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## 1.0 QUALIFICATIONS, BACKGROUND AND PURPOSE OF EVIDENCE

### QUALIFICATIONS

- 1.1 My name is Mitch Cooke. I hold an Honours degree in Ecology from the University of Westminster. In addition I hold a Masters of Science in Environmental Assessment and Management from Oxford Brookes University and am a Full Member of the Chartered Institute of Ecology and Environmental Management (CIEEM), and have been a member for 20 years. Furthermore, I am Chartered Environmentalist (CEnv) and have been for over 10 years.
- 1.2 I am the Director of Greengage Environmental, a practice that provides ecological planning and design advice to the public and private sectors. I have been practicing as an ecologist for over 40 years and have a wide experience in Ecological Assessments relating to distribution, residential, industrial, retail, educational, commercial and leisure schemes. I have advised on ecological matters for clients such as Legal & General, Aviva, Aberdeen Standard, Crest Nicholson, Taylor Wimpey, Bellway Homes, Persimmon Homes, L&Q, Southern Housing Group, Clarion, Quinn Estates, Tesco Stores, Sainsburys, Aldi, Lidl as well as National Grid, Southern Gas Networks, London Borough (LB) of Camden, LB Hounslow, LB Enfield, LB Southwark, LB Hackney and Hertfordshire County Council (Herts Living Ltd through Chalkdene Developments).
- 1.3 In particular, I am experienced in assessing potential effects arising from developments in the vicinity of European Designations including Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), Sites of Special Scientific Interest (SSSIs), non-statutory designations e.g. Local Wildlife Sites (LWSs) and a wide range of Priority and non-priority habitat types e.g. grassland, heathlands, woodlands, hedgerows and trees.
- 1.4 I have 20 years experience of ecological surveys and assessments on employment site developments, undertaking surveys and completing impact assessments for a range of B1, B8 use class schemes, for planning applications, through construction and into long term operation.
- 1.5 I have provided this expertise across the UK for developers as well as local planning authorities as clients, including Berkshire, Buckinghamshire, Hertfordshire, Surrey, where the assessment methodology, findings, mitigation and long-term management plans have been accepted by Natural England, the county ecologists, statutory nature conservation bodies, the Wildlife Trusts and other interested parties.
- 1.6 The evidence which I have prepared and provide in this proof of evidence is true and is given in accordance with the guidance of the professional institutions of which I am a

member (CIEEM). I confirm that the opinions expressed are my true and professional opinions irrespective of by whom I am instructed.

## **PURPOSE OF MY EVIDENCE**

- 1.7 My evidence assesses the ecological baseline conditions and the likely effects of the appeal proposals on the biodiversity interest of the appeal site. I review the background of the site, drawing on the available ecological survey and assessment data and scheme design information.
- 1.8 I discuss the potential effects arising from the appeal proposals on the ecology of the Appeal Site in my evidence under the following headings:
- Policy framework;
  - Review of the biodiversity interest of the Appeal Site;
  - Review the effects of the appeal proposals on the biodiversity of the Appeal Site;
  - Biodiversity net gain and the application of national and local policy;
  - Biodiversity net gain compensation; and
  - Third Party Issues.
- 1.9 Finally, my conclusions are drawn. Following a thorough review of the ecological impact assessment undertaken, I consider the proposals to be fully acceptable in ecological terms. They meet statutory requirements, national and local policy requirements and achieve a net gain for biodiversity, which is a benefit which should be inserted on the positive side of the planning balance.

## **2.0 RELEVANT STATUTORY NATURE CONSERVATION FRAMEWORK - HABITATS**

### **INTRODUCTION**

- 2.1 Below I describe the statutory framework associated with the statutorily designated sites and the relevant description associated with the protection afforded the designation. This information and those sites identified through consultation with Herts Environmental Record Centre (HERC) is contained in CD7.1.54. I indicate below where these are located on the Appeal Site or within 2km of the Appeal Site boundary. Full details are contained in CD7.1.54.

