north west of the Site is a cluster of employment uses situated within the Maple Cross/Maple Lodge Employment area which is the principal employment area for Maple Cross.
- 2.6 The residential area to the west of the Site comprises low density two/three storey terrace houses. This residential area is accessed from the south of Maple Lodge Close. This area is separate from the main area of residential development within Maple Cross which is west of Denham Way (A412).

## Accessibility

- 2.7 The Site benefits from informal pedestrian access, but no formal vehicular crossover. An existing access road runs north/south along the eastern boundary accessed from Denham Way (A412) to the north which serves the Thames Water Waste Treatment site to the south. An existing pedestrian footpath runs along the northern part of the access road but terminates at an existing gateway.
- 2.8 Denham Way (A412) runs north to south through Maple Cross connecting Rickmansworth to the north and West Hyde to the south. It also provides access to the M25 via Junction 17 (circa 1.5km from the Appeal Site). Refer to Aerial Plan at **Appendix I**.
- 2.9 It is common ground with the Council that the Site is considered to be reasonably accessible to modes of transport other than the private car and complies with the NPPF in this regard. It is my view that the Site is a sustainable location for new employment development.

## Committed and Emerging Development

- 2.10 The Maple Cross/Maple Lodge Employment area is seeing a turnover of occupiers which is a direct response to market conditions. Refer to Aerial Plan at **Appendix I**. This translates to planning permissions/applications within the employment area that are of relevance.
- 2.11 It is common ground with the Council that the Witney Place planning permission (ref. 07/1401/FUL), for the erection of a four-storey hotel, has been implemented but not built out. It is my view that this implemented planning permission has been correctly and robustly considered as a committed development as part of the assessment of the application for this Site.
- 2.12 Hertford Place (existing office use) and associated car park is subject to a live planning application (ref. 22/0033/FUL) for redevelopment for flexible employment use. This follows approval of a Prior Notification for Demolition (ref. 21/1834/PDND). It is my understanding that at the time of writing demolition has not yet taken place.
- 2.13 I refer to further planning history details of the recent and emerging context set out in **Table 2.2** of the Revised Statement of Common Ground with the Council (**CD5.24**).

### 3. Planning History

- 3.1 The Site has a limited planning history with the exception of the previous planning application and appeal ref. APP/P1940/W/19/3243565 which is detailed in the Planning Statement **(CD1.2.4, Section 2)**.
- 3.2 The Planning Inspectorate determined that appeal on 21<sup>st</sup> September 2020. Refer to the appeal decision **(CD3.9)**. This is referred to as the 'Previous Appeal'.
- 3.3 It is common ground with the Council that the Previous Appeal was dismissed on a single ground on the basis that the Inspector found that there was insufficient evidence at that time to be certain that the potential effect on the public water supply could be satisfactorily addressed by way of conditions. All other matters were (otherwise) considered to be acceptable.
- 3.4 This issue has been comprehensively addressed through the application submission for the proposed development to which this appeal relates and is set out in full within the evidence of Hannah Fraser. Indeed, it is now a matter of common ground with the Council, Affinity Water (as statutory water undertaker) and the Environment Agency. Accordingly, the single residual issue arising from the last appeal has now been addressed and (as the Council accept) should result in the grant of planning permission.

## 4. The Planning Application

### The Proposed Development

- 4.1 The Proposed Development is intended to make a significant contribution to meeting the employment need through the development of this allocated employment site.
- 4.2 The application is for full/detailed planning permission.
- 4.3 Revisions were made to the proposed development following submission which are summarised in the agreed Statement of Command Ground (**CD5.24, Section 3**).
- 4.4 It comprises two new purpose built warehouse buildings for employment use (Class E(giii)/B2/B8) with ancillary E(gi) office space and access, parking, landscaping works and associated works. Specifically it includes:
- The erection of two warehouse units for flexible Class E(giii)/B2/B8 use comprising:
    - Unit 1 totalling 8,827sqm (GIA) including 1,004 ancillary office space;
    - Unit 2 totalling 7,289 sqm (GIA) including 878 ancillary office space;
  - Improved pedestrian and cycle connectivity and associated vehicle and cycle parking:
    - 142 car parking spaces, including 29 active space and 43 passive Electric Vehicle Charging Point provision;
    - 38 HGV (lorry) parking spaces;
    - Up to 57 long-term cycle parking spaces (subject to future use);
  - Integrated landscaping works; and
  - Associated technical works including provision of relevant accesses, drainage and junction improvements.
- 4.5 I will refer to the Design and Access Statement (**CD1.2.5**) and application plans and documents to further describe the proposed development, with specific reference to the original submitted planning drawings (**CD1.1.1**) and supporting documents (**CD1.2**) along with the revised planning drawings (**CD1.1.2**) and revised and supplementary supporting documents (**CD1.3**) as necessary.

- 4.6 I will also refer to the plans for determination (Proposed Drawings) listed in Revised Statement of Common Ground (**CD5.24, Table 3.1**) which are agreed with the Local Planning Authority and set out in the proposed set of draft conditions (**CD.5.23**).

## The Application Process

### *Pre-Application*

- 4.7 The Appellant undertook pre-application consultation both in relation to the Previous Appeal and the proposed development to which this appeal relates.
- 4.8 In relation to the Previous Appeal, this included a formal pre-application meeting with officers at Three Rivers District Council (TRDC) in February 2019. Detailed scoping with Hertfordshire County Council (HCC) and Highways England (HE) was also undertaken to agree the scope of the transport assessment.
- 4.9 The Appellant continued to engage with key consultees following the Previous Appeal decision. This included discussions with the Local Planning Authority (LPA); Environment Agency; HCC contaminated land officers; Herts Ecology; and Affinity Water, as set out in detail in the evidence of Hannah Fraser.
- 4.10 I will refer to the Planning Statement (**CD1.2.4, Section 5**) in relation to the pre-application engagement process for further details.

### *Post-submission*

- 4.11 The Application was submitted to the Council and validated on 5<sup>th</sup> March 2021 (**CD2.8.2**).
- 4.12 Whilst the process of resolving issues raised has been protracted, the application has been subject to a robust assessment whereby there are no objections from statutory consultees. I note that this is also in the context of the recent Previous Appeal, which is as a material consideration of significant weight.
- 4.13 The Council's Environmental Health Officer confirmed no objection subject to conditions (**CD2.4.9**) following a review of the submitted Planning Noise Assessment (**CD1.2.18**) and Independent Noise Assessment (**CD2.4.6**) commissioned by the Maple Cross and West Hyde Residents Association.

- 4.14 Hertfordshire Ecology confirmed no objection (**CD2.2.21**) having reviewed the submitted Preliminary Ecological Appraisal (and associated surveys) and NVC Survey, and in undertaking their own NVC Survey of the Site.
- 4.15 Hertfordshire County Council Highways confirmed no objection (**CD2.3.9**) having requested further scope of assessment beyond that previously sought and considered as part of the Previous Appeal.
- 4.16 The Appellant agreed to multiple extensions of time totalling c. 9 months to deal with matters raised during the course of the Application, despite this being an allocated site. This resulted in the Application being taken to Planning Committee on 21<sup>st</sup> October 2021 with a recommendation for approval. Refer to Committee Report (**CD3.1**).
- 4.17 At Planning Committee, Members resolved to defer the Application against officers' unequivocal recommendation (**CD 3.1, Page 1**). The approved minutes (**CD3.2, Page 9**) cite the reason for the deferral.