### **STATUTORY HABITAT DESIGNATIONS**

#### **RAMSAR**

- 2.2 Ramsar sites are designated under the Convention on Wetlands of International Importance especially as Waterfowl Habitat. Wetlands are designated, protected and promoted in order to stem the progressive encroachment on and loss of wetlands, which are broadly defined to include marsh, fen, peatland and water.
- 2.3 The designation of UK Ramsar Sites has generally been underpinned through prior notification of these areas as Sites of Special Scientific Interest (SSSIs) (or Areas of Special Scientific Interest (ASSIs) in Northern Ireland). Accordingly, these receive statutory protection under the Wildlife & Countryside Act 1981 (as amended), the Nature Conservation (Scotland) Act 2004 (as amended) and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (as amended). Government and the devolved administrations have also issued policy statements relating to Ramsar Sites which extend to them the same protection at a policy level as Special Areas of Conservation and Special Protection Areas.
- 2.4 There are no RAMSAR sites within 2km of the Appeal Site.

#### **SPECIAL AREAS OF CONSERVATION (SAC)**

- 2.5 Special Areas of Conservation are sites designated by Member States under the EC Habitats Directive. The aim is to establish a European network of important high quality conservation sites that will make a significant contribution to conserving habitats and species considered to be most in need of conservation at a European level. They are protected areas in the UK designated under:

- the Conservation of Habitats and Species Regulations 2017 (as amended) in England and Wales (including the adjacent territorial sea) and to a limited extent in Scotland (reserved matters) and Northern Ireland (excepted matters),
  - the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) in Scotland,
  - the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended) in Northern Ireland, and
  - the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) in the UK offshore area.

2.6 There are no SAC sites within 2km of the Appeal Site.

### **SPECIAL PROTECTION AREAS (SPA)**

2.7 Special Protection Areas are designated under the EC Birds Directive, to conserve the habitat of certain rare or vulnerable birds and regularly occurring migratory birds. Any significant pollution or disturbance to or deterioration of these sites has to be avoided.

2.8 All SPAs are also Sites of Special Scientific Interest (SSSIs). SPA designation provides enhanced protection to SSSIs.

2.9 There are no SPA sites within 2km of the Appeal Site.

### **NATIONAL NATURE RESERVES (NNR)**

2.10 National Nature Reserves are statutory reserves established for the nation under the Wildlife and Countryside Act, 1981. NNRs may be owned by relevant national body (e.g. Natural England in England) or established by agreement; a few are owned and managed by non-statutory bodies. NNRs cover a selection of the most important sites for nature conservation and geology in the UK.

2.11 There are no NNR sites within 2km of the Appeal Site.

### **SITES OF SPECIAL SCIENTIFIC INTEREST (SSSI)**

2.12 Sites of Special Scientific Interest are areas notified under the Wildlife and Countryside Act, 1981, as being of 'special interest for nature conservation'. They represent the best sites for wildlife and natural features in Great Britain supporting many characteristic, rare and endangered species, habitats and natural features. Notification as a SSSI is primarily a legal mechanism organised by Natural England and selected according to specific criteria. The Guidelines for the Selection of Biological SSSIs, published in 1989 by the Joint Nature Conservancy Council, set down the selection criteria for both biological and geological SSSIs.

2.13 There are no SSSI sites within 2km of the Appeal Site.



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## LOCAL NATURE RESERVES (LNR)

- 2.14 LNRs are designated for both people and wildlife. LNRs are designated by the local authority under Section 21 of the National Parks and Access to the Countryside Act 1949. Some reserves are managed by a non-statutory body. Local authorities have the power to pass bylaws controlling (e.g.) access, special protection measures.
- 2.15 There are no LNR on site. There are 4no. LLR within 2km of the Appeal Site with the closest being Stockers Lake 720m northeast of the Appeal Site boundary, designated primarily for its wintering bird population.

### 3.0 RELEVANT NON-STATUTORY NATURE CONSERVATION FRAMEWORK – HABITATS

#### INTRODUCTION

3.1 Below I describe the statutory framework associated with the non-statutorily designated sites and the relevant description associated with the protection afforded the designation. This information and plans indicating their location, identified through consultation with HERC are contained in CD7.1.54. I indicate below where these are located on the Appeal Site or within 2km of the Appeal Site boundary. Full details are contained in CD7.1.54.