*Post-Lodging of the Appeal*

- 4.18 Following submission of the Appeal, the Application was reported to an Extraordinary Planning Committee on 8<sup>th</sup> February 2022.
- 4.19 The 8<sup>th</sup> February Committee Report (**CD3.10, Page 1**) confirms that the Council had instructed a Hydrogeologist to review the Application and that the work was ongoing following Members' instruction at Planning Committee on 21<sup>st</sup> October 2021. It was noted that the Council was also looking to instruct an ecologist. However, as the work was not complete the outcome of these reviews was not available to the Council. Even considering the decision to defer, the Committee Report set out officers' unequivocal recommendation for approval.
- 4.20 The Council's minutes of the Extraordinary Planning Committee (**CD3.11, Page 17**) confirm Members' resolution.
- 4.21 A Statement of Common Ground was agreed on 1<sup>st</sup> March 2022 (**CD5.11**) which confirmed the only matter in dispute to be whether the hydrogeological impacts of the development on the Maple Lodge Nature Reserve (not the water supply) have been fully understood or that the suggested conditions to control such impacts would meet the requirements of the NPPF

(paragraph 174) and Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

- 4.22 In addition, the draft conditions set out within the committee report were not agreed. Specifically, it was not agreed that draft condition 7 (Groundwater Levels), as drafted by the LPA in the 21<sup>st</sup> October planning committee report (**CD3.1, C7**) meets the test of Paragraph 55 of the NPPF.
- 4.23 The Appellant and Council have continued engagement on the matters of disagreement.
- 4.24 The Council's Peer Review Technical Note, prepared by McCloy Consulting, was received on 8<sup>th</sup> March 2022 (**CD5.13**). This confirms that subject to conditions, the proposed development's effect on the groundwater and Maple Lodge Nature Reserve can be managed and appropriately mitigated.
- 4.25 The Council subsequently issued an Addendum Statement of Case on 10<sup>th</sup> March 2022 (**CD5.14**) which confirms that the Council has concluded that there are no sound and clear cut reasons for the refusal of planning permission for the proposed development subject to conditions.
- 4.26 Therefore, with the exception of matters of disagreement concerning conditions relating to operating hours and noise, the remaining conditions are agreed with the Council (**CD5.23**). There is also an agreed Section 106 with the Council.
- 4.27 Therefore, there is a powerful consensus of professional and independent technical evidence, which demonstrates that the residual issue from the last appeal has been comprehensively addressed and that there is no extant objection to this proposal, which complies with the statutory development plan. Had the Council still been seised of the determination, they would have already granted planning permission. Significant weight should attach to the consensus reach with the Council, in the light of the agreed technical evidence.
- 4.28 I will refer to the Council's addendum (**CD5.14**) and the Revised Statement of Common Ground (**CD5.24**).

## 5. The Key Issues

- 5.1 The key issues have been identified by the Inspector in their Case Management Conference note **(CD5.22)** as the effect of the proposal on:
- a) groundwater with regard to the hydrogeological impact on the Maple Lodge Nature Reserve and public water supply;
  - b) biodiversity interests, in particular biodiversity net gain and the Forester Moth;
  - c) the living conditions of the occupiers of local residential properties by way of noise from traffic and the operation of the proposal; and
  - d) planning balance (including the benefits of the scheme if not a separate issue) and the conclusion.

### Statutory Consultee Responses

- 5.2 A summary of all Statutory consultee responses is set out in **Appendix II** with those relevant to the key issues included below.

*Environment Agency (CD2.1.9, CD2.1.13, CD2.1.17, CD2.1.18)*

- 5.3 No objection subject to conditions. This was agreed following initial objections which were overcome through the submission of additional evidence in relation to potential impacts on the MLnr.

*Natural England (CD2.2.16)*

- 5.4 No objection. It is noted that Natural England were consulted on the Application in relation to the Forester moth. In their view the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

### Other Consultee Responses

- 5.5 A summary of all other consultee responses are set out in **Appendix III** with those relevant to the key issues included below.

*Hertfordshire Ecology (CD2.2.2, CD2.2.5, CD2.2.6, CD2.2.10, CD2.2.11, CD2.2.21)*

- 5.6 No objection, subject to conditions and a Section 106 obligation securing 10% biodiversity net gain. This is addressed further in the evidence of Mitch Cooke.

*TRDC Development Plans Team (Planning Policy) (CD2.8.8)*

- 5.7 No objection. In their view due to the sites formal allocation for employment uses and the future need to provide employment floorspace, the site is considered suitable for the proposed uses and development is supported.

*Affinity Water (CD2.1.8)*

- 5.8 No objection, subject to conditions. This position was reached after detailed engagement between the Applicant and AW, which is set out in detail in the evidence of Hannah Fraser.

*Environmental Health (Residential) – Noise (CD2.4.5)*

- 5.9 No objection, subject to conditions.

*Environmental Health (Commercial) – Land Contamination (CD2.8.10)*

- 5.10 No objection, subject to conditions.

**Third Party Representations**

- 5.11 A summary of third party responses is set out in **Appendix IV** and Section 4.2 of the Council's committee report (CD3.1).
- 5.12 The Maple Lodge Conservation Society has jointly formed a Rule 6 party with the Maple Cross & West Hyde Residents Association. As part of this process the range of objections has been reduced and is set out further below.
- 5.13 The Appellant is in the process of seeking agreement of a Statement of Common ground with the Rule 6 party.

**Matters of Disagreement with Council**

- 5.14 As initially outlined in the Council's Statement of Case (**CD5.9**), the only matters of disagreement between the Appellant and the Council at the point of putative determination related to: (i) whether the hydrogeological impacts of the development on the Maple Lodge Nature Reserve have been fully understood; (ii) whether the suggested conditions to control such impacts would meet the requirements of the NPPF (paragraph 174) and Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management

Policies LDD (adopted July 2013); and (iii) the full set of draft conditions was also not agreed. Refer to the Statement of Common Ground with the Council **(CD5.11, Section 7)**.

- 5.15 Since the agreement of the initial Statement of Common Ground **(CD5.11)** the Council's Peer Review Technical Note, prepared by McCloy Consulting was received on 8<sup>th</sup> March 2022 **(CD5.13)**. The report confirms that subject to conditions, the proposed development's effect on the groundwater and MLnr can be managed and appropriately mitigated.
- 5.16 The Council subsequently issued an Addendum Statement of Case on 10<sup>th</sup> March 2022 **(CD5.14)** which concluded that there are no sound and clear cut reasons for the refusal of planning permission for the proposed development subject to conditions. On this basis there is nothing left in dispute with the Council save detailed condition wording which is addressed in **Section 14** of this Proof.
- 5.17 I will refer to the Council's addendum Statement of Case **(CD5.14)** and a Revised Statement of Common Ground **(5.24)**.

### **Matters of Disagreement with Rule 6 Party**

- 5.18 Maple Cross & West Hyde Residents Association and the Maple Lodge Conservation Society has formed the Maple Cross Residents Environment Group (MCREG). The group requested Rule 6 status on 7<sup>th</sup> February 2022 noting that the topics they wished to address were: noise; water; biodiversity; endangered species; and air pollution **(CD5.6)**. Rule 6 status was granted by PINs on 7<sup>th</sup> February **(CD5.7)**.
- 5.19 The Rule 6 Party issued its Statement of Case **(CD 5.12)** on 4<sup>th</sup> March 2022 which limits the issues to:

*Noise: to ensure the protection of residents' current good standard of amenity, their health and well-being.*

*Maple Lodge Nature Reserve & Maple Lodge Marsh: ensure the protection and sustainability of their Section 41 habitats.*

*Biodiversity and the Forester Moth: Should the development be sanctioned then Biodiversity Net Gain must be demonstrated to be achievable using a recommended tool.*

*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.*

- 5.20 The Statement of Case must set out the full particulars of the case. The impact on groundwater and any consequential impacts to the nature reserve do not, therefore, form part of the Rule 6 Party's objection.
- 5.21 Indeed, the Rule 6 Party emailed PINs on 4<sup>th</sup> March 2022 (**CD5.15**) confirming that following legal advice the Party is no longer pursuing the challenge to the issue of the public drinking water supply and in addition, with regards to the MLnr should the specific conditions outlined by the Environment Agency be fully adhered to the Rule 6 Party believes that the MLnr's Section 41 habitats should be protected from harm.
- 5.22 The Appellant has sought a Statement of Common Ground with Rule 6 Party to seek clarity on the outstanding issues in dispute including conditions.
- 5.23 However, it should be noted that (in the light of such issues being raised at the application stage and in the SoC), it is the Council's case that planning permission should nonetheless be granted.

### Conditions

- 5.24 I will refer to the agreed schedule of conditions (**CD5.23**).
- 5.25 I will refer to this as to where there is agreement between the relevant parties.
- 5.26 I refer to **Section 14** of this Proof for those conditions which are in dispute with the Council.

### Section 106 Agreement

- 5.27 The Section 106 heads of terms are set out in the Council's Committee Report (**CD3.1**) and the Revised Statement of Common Ground with the Council (**CD5.24**).
- 5.28 The Appellant and the Council are agreed on the terms of all necessary planning obligations as confirmed by the Revised Statement of Common Ground with the Council (**CD5.24**).
- 5.29 The Appellant and the Rule 6 Party are expected to agree on terms of all necessary planning obligations with the exception of the financial contribution towards biodiversity net gain and

compensation in respect of the Forester moth (if it is assumed to be present, contrary to the survey evidence).

- 5.30 **Section 15** of this Proof sets out those Section 106 matters. The draft Statement of Common under preparation between the Rule 6 Party and Appellant sets out the matters which are in dispute with the Rule 6 Party in further detail.

### The Key Determining Issues

- 5.31 The Council's Addendum Statement of Case (**CD5.14**) confirms that there are no remaining matters of disagreement with the Council. This is confirmed by the revised Statement of Common Ground with the Council (**CD5.24**). None of the main issues are therefore in dispute with the Council, who now consider that planning permission should be granted, consistent with their allocation of the site.
- 5.32 In my view these key issues should be considered in the context of the in-principle acceptability of the proposed development (refer to the Revised Statement of Common Ground, (**CD5.24**) and the public benefits associated with it, in particularly the economic benefits (refer to **Section 16** of this Proof).

## 6. Planning Policy Framework

- 6.1 S.38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

### The Development Plan

- 6.2 The adopted Development Plan comprises:
- Three Rivers Core Strategy 2011-2026 (2011) **(CD4.29)**;
  - Development Management Policies (2013) **(CD4.30)**; and
  - Site Allocations Local Development Document (2014) **(CD4.31)**.

### Policy Designations

- 6.3 The Site is subject to the following site/area specific Local Plan policies:
- The adopted Policies Map (2014) identifies the site as within an Employment Area (Site Allocation SA2 E(d)) **(CD4.14)**.
  - Policy SA2 safeguards allocated employment sites for business, industrial and storage or distribution uses (Classes B1c/B2/B8) (B1c now E(g)(iii)).
  - The Site is subject to a Tree Preservation Order (TPO) (ref. 493) (refer to **Appendix 4 of CD1.2.8**).
  - A small part of the site is designated as Green Belt (refer to **Appendix V**).
- 6.4 It is common ground with the Council that the Site is allocated for development within the Site Allocations LDD (2014) and therefore the principle of development is not in dispute. Refer to site allocation SA2 E(d) **(CD4.14)**. Rather, the principle of development is in accordance with an up to date development plan allocation.
- 6.5 The South West Herts Employment Land Update (2010) **(CD4.36)** which formed the evidence base for the Site Allocation LDD identifies a shortfall in supply of 13,000-14,000 sqm (c. 3.5ha) of industrial and warehousing floorspace to 2026 and 2031 **(CD4.36, para. 5.48)**.

6.6 The 2010 study recommended the allocation of this Site to deliver this requirement in its entirety (i.e. 14,000 sqm) **(CD4.36, para. 5.49)**.

6.7 This is considered further in **Section 7** of this Proof.

### Key Development Management Policies

6.8 The Revised Statement of Common Ground **(CD5.24)** provides a list of Development Plan policies of relevance to the Application. **Table 6.2**, below, identifies the principal policies of relevance to the key determining issues identified in the previous section.

### Emerging Plan

6.9 The Council is progressing a Local Plan which will provide the planning policies and proposals for growth in the District up to 2032. A summary of the current position is included in the Revised Statement of Common Ground **(CD5.24, Section 5)**.

6.10 NPPF Para. 48 confirms that weight may be given to relevant policies in emerging plans according to the stage of preparation; the extent to which there are unresolved objections to relevant policies; and the degree of consistency with the NPPF. The draft Plan is at a very early stage and has not yet been subject to public examination and is subject to unresolved objections, therefore in my opinion limited weight should be afforded to its policies at this point in time.

6.11 The Council has prepared a suite of reports which comprise the evidence base to inform the preparation of the draft Local Plan. These are technical reports undertaken by independent experts. Significant weight can be attached to such reports as evidence (as distinct from emerging policy).

6.12 Of relevance, the more recent South West Herts Economic Study Update (2019) **(CD4.32)** continues to identify a shortfall in industrial floorspace, which has increased to a deficit of 39,945 sqm (c. 10ha) **(CD4.32, para 5.49)**.

6.13 The Council's Authority Monitoring Reports (AMR) provide further evidence of the need for employment floorspace since the 2019 report was published. Table 6.2 in both the 2019-2020 AMR **(CD4.53)** and 2020-2021 AMR **(CD4.54)** sets out the amount of employment floorspace developed in the District, and specifically within allocated employment areas.

Table 6.3 in both AMRs (**CD4.53 and 4.54**) then sets out the amount of employment floorspace lost in the District, and also specifically within allocated employment areas.

- 6.14 The tables are summarised in **Table 6.1** of this Proof below.
- 6.15 This shows that there has been a net loss of 2,449 sqm industrial floorspace (B1c, B2 and B8) over the two year period within the District. Furthermore, there has been a net loss of 2,305 sqm within allocated employment areas over the two year period.
- 6.16 Together with the South West Herts Economic Study Update (2019) (**CD4.32**) such evidence demonstrates that the capacity to meet the need for employment floorspace in TRDC is further constrained.