#### **Ancient woodland**

3.2 Ancient Woodland is land that has had a continuous woodland cover since at least 1600 AD and has only been cleared for underwood or timber production. It can be placed in two categories:

- Ancient Semi-natural Woodland (ASNW) – woodland that retains a native tree and shrub cover that has not been planted, although it may have been managed by coppicing or felling and allowed to regenerate naturally. This covers all stands of ancient woodland which do not obviously originate from planting.
- Ancient replanted Woodland (AWS - ancient woodland site or PAWS - plantation on ancient woodland site) – woodland where the original tree cover has been felled and replaced by planting, often with conifers and usually this century.

3.3 There are no areas of Ancient Woodland on the Appeal Site. There are 6no. areas of Ancient Woodland within 2km of the Appeal Site with the closest being Ladywalk Wood 940m northwest of the Appeal Site boundary.

#### **Local Wildlife Site / Wildlife Sites**

3.4 Local Wildlife Sites (LWS) are non-statutory sites designated at a county and local level as being of conservation importance and often recognised in Local authority development plans. The aim of this identification is to protect such sites from land management changes, which may lessen their nature conservation interest, and to encourage sensitive management to maintain and enhance their importance. Although LWS have no statutory protection they need to be considered in the planning process through the National Planning Policy Framework (NPPF) that recommends at Section 179a that local plans should *'identify, map and safeguard components of local wildlife-rich habitats...and locally designated sites of importance for biodiversity*. There are no LWS on the Appeal Site. There are 13no. LWS within 2km of the Appeal Site boundary.

- 3.5 The closest is Maple Lodge Marsh South recorded 150m east from the Appeal Site listed as:

*'Wet, rough neutral grassland which supports areas of species-rich marsh habitat characterised by rushes (Juncus spp.), sedges (Carex spp.), Reed Sweet-grass (Glyceria maxima) and Meadowsweet (Filipendula ulmaria)'*

- 3.6 The Maple Lodge Nature Reserve LWS (see below) is recorded 220m south of the Appeal Site and is listed as:

*'A mosaic of habitats, situated in the Colne Valley, formed on disused gravel workings. Habitats include reed beds, lakes, marshy grassland, scrub, secondary woodland and broadleaved plantation. It is an important site for birds with over 125 species recorded, several of which are at least County Red List species. Wildlife Site criteria: Mosaic site with grassland and fen and swamp indicators; species.'*



## 4.0 RELEVANT STATUTORY AND NON-STATUTORY NATURE CONSERVATION FRAMEWORK - SPECIES

### INTRODUCTION

- 4.1 Current key legislation relating to ecology includes the Wildlife and Countryside Act 1981 (as amended); The Conservation of Habitats and Species Regulations 2019 ('Habitats & Species Regulations'), The Countryside and Rights of Way Act 2000 (CRoW Act), and The Natural Environment and Rural Communities Act 2006. The ecological reports and assessments undertaken for the Appeal Site are contained in CD 2.30 and give the findings from these assessments on relevant species.

### **The Conservation of Habitats and Species Regulations 2017**

- 4.2 The Conservation of Habitats & Species Regulations replace The Conservation (Natural Habitats, etc.) Regulations 1994 (as amended), and transpose Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora ('EU Habitats Directive'), and Council Directive 79/409/EEC on the Conservation of Wild Birds ('Birds Directive') into UK law (in conjunction with the Wildlife and Countryside Act).
- 4.3 Regulation 43 and 47 respectively of the Conservation of Habitats & Species Regulations makes it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2 (European protected species of animals), or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 5 (European protected species of plant). Development that would contravene the protection afforded to European protected species requires a derogation (in the form of a licence) from the provisions of the Habitats Directive.
- 4.4 Regulation 63 (1) states: 'A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which —
- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and*
- (b) is not directly connected with or necessary to the management of that site;*
- must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.'*

### **Wildlife and Countryside Act 1981 (as amended)**

- 4.5 The Wildlife and Countryside Act 1981 (as amended) is the principal mechanism for the legislative protection of wildlife in Great Britain. This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the 'Bern

Convention') and the Birds Directive and EU Habitats Directive are implemented in Great Britain.