Table 6.1: Summary of Table 6.3 and 6.4 of TRDC 2019-2020 AMR and 2020-2021 AMR

	B1	B1a	B1b	B1c	B2	B8	Total
<i>Amount of Employment Floorspace Developed in the Employment Site Allocations</i>							
<i>Gross (sqm)</i>							
2019-2020	4,824	0	0	0	226	647	5,697
2020-2021	0	58	0	0	0	445	503
<b>Total</b>	<b>4,824</b>	<b>58</b>	<b>0</b>	<b>0</b>	<b>226</b>	<b>1,092</b>	<b>6,200</b>
<i>Gross in Employment Area (sqm)</i>							
2019-2020	0	0	0	0	0	647	647
2020-2021	0	0	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>647</b>	<b>647</b>
<i>% in Employment Area</i>							
2019-2020	0	0	0	0	0	100%	647
2020-2021	0	0	0	0	0	0	0
<i>Amount of Employment Floorspace Lost in the Employment Site Allocations</i>							
<i>Loss (sqm)</i>							
2019-2020	0	4,917	0	0	0	3,767	8,684
2020-2021	192	1,267	0	0	0	0	1,459
<b>Total</b>	<b>192</b>	<b>6,184</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,767</b>	<b>10,143</b>
<i>Loss in Employment Areas (sqm)</i>							
2019-2020	0	4,788	0	0	0	2,952	7,740
2020-2021	192	0	0	0	0	0	192
<b>Total</b>	<b>192</b>	<b>4,788</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,952</b>	<b>7,932</b>
<i>% in Employment Area</i>							
2019-2020	0%	97.4%	0%	0%	0%	78%	89%

2020-2021	100%	0%	0%	0%	0%	0%	13%
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## Material Considerations

### *Previous Appeal*

- 6.17 As noted earlier in this Proof the Previous Appeal was dismissed on a single ground on the basis that the Inspector found that there was insufficient evidence at that time to be certain that the potential effect on the public water supply could be satisfactorily addressed by way of conditions.
- 6.18 It is noted that the NPPG is clear that local planning authorities are at risk of an award of costs if they behave unreasonably, which includes persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable (Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014). There is, therefore, no reasonable basis to persist in objections to this scheme which have already been heard and dismissed at a previous appeal.
- 6.19 The proposed development is not materially different from Previous Appeal and remains principally the same in terms of scale, layout and massing, with only minor amendments to car parking layouts and accesses. Furthermore, there has been no material change in circumstances. The Previous Appeal decision letter (**CD3.9**) is, therefore, a material consideration of significant weight in favour of development because there should be consistency of decision making.

### *National Planning Policy and Guidance*

- 6.20 The NPPF (**CD4.34**) is a material consideration in planning decisions (NPPF para. 2) as is the associated Planning Practice Guidance (PPG). NPPF paragraphs and of relevance to the determination of the appeal are identified in the Revised Statement of Common Ground (**CD5.24**).

### *Supplementary Planning Documents*

- 6.21 NPPF Annex 2 defines Supplementary Planning Documents (SPDs) as being documents which add further detail to the policies of the development plan and confirms that SPD's are capable of being material considerations in planning decisions, while not part of the

development plan. The PPG clarifies that the policies (that SPD’s supplement) should be within an adopted local plan and that SPDs cannot introduce new planning policies into the development plan (Paragraph: 008 Reference ID: 61-008-20190315).

6.22 It is my opinion that there are no SPDs of relevance to the proposed development. This is confirmed by the absence of any SPDs in Section 5 of the Revised Statement of Common Ground with the Council (**CD5.24, Section 5**).

**Summary**

6.23 **Table 6.2** below draws together the evidence set out above and summarises my view on the principal relevant decision-making framework applicable to each of the key determining issues identified in the previous section. The weight to be afforded to each is as per that set out above.

*Table 6.2: Principal Policies of Relevance to Key Determining Issues*

Key Determining Issue	NPPF/PPG	Three Rivers Core Strategy	Development Management Policies	Site Allocations Local Development Document
Principle of Development	Paragraphs as appropriate throughout	PSP3 CP1		SA2
Land Use and Amount		PSP3 CP6		SA2
Groundwater		CP1 CP8	DM6 DM8 DM9	
Biodiversity		CP1 CP9	DM6	
Noise		CP1	DM9	
Transport		CP1 CP10	DM13	
Air Quality		CP1	DM9	
Heritage		CP10	DM3	

6.24 I will refer to the relevant policy framework documents for full extracts of the relevant policies.

## 7. Planning Assessment – Need for the Development

- 7.1 The principle of development is determined by the site allocation and is agreed with the Council. No party disputes that the allocation is not up-to-date. Indeed, the need for this proposal is confirmed by the latest Council evidence.
- 7.2 The Council propose to continue to allocate the Site for employment development as part of the emerging Local Plan. There is no doubt that the redevelopment of the Site is, in principle, acceptable. Therefore, any development specific impacts must be considered in this context.

### Need for the Development

- 7.3 There is a clear evidence base underpinning the need for development which has informed the site allocation.
- 7.4 The South West Hertfordshire Employment Space Study (2005) **(CD4.35)** formed part of the evidence base to the current Development Plan on employment matters.
- 7.5 It identifies Maple Cross as a good quality employment location. It benefits from excellent strategic and local access, being less than 1 mile away from Junction 17 of the M25. The Employment Area is also self-contained, largely separated from the adjacent residential areas of Maple Cross, with the exception of residential properties south of Maple Cross House (Skanska). The existing buildings within the Employment Area provide a degree of critical mass. Other than the greenfield site at Leavesden Aerodrome, it is the only area in the District where a significant supply of land is available for development **(CD4.35, para. 6.80)**.
- 7.6 Notwithstanding this, the South West Hertfordshire Employment Space Study (2005) clearly identified that TRDC could not afford to lose any industrial/warehouse sites over and above current planning commitments in order to meet forecast future demand to 2021 **(CD4.35, para. 25, bullet 2)**.
- 7.7 The evidence base was supplemented by the South West Herts Employment Land Update (2010) **(CD4.36)**. It was commissioned to advise on employment land polices to be included within the (then) emerging development plans (now adopted Development Plan). It identified a net loss of 7,500 sqm industrial and warehousing floorspace. This net loss

- included the potential site at Maple Cross (the Site subject of this appeal) as a commitment to deliver c.16,000 sqm (**CD4.36, para 5.36**).
- 7.8 The South West Herts Employment Land Update (2010) identifies a shortfall in supply of 13,000-14,000 sqm of industrial and warehousing floorspace to 2026 and 2031 (**CD4.36, para 5.48**).
- 7.9 In terms of land required to deliver floorspace need, the 2005 and 2010 Studies identify industry practice of the application of a 40% plot ratio (4,000 sqm of floorspace per hectare of site area) for industrial/warehousing space (**CD4.35, para 5.49 & CD4.36, para 4.84**). This equates to c. 3.5ha of land requirement. Notwithstanding this, floorspace should be the reliable measure over site area (**CD4.35, para 5.49**).
- 7.10 The Site at Maple Cross was the only site identified by the 2010 Study with the potential to deliver additional industrial and warehouse floorspace in the District (**CD4.36, para. 5.49, bullet 3**). It was therefore recommended to come forward for development.
- 7.11 It was on the basis of such evidence that the Site was allocated. The principle of development is therefore acceptable to meet an objectively assessed need for employment development. This remains the up to date position.
- 7.12 Whilst the emerging policies of the draft Plan can be afforded limited weight, significant weight can attach to the latest Economic Studies are pieces of evidence, as they are the most up to date evidence base and have been undertaken by competent independent consultants and they are endorsed by the Council (as LPA).
- 7.13 The South West Herts Economic Study (2016) (**CD4.37**) and subsequent South West Herts Economic Study Update (2019) (**CD4.32**) provide guidance on land use allocations required to meet potential needs.
- 7.14 The most recent Study (2019) (**CD4.32**) continues to identify a shortfall in industrial space, which has increased to a deficit of 39,945 sqm (c. 10ha) (**CD4.32, para 5.49**). It is recommended that the existing site allocations (including the Site subject to this appeal) are retained for employment use (**CD4.32, Table 10.2**). The Site is recognised as the only site with potential for intensification. Whilst it is noted that the Site is constrained, it has been demonstrated that these matters have been overcome.