### **The Countryside and Rights of Way Act 2000**

- 4.6 The Wildlife and Countryside Act has been updated by the CRoW Act. The CRoW Act 2000 amends the law relating to nature conservation and protection of wildlife. In relation to threatened species it strengthens the legal protection and adds the word 'reckless' to the offences of damaging, disturbing, or obstructing access to any structure or place a protected species uses for shelter or protection, and disturbing any protected species whilst it is occupying a structure or place it uses for shelter or protection.

### **The Natural Environment and Rural Communities Act 2006**

- 4.7 The Natural Environment and Rural Communities Act 2006 states that every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Biodiversity Action Plans provide a framework for prioritising conservation actions for biodiversity.
- 4.8 Section 41 of the Natural Environment and Rural Communities Act requires the Secretary of State to publish a list of species of flora and fauna and habitats considered to be of principal importance for the purpose of conserving biodiversity. The list, a result of the most comprehensive analysis ever undertaken in the UK, currently contains 1,149 species, including for example, hedgehog (*Erinaceus europaeus*), and 65 habitats that were listed as priorities for conservation action under the now defunct UK Biodiversity Action Plan (UK BAP). Despite the devolution of the UK BAP and succession of the UK Post-2010 Biodiversity Framework (and Biodiversity 2020 strategy in England), as a response to the Convention on Biological Diversity's (CBD's) Strategic Plan for Biodiversity 2011-2020 and EU Biodiversity Strategy (EUBS), this list (now referred to as the list of Species and Habitats of Principal Importance in England) will be used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 41 of the Natural Environment and Rural Communities Act 2006 'to have regard' to the conservation of biodiversity in England, when carrying out their normal functions.

### **Biodiversity Action Plans**

- 4.9 Non-statutory Biodiversity Action Plans (BAPs) have been prepared on a local and regional scale throughout the UK over the past 15 years. Such plans provide a mechanism for implementing the government's broad strategy for conserving and enhancing the most endangered ('priority') habitats and species in the UK for the next 20 years. UK BAP was succeeded in England by Biodiversity 2020 although the list of priority habitats and species remains valid as the list of Species of Principal Importance for Nature Conservation.

4.10 Regional and local BAPs are still valid however and continue to be updated and produced.

#### **Wild Mammals (Protection) Act 1996**

4.11 All wild mammals are protected against intentional acts of cruelty under the above legislation.

4.12 This makes it an offence to:

- Mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

4.13 To avoid possible contravention, due care and attention should be taken when carrying out works (for example operations near burrows or nests) with the potential to affect any wild mammal in this way, regardless of whether they are legally protected through other conservation legislation or not.

#### **Legislation Relating to Badger**

4.14 The Protection of Badgers Act (1992) provides badgers with legislative protection in the UK. It makes it an offence to kill, injure or take a badger from the wild. It is also an offence under the act to intentionally or recklessly destroy, damage, interfere with or obstruct entrance to a sett without a relevant license from a statutory authority.

#### **Legislation Relating to Nesting Birds**

4.15 Nesting birds, with certain exceptions, are protected from intentional killing, destruction of nests and destruction/taking of eggs under the Wildlife and Countryside Act 1981 (as amended) and the CRoW Act. Any clearance of dense vegetation should therefore be undertaken outside of the nesting bird season, taken to run conservatively from March to August (inclusive), unless an ecologist confirms the absence of active nests prior to clearance.

#### **Legislation Relating to Bats**

4.16 All UK bats and their roosts are protected by law. Since the first legislation was introduced in 1981, which gave strong legal protection to all bat species and their roosts in England, Scotland and Wales, additional legislation and amendments have been implemented throughout the UK.

4.17 Six of the 18 British species of bat have Biodiversity Action Plans (BAPs) assigned to them, which highlights the importance of specific habitats to species, details of the threats they face and proposes measures to aid in the reduction of population declines.

- 4.18 Although habitats that are important for bats are not legally protected, care should be taken when dealing with the modification or development of an area if aspects of it are deemed important to bats such as flight corridors and foraging areas.
- 4.19 The Wildlife & Countryside Act 1981 (WCA) was the first legislation to provide protection for all bats and their roosts in England, Scotland and Wales (earlier legislation gave protection to horseshoe bats only.)
- 4.20 All eighteen British bat species are listed in Schedule 5 of the Wildlife and Countryside Act, 1981 and under Annexe IV of the Habitats Directive, 1992 as a European protected species. They are therefore fully protected under Section 9 of the 1981 Act and under Regulation 43 of the Conservation of Habitats and Species Regulations 2017, which transposes the Habitats Directive into UK law. Consequently, it is an offence to:
- Deliberately capture, injure or kill a bat;
  - Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
  - Damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
  - Possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat; and
  - Intentionally or recklessly obstruct access to a bat roost.
- 4.21 This legislation applies to all bat life stages.
- 4.22 The implications of the above in relation to the proposals are that where it is necessary during construction to remove trees, buildings or structures in which bats roost, it must first be determined that work is compulsory and if so, appropriate licenses must be obtained from Natural England.

#### **Legislation Relating to Reptiles**

- 4.23 All species of reptile native to the UK are protected to some degree under national and/or international legislation, which provides mechanisms to protect the species, their habitats and sites occupied by the species.
- 4.24 Sand lizards and smooth snakes are European protected species and are afforded full protection under Section 9 of the Wildlife and Countryside Act 1981 and Regulation 43 of the Conservation of Habitats and Species Regulations 2017. However, these species are rare and highly localised. Their occurrence is not considered as relevant in this instance, as the ranges and specialist habitats of these species do not occur at this site.
- 4.25 The remaining widespread species of native reptiles (adder, grass snake, slow worm and viviparous lizard) are protected under part of Section 9(1) and all of Section 9(5) of the Wildlife and Countryside Act 1981. They are protected against intentional killing and injury and against sale, transporting for sale etc. The habitat of these species is not protected.

However, in terms of development, disturbing or destroying reptile habitat during the course of development activities while reptiles are present is likely to lead to an offence under the Wildlife and Countryside Act 1981. It is therefore important to identify the presence of these species within a potential development site. If any of these species are confirmed, all reasonable measures must then be taken to ensure the species are removed to avoid the threat of injury or death associated with development activities.

- 4.26 Each species of native reptile has specific habitat requirements but general shared features include a structurally diverse habitat that provides for shelter, basking, foraging and hibernating.
- 4.27 All reptiles are BAP species and as such are also of material consideration in the planning process due to the NPPF.

#### **Legislation Relating to Dormice**

- 4.28 Dormice are given full protection under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. Protection to the species is also afforded by Regulation 43 of the Conservation of Habitats and Species Regulations 2017, making the hazel dormouse a European Protected Species. These two pieces of legislation operate in parallel, although there are some small differences in scope and wording. Under the provisions of Section 9 of the Wildlife & Countryside Act, it is an offence to:
- Intentionally kill, injure or take a dormouse;
  - Possess or control and live or dead specimen or anything derived from a dormouse (unless it can be shown to have been legally acquired);
  - Intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a dormouse; and
  - Intentionally or recklessly disturb a dormouse while it is occupying a structure or place which it uses for that purpose.
- 4.29 Regulation 43 of the Conservation of Habitats and Species Regulations 2017 makes it an offence to:
- Deliberately capture or kill a dormouse;
  - Deliberately disturb a dormouse;
  - Damage or destroy a breeding site or resting place of a dormouse; and
  - Keep transport, sell or exchange, or offer for sale or exchange a live or dead dormouse or any part of a dormouse.

#### **Legislation Relating to Natura 2000 Sites and Habitats Directive Annex I/II Species**

- 4.30 European Commission Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora ('EU Habitats Directive'), and Council Directive



79/409/EEC on the Conservation of Wild Birds ('Birds Directive') form the cornerstones of nature conservation legislation across EU member states. Priority species requiring protection across Europe are listed in the Annexes of these Directives. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 and Offshore Marine Conservation Regulations, 2007 (as amended) transpose these directives into UK law and set the basis for the designations of protected sites (known as Natura 2000 sites; Special Areas of Conservation under the Habitat Directive and Special Areas of Protection under the Birds Directive) that are of importance for habitats, species or assemblages listed on the directive Annexes. In the UK Ramsar sites are also offered the same level of protection as SPAs and SACs however the qualifying species for the designation may differ; Ramsar sites being designated specifically as important wetland habitats.