- 7.15 Furthermore, the 2019 Study (**CD4.32**) identifies a lack of supply of land suitable for industrial uses in Three Rivers, with a recommendation to consider allocating additional sites to meet the needs of businesses serving local markets. This suggested further release of the Green Belt should be considered in Maple Cross.
- 7.16 It is my view that this places significant weight on the requirement to optimise the Site to deliver on the identified need through this allocated site, as the alternative is the release of greenfield Green Belt land. Green Belt land cannot be released while there is suitable viable and available alternatives on allocated sites. This Site must, therefore, be developed in accordance with the adopted and emerging Development Plan.
- 7.17 Further, I refer to the up-to-date Market Commentary provided DTRE (**Appendix X**) in their role as a market-leading property advisory firm specialising in the warehouse / logistics and office sectors. There continues to be strong occupier demand and lack of stock in London and the South East. Speculative development opportunities remain dominant due to the extended (c.18 month) timescales associated with 'build to suit development'. Occupiers will flex their requirements accordingly as such to take up speculative development.
- 7.18 DTRE has assisted in informing these proposals in order to maximise their occupational appeal. Furthermore, there are known occupier requirements in a range of sectors with the ability to operate within the proposed flexible E(g)(iii), B2 and B8 use which this development will provide for.

### Planning for Identified Need

- 7.19 NPPF para. 15 provides that the planning system is to be plan-led with up-to-date plans providing a framework for addressing economic priorities.
- 7.20 The Core Strategy spatial vision (**CD4.55**) is underpinned by strategic policy objectives to deliver the vision. This includes providing opportunities for local employment (**CD.4.55, part d**). The purpose of the strategic objectives is to assist the delivery of the spatial vision. Strategic Objective S4 seeks to provide sufficient land to maintain a prosperous economy. It is clear that for employment, this means meeting local needs in terms of the type of jobs and employment sectors. This is consistent with NPPF para. 22 and 81-83.

- 7.21 Place-shaping policies have been set to provide fundamental principles to deliver the spatial vision and strategic objectives. Core Strategy Policy PSP3 provides the place-shaping policy for secondary centres including Maple Cross, directs an extension of employment floorspace at Maple Cross/Maple Lodge **(CD4.21, part c)**.
- 7.22 The evidence base underpinning the Core Strategy strategic policies identified the required expansion of business activity at Maple Cross, with reference to Core Strategy Figure 5 **(CD4.56)** identifying an Extended Employment Area in Maple Cross. This is consistent with NPPF para. 23 and 81-83.
- 7.23 Core Strategy Policy CP6 recognises the Site Allocations LDD as the appropriate tool to identify sites for additional employment floorspace, as also required by NPPF para. 23 and 81-83.
- 7.24 Whilst this part of the Site formerly comprised designated Green Belt, the proposed change within the Site Allocations LDD was brought forward through the local plan process. It was therefore considered that there were exceptional circumstances to amend the Green Belt boundary, to allow for the development of the Site for employment purposes.
- 7.25 Consultation on the Site Allocations LDD was undertaken by the Council and the outcome has been well documented at each stage as follows:
- The Site Allocations Issues and Options Report of Public Consultation (November 2010) **(CD4.38)** which identified a majority (79%) in support for the amendment to the Green Belt boundary and extension of the employment area (Site E(e)) to cover the Site **(CD4.38, Page 9)**
  - This was proceeded by the Site Allocations Preferred Options Report of Public Consultation (January 2012) **(CD4.39)** identifying majority support (76%) **(CD4.39, Page 54)**.
- 7.26 The Proposed Submission Version (November 2012) **(CD.4.40)** proposed the extension of the existing Maple Cross/Maple Lodge Employment Area to include the Site.
- 7.27 During examination the Inspector raised the question (3.1) to Main Issue (Main Issue 3) as to whether the amount of additional employment land identified is adequate to achieve the intentions of the Core Strategy as set out in Policy CP6 and those of the Framework.

- 7.28 The Council's Statement of Response to Main Issue 3 (**CD4.41**) confirmed the South West Herts Employment Land Update (2010) had been used to inform the proposed allocation, and that the 3.5 ha of additional land should be developed at Maple Cross to address an undersupply of land for industrial and warehousing space (**CD4.41, para. 1.4**).
- 7.29 During examination the Inspector also raised the question (3.1) (Main Issue 3) as to whether the Site Allocations LDD provides satisfactorily for the amount and type of local employment, shopping and green infrastructure envisaged the Core Strategy. The Council confirmed in its Statement in Response that the quality of land identified is adequate to the task (**CD4.41, para. 2.2**).
- 7.30 It was also confirmed that statutory consultees, the Environment Agency and Hertfordshire Biological Records Centre raised no objection to the inclusion of the additional employment land within the Site Allocations LDD. There cannot, therefore, be any ecological objection which questions the principle of development.
- 7.31 The Inspector's Report to the Site Allocations LDD (**CD4.42**) recognised at that time the landowners were supportive of the wider allocation in that it is qualitatively suitable for industrial and warehousing development and confident of achieving development of that type. The Inspector's Report confirms this allocation was necessary for soundness (**CD4.42, para. 42**).
- 7.32 The Inspector concluded the Site Allocations LDD sound following main modifications. Therefore, the Site Allocations LDD has been prepared in accordance with NPPF para. 35.

### **Delivering on Need - Compliance with the Site Allocation**

- 7.33 It is recognised that the Site does not fall within the NPPF definition of previously developed land.
- 7.34 It is common ground with the Council that the majority of the Site is outside of the Metropolitan Green Belt, and that this land is allocated under Policy SA2d(e) for employment by the Site Allocations LDD (2014) (**CD4.14**).

- 7.35 It is also common ground with the Council that the proposed E(g)(iii)/B2/B8 and ancillary E(g)(i) land use of the Site is supported by Policy SA2d(e) (**CD5.24, para 6.3**). Indeed, the Site is safeguarded for this purpose and cannot be developed for any other use.
- 7.36 The proposed development comprises two units: Unit 1 totalling 8,827sqm (GIA) including 1,004 ancillary office space and Unit 2 totalling 7,289 sqm (GIA) including 878 ancillary office space. Together these provide 16,116 sqm (GIA) floorspace. When excluding the ancillary office space, the units combined will deliver 14,234 sqm (GIA) floorspace. Applying the application site area (3.4ha), the development will make effective use of land (NPPF para. 119) with a plot ratio of 0.42, exceeding the industry standard 0.4, and that assumed by the evidence base in allocating the Site to deliver 13,000-14,000 sqm of warehouse/industrial floorspace.
- 7.37 NPPF para. 81 requires planning policies and decisions to help create conditions in which businesses can invest. This applies in its entirety to this allocated site specifically as a speculative development. Furthermore, NPPF para. 83 requires policies and decisions to recognise and address locational requirements, specifically referencing storage and distribution operations.
- 7.38 It is common ground with the Council that the Site is considered to be reasonably accessible to modes of transport other than the private car (**CD5.24, par. 2.10**). The evidence base informing the site allocation recognises Maple Cross as a good quality employment location benefiting from excellent strategic and local access (**CD4.35, para. 6.79**). It is the best located employment area in the District in terms of access to the M25 and strategic road network.
- 7.39 The proposal therefore derives significant support from NPPF paras. 81-83 and the PPG which supports such policy. Significant weight should be attached to such support in the NPPF and PPG.
- 7.40 Policy CP6 (**CD4.16**) supports development that provides an appropriate number of jobs to meet strategic requirements (part b), promote skills and learning of the local workforce (part c) and to support sustainable growth through continuing to focus employment use in key employment areas, including Maple Cross.