- 4.31 Under article 6(3) of the Habitats Directive, where projects stand to have likely significant effect (in accordance with the European Court of Justice ruling of C-127/02 Waddenzee cockle fishing) upon the integrity of conservation objectives (i.e. conservation status of the qualifying species or habitats) within the designated sites then the Competent Authority must undertake an Appropriate Assessment.

#### **Legislation Relating to Invasive Plants**

- 4.32 Section 14(1) of the Wildlife and Countryside Act 1981 makes it illegal to release or allow to escape into the wild any animal which is not ordinarily resident in Great Britain and is not a regular visitor to Great Britain in a wild state, or is listed in Schedule 9 to the Act. It is also illegal to plant or otherwise cause to grow in the wild any plant listed in Schedule 9 to the Act.

## 5.0 PLANNING POLICY FRAMEWORK - NATURE CONSERVATION

### INTRODUCTION

- 5.1 The policy framework against which the proposals will be assessed is relevant at two levels, namely the national and local levels. I discuss these below:

#### **National Policy**

##### ***National Planning Policy Framework (NPPF)***

- 5.2 National policy is set out within the National Planning Policy Framework (NPPF) 2021. Chapter 15 'Conserving and Enhancing the Natural Environment' includes policies in respect of 'Habitats and Biodiversity'.
- 5.3 Paragraph 180a sets out the key biodiversity test to be applied which is that where 'significant harm to biodiversity' cannot be avoided, mitigated or compensated then planning permission should be refused. This sequential process is termed the 'mitigation hierarchy'.
- 5.4 In addition to avoiding significant harm to biodiversity, the NPPF at paragraph 180d sets out that opportunities should be taken up to incorporate biodiversity benefits into developments especially where this can secure net gains for biodiversity.

##### ***National Planning Practice Guidance (NPPG)***

- 5.5 National Planning Practice Guidance ([Protected sites and areas: how to review planning applications - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/protected-sites-and-areas-how-to-review-planning-applications)) provides additional detail and guidance on aspects of the National Planning Policy Framework. In respect of the Natural Environment, the NPPG indicates how ecology should be considered as part of planning, sets out the mitigation hierarchy, and provides further detail on net gain and how this can be achieved.

##### ***Environment Act 2021***

- 5.6 The Environment Act (CD7.1.55) will provide a comprehensive legal framework for environmental improvement within the UK, forming one of the key measures to deliver the vision set out under the 25 Year Environment Plan.
- 5.7 The Environment Act establishes the structure for long-term environmental governance and accountability and includes key measures to drive improvements for nature. In particular, it lays the foundation for a Nature Recovery Network, and introduces a mandatory requirement for biodiversity net gain in the planning system (to be implemented by

secondary legislation), requiring developments to deliver a 10% improvement in biodiversity value from 2023.

- 5.8 It has passed through both Houses and has been granted Royal Assent in November 2021. Secondary legislation is required to implement the provisions of the Act and on 3 December 2021 the secondary legislation consultation was released by Defra. Therefore, further intricacies on the legislation (including but not limited to, which commodities will be in scope of the regulations) which businesses will be subject to the provisions and how the requirements will be enforced, will be provided in due course with the consultation closes 5th April 2022.

### ***Environment Act 2021 Explanatory Notes***

- 5.9 In the absence of formal guidance Explanatory Notes (CD7.1.56) have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader in understanding the Act.
- 5.10 They do not form part of the Act and have not been endorsed by Parliament but explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- 5.11 Section 6 deals with Nature and Biodiversity and states:

*Since the 25 Year Environment Plan set the ambition towards embedding a broad 'environmental net gain' principle in the planning system, this government has focussed on embedding the principle of biodiversity net gain. In July 2018, the revised National Planning Policy Framework strengthened planning policy on biodiversity net gain by making it clearer that all development in scope should deliver biodiversity net gains.*

*49 Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 requires all public authorities carrying out functions in England (together with HMRC carrying out functions in Wales) to have regard to conserving biodiversity when delivering their functions. The existing wording does not adequately reflect the aspiration or language of the 25 Year Environment Plan. Shifting the focus of the duty to an active requirement to seek the further conservation and enhancement of nature should better align public authorities' action on biodiversity with the government's ambition.*

## **LOCAL POLICY**

### **Three Rivers District Core Strategy 2011**

- 5.12 The Appeal Site is currently unoccupied and the land is zoned as an allocated employment site as part of Three Rivers District Council (TRDC)'s Local Plan (adopted 17th October 2011). The principle of employment development is accepted and there can be no in principle objection to the employment development on site.

**CP9: Green Infrastructure (CD4.18)**

- 5.13 CP9 sets out the approach Three Rivers will apply in seeking a net gain in the quality and quantity of Green Infrastructure, through the protection and enhancement of assets and provision of new green spaces. This is primarily focused on existing landscape features, however, new development will be required to contribute to the delivery of new Green Infrastructure and the management of a linked network of new and enhanced open spaces and corridors. It also sets out the council's approach to conserving and enhancing key assets and linkages between them, specifically listing out 'the Districts Sites of Special Scientific Interest, Local Nature Reserves, wildlife sites, key biodiversity habitats, species and areas identified in the Hertfordshire Biodiversity Action Plan'.

**Development Management Policies DM6: Biodiversity, Trees, Woodlands, Watercourses and Landscaping (CD4.25)**

- 5.14 This policy states that development should result in no net loss of biodiversity value across the District as a whole. Proposals for new development should be submitted with landscaping proposals which seek to retain trees and other important landscape and nature conservation features. Landscaping proposals should also include new trees and other planting to enhance the landscape of the site and its surroundings as appropriate. Development proposals on sites which contain existing trees and hedgerows will be expected to retain as many trees and hedgerows as possible and proposals should demonstrate that existing trees, hedgerows and woodlands will be safeguarded and managed in accordance with the relevant British Standards.

**SUMMARY**

- 5.15 The proposed development at the Appeal Site does not affect any designated or non-designated habitats. The Environment Bill 2021 will mandate the requirement for new development in England to deliver a minimum 10% biodiversity net gain (BNG). Mandatory biodiversity net gain as set out in the Environment Act applies in England only by amending the Town and Country Planning Act and is likely to become law in 2023 (Planning Advisory Service website accessed 28<sup>th</sup> March 2022).
- 5.16 The Appeal Proposals would not lead to any adverse impact on designations, habitats and fauna (see Section 6.0). Furthermore, subject to the delivery of the proposed mitigation and enhancement measures, all of which conform to agreed and accepted principles applied to new developments throughout the country, it has been concluded that the Appeal Proposals would not lead to any significant ecological harm. This is a view shared by both Hertfordshire Ecology (HE) (CD2.2.21) and myself and as HE are the advisors to Three Rivers, it is also evident that the local authority have no such concerns.

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- 5.17 A draft Statement of Common Ground (SoCG) has been sent to HE which sets out those areas that are considered to be agreed between HE and Greengage in relation to biodiversity on site. These are;
- 5.18 The Appeal Site is of Low Ecological Value; semi-improved grassland dominates the Appeal Site habitat coverage; there are no Priority Habitats on the Appeal Site; there is no mandatory BNG requirement and NPPF or Policy DM6 of the Development Management Policies LDD specify a % or quantum of 'net gains'; the proposed financial contribution of up to £142,800 has been calculated in accordance with the methodology proposed by HE; that through this contribution, the Appeal Scheme will demonstrate 10% biodiversity net gain, which exceeds the policy requirement.
- 5.19 Furthermore, the SoCG agrees that measures have been secured for the conservation of the Forester moth through the provision of the Landscape & Ecology Management Plan to be secured by condition for onsite mitigation and the biodiversity offsite contribution of up to £142,800; it is agreed that this provides the measures for Three Rivers District Council as the LPA to be satisfied that its duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 has been carried out accordingly, and 'having regard' to this species during planning.
- 5.20 I specifically address this BNG policy at Section 0 of my proof.