7.41 I refer to the Maple Cross Economic Benefits Assessment enclosed at **Appendix IX** which demonstrates the proposed development will provide significant economic benefits to which great weight should attach. These are summarised as:

- 180 direct and 72 indirect jobs during the construction phase:
  - 189 of these jobs would be additional, of which 40 would go to local residents.
  - This would equate to equivalent of 25 Full time equivalent (due to temporary nature associated with construction jobs).
- 301 FTE jobs for the operational phase, comprising 215 FTE direct with a further 86 FTE indirect jobs:
  - 256 of these FTE jobs would be additional, of which 54 FTE jobs would go to local residents.
- Development would generate £17.9m of Gross Value Added (GVA) per annum, of which £15.2m would be additional, and £2.8m retained in the local area.
- In total (construction and operational phases) the scheme would deliver 326 FTE jobs (gross).

7.42 The Previous Appeal decision letter afforded these benefits considerable weight particularly in the current economic climate (**CD3.9, para. 158**). The circumstances of the current economic climate today continue to be fragile. Therefore, significant weight should continue to be attached to job creation and economic benefits of this development.

### Green Belt

7.43 The Inspector's Report (**CD4.42**) to the Site Allocations LDD specifically considered whether the Site Allocation LDD addresses necessary changes to the Green Belt boundary in an appropriate fashion. The Inspector concluded that the employment allocation at Maple Cross be removed from the Green Belt in order not to conflict with the proposed allocation.

7.44 I note that the Green Belt boundary is drawn tight to the allocation. This matter was raised by the Inspector's Report as a general point of principle (**CD4.42, para. 93**).

- 7.45 The remaining part of the Site which encompasses the existing access road and a narrow strip along the eastern boundary is designated as Green Belt. The majority of the strip of land to the east of the Site adjacent to the access road is tree lined.
- 7.46 The allocation only extends to the road in two discreet points at the north and south of the eastern boundary. Whilst the Green Belt designation follows the clear break in the tree line of the narrow strip along the eastern boundary to the south, it does not do the same to the north.
- 7.47 I refer to **Appendix V**. Access to Unit 2 to the south does not conflict with the Green Belt boundary. In the north, the presence of existing trees covered by a TPO which are proposed to be retained conflicts with the Employment Land allocation. There is instead a break in the tree line at the north of the narrow strip of Green Belt. Access to Unit 1 is therefore proposed to overlap the Green Belt boundary in order to avoid removal of the existing trees covered by TPO to the north.
- 7.48 It is unclear why the Green Belt boundary has been drawn in this way tight to the allocation. It is my view that in allocating the Site in this way (with the Green Belt covering the access road and tight to the boundary) it is accepted that limited works would be required within the Green Belt in order to facilitate access to this Site (which has no existing formal access) in order to deliver on the allocation.
- 7.49 It is my view that the proposed development does not conflict with the fundamental aim of Green Belt Policy because in the context of the allocation being acceptable and deliverable there is no urban sprawl and no impact on openness on the Green Belt (NPPF para. 137).
- 7.50 The proposed access to Unit 1 is in my view an engineering operation (NPPF para. 150 b) that by its nature would preserve openness and would not conflict with the purposes for its inclusion (NPPF para. 138). "Engineering operations" is defined under Section 336 (interpretation) of the Town and Country Planning Act 1990 (as amended) as: "includes the formation or laying out of means of access to highways". Therefore, I conclude that the proposed access would not be inappropriate in the Green Belt (NPPF para. 150 b). It could also be considered to be "local transport infrastructure" which requires this small piece of Green Belt land to facilitate access to the allocated site (NPPF 150(c)).

- 7.51 Without prejudice to this, I consider that in the event that this part of the development is considered not to fall within the definition of an engineering operation, and therefore inappropriate development within the Green Belt (which I dispute), then the application of very special circumstances would nonetheless apply (NPPF para. 148).
- 7.52 In such circumstances, it is my view that whilst there would be harm by definition (NPPF para. 147), the formation of an access which would not conflict with the purposes of including land within the Green Belt (NPPF para. 138) would be clearly outweighed by the delivery of a planned Employment Land Site Allocation for which there continues to be a pressing identified need and that would deliver significant public benefits (considered further in Section 16 of this Proof).
- 7.53 Furthermore, no development relating to the proposed buildings, parking or service yards is situated within this part of the Site. These elements of the scheme are not within the Green Belt but on the allocated site. The proposal therefore complies with the NPPF, Core Strategy Policy CP11 (**CD4.57**) and Development Management Policy DM2 (**CD4.58**).

## 8. Planning Assessment – Groundwater

- 8.1 I will defer to the evidence of Hannah Fraser (**CD6.1.4**) who will demonstrate that the development will not contribute to unacceptable risk or be adversely affected by unacceptable levels of water pollution in accordance with NPPF para. 174.
- 8.2 The development will conserve the District's Sites of Special Scientific Interest, Local Nature Reserves, wildlife sites, key biodiversity habitats, species and areas identified in the Hertfordshire Biodiversity Action Plan in accordance with Policy CP9 of the Core Strategy (2011) (**CD4.18**).
- 8.3 The development will have no adverse impact on the quality of local groundwater or surface water quality in accordance with Policy DM9 of the Development Management Policies LDD (2013) (**CD4.27**).
- 8.4 The Water Framework Directive has been appropriately considered and an assessment is not required and therefore the development complies with Policy DM6 of the Development Management Policies LDD (2013) (**CD4.25, part g**). This is agreed with the Environment Agency, who are the responsible statutory body to address this issue (**CD2.1.17**).
- 8.5 Specifically, there will be no adverse hydrogeological impacts from the development on the Maple Lodge nature reserve or Maple Lodge Marsh in accordance with the NPPF para. 174 and Policy CP9 of the Core Strategy (2011) and Policy DM9 of the Development Management Policies LDD (2013).

## 9. Planning Assessment – Biodiversity

- 9.1 I will defer to the evidence of Mitch Cooke (**CD6.1.7**) who demonstrates that the development does not result in significant harm to biodiversity and conversely will enhance biodiversity in accordance with NPPF para. 190.
- 9.2 There is no net loss of biodiversity as a result of the development or any adverse impact on any Site of Special Scientific Interest, Local Nature Reserve, Local Wildlife Site or protected species under UK or European law. Rather, there is a net gain, which weighs in favour of planning permission being granted.
- 9.3 The development conserves, enhances and restores biodiversity, including related to any protected habitats and species. The development therefore complies with Policy DM6 of the Development Management Policies LDD (2013) (**CD.4.25**).
- 9.4 In summary, the development delivers a measurable biodiversity net gain of 10% to provide for the creation and management over a 25-year period of an appropriate species rich grassland, suitable for the Forester moth, in a location within close proximity of the Site, in accordance with the NPPF para. 180 and Policy DM6 of the Development Management Policies LDD (2013) .

## 10. Planning Assessment – Noise

- 10.1 I will defer to the evidence of Matthew Heyes (**CD6.1.10**) who demonstrates that the development does not have an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development or countryside areas of tranquillity which are important for wildlife and countryside recreation.
- 10.2 The development will not cause any significant increase in the background noise level of nearby existing noise-sensitive property such as dwellings, hospitals, residential institutions, nursing homes, hotels, guesthouses, schools and other educational establishments.
- 10.3 The development therefore complies with Policy DM9 of the Development Management Policies LDD (2013) subject to the inclusion of appropriate planning conditions including in relation to preventing refrigerating HGVs and the operation of tug units (**CD4.27**).

## 11. Planning Assessment – Highways

- 11.1 The Rule 6 Party has confirmed that they have no objection in respect of highways and do not intend to present any evidence on this matter. This is also agreed with the Council, Highways Authority and Highways England.
- 11.2 I will defer to the evidence of Paul Wilson (**Appendix VI**) who demonstrates that the development is acceptable in terms of highways matters and accords with Core Strategy Policy CP10 (**CD4.19**) Development Management Policy DM13 (**CD4.59**), subject to a financial contribution of £6,000 is to be secured by way of a S106 Agreement to support the implementation, processing and monitoring of a full travel plan in order to maximise sustainable travel options.

## 12. Planning Assessment – Air Quality

- 12.1 I will defer to the evidence of Freya Hoyle of BWB (**Appendix VII**), who demonstrates that the development is in accordance with Development Management Policy DM9 in respect of air quality (**CD4.27**). The Rule 6 Party has confirmed that they have no extant objection regarding Air Quality.

## 13. Planning Assessment – Heritage

- 13.1 I will defer to the evidence of Kathryn Sather, of KSA Heritage Conservation Consultants (**Appendix VIII**), who demonstrates that the development is in accordance with Development Management Policy DM3 and does not result in any harm to nearby heritage assets (**4.24**). This matter was addressed comprehensively at the last Appeal and there is no rational evidential basis on which to reach a different conclusion.

## 14. Condition Matters

- 14.1 It is common ground that the full set of draft planning conditions are not agreed between the Appellant and the LPA. The Rule 6 Party has also indicated dispute in relation to Planning Conditions, but discussions remain on-going as part of a Statement of Common Ground between the two parties.
- 14.2 The Appellant has continued to work with the LPA and Rule 6 Party to further agree a draft list of conditions. Notwithstanding this, there are planning conditions that remain in dispute. A schedule of conditions is included as a Core Document (**CD5.23**).
- 14.3 Those conditions which remain in dispute with the Council are set out and considered below.

### **C19 (Noise Assessment)**

- 14.4 The LPA's draft wording for Condition 19 was updated following the Extraordinary Planning Committee on 8<sup>th</sup> February 2022. The reason provided for the amendments to the previous agreed condition was to take into consideration that the 2 units could be used by different occupiers and to account for changes in occupiers in the future.
- 14.5 The draft condition wording is included below along with the Appellant's proposed amendment which follows the advice of Matthew Heyes (RSK Acoustics) in his capacity as the Appellant's noise expert.
- 14.6 The proposed amendment follows the evidence set out in the submitted Noise Assessment (**CD1.2.18**) and Updated Planning Noise Assessment (**CD1.3.3**). The proposed amendments provide a more precise form of wording enabling it to be enforceable and therefore meet the tests set out in NPPF para. 55. It has been demonstrated that the LPA's suggested wording is not necessary and would place a further burden on the Appellant which is not reasonable, specifically in light of the Previous Appeal.

*Prior to the use of Unit 1 and Unit 2 by any prospective tenant (including all subsequent uses by future tenants thereafter in perpetuity), a noise assessment that demonstrates that the rating noise level from any fixed or mobile mechanical plant on the buildings or within the application site and*

*commercial activity including all noise associated with deliveries and vehicle movements within the car park and service yards shall not exceed ~~the background sound level representative of the period being assessed~~ exceed 5 dB above the background sound level representative of the period being assessed, or 45 dB(A) during the day/40 dB(A) at night, whichever is higher, at noise sensitive receptors such as residential properties within Longmore Close (the noise sensitive receptors to have been previously agreed with the Council) shall be submitted to and approved in writing by the Local Planning Authority. The noise assessment should be carried out in line with the methodology presented in BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound. The use of Unit 1 or Unit 2 shall thereafter be implemented and operated in accordance with the approved noise assessment including undertaking the required mitigation measures (if required) contained therein (unless those mitigation measures would require separate planning permission from the LPA).*

*Reason: This is a pre-operation condition to ensure that nearby residential properties are not subjected to excessive noise and disturbance having regard to Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

### **Condition C38 (Hours)**

- 14.7 Draft Condition 38 was introduced following the Extraordinary Planning Committee on 8<sup>th</sup> February 2022. The reason given for the change is set out in the Extraordinary Planning Committee Minutes (**CD 3.11**) as to allow parents and children to enjoy their homes and to allow children to get a good night's sleep before going to school the next day. The draft condition wording seeks to restrict operational hours as set out below.

#### *C38 Hours of Use/Operation*

*The hours of use of the development hereby permitted shall be restricted to the hours of 07.00 to 20.00 Mondays to Fridays (inclusive) and 10.00 to 16.00 (inclusive) Saturdays, Sundays and Bank Holidays. No deliveries shall be taken to or dispatched from other than within these hours.*

*Reason: To safeguard the residential amenities of the occupiers of neighbouring properties in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

- 14.8 It has been demonstrated by Matthew Heyes' Proof of Evidence (**CD6.1.10**) that there will be no adverse impacts on local residents as a result of the development in respect of noise. On this basis, is not necessary or reasonable. It therefore does not meet the tests set out in NPPF para. 55 and should be removed. Further, it is standard for allocated employment areas to work 24 hours. There was no restriction in the policy of allocation.
- 14.9 Further conditions which are disputed by the Rule 6 Party are set out within the Council's schedule of conditions (**CD5.23**).

## 15. S106 Matters

- 15.1 The development is subject to a Section 106 Agreement to secure the following planning obligations:
- Biodiversity Net Gain (BNG) Contribution; and
  - Travel Plan Monitoring
- 15.2 Planning obligations are required to comply with the tests set down in Section 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) (“the Regulations”).
- 15.3 Section 122 of the Regulations states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
1. Necessary to make the development acceptable in planning terms;
  2. Directly relate to the development; and
  3. Fairly and reasonably related in scale and kind to the development.
- 15.4 The draft planning obligations meet these tests as set out below.

### Biodiversity Net Gain (BNG) Contribution

- 15.5 The obligation is defined as follows:

*“Biodiversity Loss Offset Contribution” means the sum of one hundred and forty two thousand eight hundred pounds (£142,800.00) index linked in accordance with clause **Error! Reference source not found.** as a contribution towards the provision and future management for a period of twenty five (25) years of an area of species rich grassland in a location within proximity of the Site which in the opinion of the Council will deliver 11.90 Biodiversity Units applying Natural England’s Biodiversity Metric Version 2*

- 15.6 The grassland within the development site at Maple lodge is generally species-poor and of low to moderate interest in places; it is of some local value given its size, but it does not meet the criteria for Local Wildlife Site status.

- 15.7 Notwithstanding this, NPPF para. 174 requires that planning decisions should contribute to and enhance the natural and local environment in several ways, including by minimising impacts on and providing net gains for biodiversity. This is reflected by Policy DM6 of the Development Management Policies LDD (2013) **(CD4.25)** which requires that development conserves, enhances, and restores biodiversity, including related to any protected habitats and species.
- 15.8 The Biodiversity Loss Offset Contribution secured in the S106 Agreement is consistent with the aims of the NPPF and Policy DM9 **(CD4.27)** and is necessary to make the development acceptable in planning terms; directly relate to the development; and fairly and reasonably related in scale and kind to the development.

### Travel Plan Monitoring

- 15.9 The obligation is defined as follows:

*“Travel Plan Evaluation and Support Contribution” means the sum of six thousand pounds (£6,000.00) (index linked in accordance with clause 7.1) as a contribution towards supporting the implementation, processing and monitoring of a Travel Plan*

- 15.10 It is necessary to make the development acceptable in planning terms because travel plans are a necessary tool in ensuring that sustainable travel modes are encouraged, promoted and regulated to be in accordance with the National Planning Policy Framework (NPPF). NPPF para. 113 confirms that all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed. The securing of a travel plan via a planning obligation allows for a greater level of detail to be agreed than could reasonably be achieved by a planning condition particularly in relation to the implementation and monitoring of the plan.
- 15.11 It is directly related to the development because the travel plan would provide a long-term management strategy for the site and its proposed use as an employment site. The travel plan would support the need to secure specific objectives, targets and commitments (including details of survey methods, funding and any required third party engagement) and be required to address the transport impacts generated by: employees commuting to and from the site; visitor movements and freight/delivery movements.

- 15.12 It is fairly and reasonably related in scale and kind to the development because the development proposals meet the thresholds for requiring a full travel plan and its associated level of financial contribution as laid out in Hertfordshire County Council’s Travel Plan Guidance March 2020 (**CD4.43**). The monitoring and enforcement of travel plans is not a statutory function of Hertfordshire County Council and therefore it is justified to request a reasonable level of contribution to support this. Section 93 of the Local Government Act 2003 gives the power to local authorities to charge for discretionary services. These are services that an authority has the power for, but not the duty to, provide.
- 15.13 The implementation of a Travel Plan is necessary to make the proposed development acceptable in planning terms. The obligations relating to the Travel Plan Evaluation and Support Contribution are necessary to make the development acceptable in planning terms; directly relate to the development; and fairly and reasonably related in scale and kind to the development.

## 16. Public Benefits

- 16.1 It is common ground between the Appellant, Council and Rule 6 Party that there are economic and planning benefits (Revised Statement of Common Ground with Council **(CD5.24)**, Council's Committee Report **(CD3.1)** and Section 7 of Rule 6 Statement of Case **(CD5.12)**).
- 16.2 In my opinion the scheme will generate significant public benefits which are a material consideration in planning terms which should be afforded substantial weight in decision taking.
- 16.3 These include the following:
- It will deliver the policies of the adopted local plan as a whole, and therefore deliver sustainable development as a consequence (the purpose of the UK planning system);
  - It will provide 16,115 sqm employment floorspace that will provide a significant contribution to meeting the need identified by the South West Herts Economic Study (2018) for 13,200 sqm of B1c/B2 floorspace and 15,600 sqm of B8 floorspace for Three Rivers over the 2018-2036 period
  - In the context of a period of an uncertain economic future this employment development will make a significant economic contribution through generating £17.9m of Gross Value Added (GVA) per annum, of which £15.2m would be additional, and £2.8m retained in the local area. It will also result in the creation of a significant jobs both during the construction and operational phase, totalling 326 full time equivalent roles. This includes new jobs for local people which is identified as a priority for sustainable development by Core Strategy Policy CP6 **(CD4.16)**.
  - Proactively addressing drainage through the upgrade of the estate road as supported by TRDC Development Management DPD Policy DM8.
  - The provision of measurable biodiversity net gain through onsite and offsite contributions.
  - An exemplar of sustainable development in the District significantly exceeding the relevant policy requirements and proactively responding to the District's wider strategic climate change policy in declaring a climate emergency.

## 17. Conclusions and Overall Planning Balance

- 17.1 The development is crucial to delivering the strategies, objectives and priorities of the development plan particularly in respect to employment land.
- 17.2 The proposal complies entirely with the allocation. It delivers a development which was needed to meet the minimum requirements for future land supply. The evidence base continues to demonstrate that this remains the case. Further, the latest evidence demonstrates an even greater need to rectify a now larger deficit.
- 17.3 S.38(6) of the Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. I do not consider there to be any material considerations to indicate that the application should be refused.
- 17.4 It follows that:
- The principle of development is consistent with an up to date plan, and should be consented without delay (NPPF para. 11);
  - It will deliver sustainable development in achieving the overarching economic, social and environmental objectives (NPPF para. 8).
  - Significant weight should be attached to benefits of meeting the minimum requirements for future employment land, as identified in the adopted and emerging statutory development plans and the economic benefits that this would deliver in terms of investment and jobs for which there is an identified market requirement;
  - The Site is accessible by modes of transport other than the private car and complies with the NPPF in this regard. It is a good quality employment location benefiting from excellent strategic and local access which has been planned for (NPPF para. 83). There are no highways unacceptable impact on highway safety, and it has been demonstrated that the residual cumulative impacts on the road network would not be severe (NPPF para. 111);
  - There are no adverse impact on all matters for residential amenity. It does not result in overshadowing, material loss of prospect/outlook or loss of light to neighbouring

properties. There would be no overlooking of neighbouring properties and is acceptable in privacy terms. There would be no adverse impacts in terms of noise or light disturbance, subject to conditions. It is acceptable in terms of air quality.

- The Site does not form part of a valued landscape, but instead one in which employment development is acceptable. The development is acceptable in terms of its visual impact on the landscape and on the character of the landscape. It is acceptable in terms of the impacts on trees.
- The development does not conflict with the openness of the Green Belt. It would preserve openness and would not conflict with the purposes for its inclusion.
- There will be no adverse impacts on flood risk, drainage, groundwater or contamination matters.
- There is no net loss of biodiversity as a result of the development or any adverse impact on any Site of Special Scientific Interest, Local Nature Reserve, Local Wildlife Site or protected species under UK or European law. Rather, there is a net gain, which weighs in favour of planning permission being granted.
- It far exceeds the Development Plan requirements in terms of sustainability through the provision of a reduction of 40% (Unit 1) and 37% (Unit 2) in terms of carbon dioxide emissions over Part L (2013), as well as providing for 20% active and 30% passive electrical vehicle charging points.

17.5 Therefore, the proposed development accords with the Development Plan as a whole.

17.6 Indeed, there is a powerful consensus of professional and independent technical evidence which confirms there are no material considerations which should be afforded significant weight. This has been accepted by the Council which is not defending this appeal.

17.7 Notwithstanding this, if reasons for refusal were found to be justified (contrary to the evidence presented by the Appellant) this should be weighed against the substantive public benefits that would be realised by allowing the scheme to proceed, as detailed in the previous section.

17.8 On the basis of the agreed evidence with the Council, planning permission should be granted without delay (NPPF para. 11), subject to the agreed conditions and the agreed Section 106 planning obligations.

# Contact Details

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