## 6.0 REVIEW OF THE BIODIVERSITY INTEREST OF THE APPEAL SITE

### APPEAL SITE DESCRIPTION AND ECOLOGICAL CHARACTERISTICS

- 6.1 The Appeal Site is an allocated employment site within the Three Rivers Core Strategy (adopted 17th October 2011).
- 6.2 As part of the allocation process ecology baseline surveys and the Strategic Environmental Assessment (CD7.1.57) determined its suitability for allocation with respect to onsite and offsite biodiversity impacts. The 1996 surveys shown in Table 6.1 Previous Ecological Survey Summary are understood to have informed the council's evidence base for the employment land allocation.
- 6.3 The HERC consultation and biological records identify the current Appeal Site as Poor Semi-Improved Grassland and Existing Habitat not currently qualifying under S41 NERC Act. The map indicating this and the associated citation is shown in CD7.1.57.
- 6.4 The Appeal Site itself is dominated by dense / continuous scrub towards the edges, semi-improved (neutral) grassland across the central part, marshy grassland and tall ruderal vegetation. Other habitats present include scattered trees, waterbodies and buildings. This is shown on the Habitat Plans prepared for the Preliminary Ecological Appraisal (PEA) reports listed in Table 6.1 Previous Ecological Survey Summary for the Appeal Site (CD7.1.58).
- 6.5 Full details on the ecology of the Appeal Site are set out within the PEA (CD1.2.12) dated January 2021 which accompanied the planning application, alongside the supplementary reports on Bats, Badgers and Riparian Mammals.
- 6.6 I have visited the Appeal Site throughout 2021 and more recently in March 2022 to verify the findings reported within the ecological documents which informed the planning application and to determine whether the conclusions drawn within the ecological documents remained valid. The site conditions at the Appeal Site remain as were recorded in the Greengage PEA dated January 2021, with poor semi-improved neutral grassland being the dominate habitat type across the site. The potential for protected species to be on site remains as assessed in the PEA dated January 2021, with these being likely absent or having low potential to be on site.

### PREVIOUS ECOLOGICAL ASSESSMENTS AND SURVEYS

- 6.7 The Appeal Site has been subject to a range of ecological surveys and assessments which have been used to inform the current understanding of the ecological baseline and biodiversity value of the site. These have been carried out for a range of reasons and have been supplemented by the provision of other ecological information collated by the Herts

Environmental Records Centre (HERC). HERC were consulted and provided biological records to Greengage in 2017 and again more recently on 5th January 2021 (CD7.1.54).

- 6.8 HERC is hosted by Herts and Middlesex Wildlife Trust who provide data provided by recorders, professional ecologists and the public. They make this information available to a wide range of individuals and organisations for use in nature conservation, development planning and research. Their database holds over 3,117,000 records of species, over 4,000 sites and 20,000 habitat records.
- 6.9 HERC provided the search results for sites within Hertfordshire that have statutory and non-statutory nature conservation designations, which is contained in CD7.1.54.
- 6.10 The Appeal Site is not listed as having any statutory or non-statutory nature conservation designation. Details of the location, proximity to the Appeal Site are contained in CD7.1.54 and reference in Section 3.0 above. There are no statutory nature designated sites on the Appeal Site; there are 4no. LNR within 2km of the Appeal Site with the closest being Stockers Lake 720m northeast of the Appeal Site boundary, designated primarily for its wintering bird population.
- 6.11 There are no non-statutory LWS on the Appeal Site. There are 13no. non-statutory LWS within 2km of the Appeal Site boundary. The closest is Maple Lodge Marsh South recorded 150m east from the Appeal Site; the Maple Lodge Nature Reserve LWS is recorded 220m south of the Appeal Site.

## PREVIOUS SURVEYS

- 6.12 In addition, to the ecological records provided by HERC the site has been surveyed and assessed since 2009. The nature and findings of these surveys are shown in Table 6.1 Previous Ecological Survey Summary below.

Table 6.1 Previous Ecological Survey Summary

Year	Year of Survey	Organisation Undertaking Survey	Reason for Survey	Findings of Survey
1993	Habitat Survey	Hertfordshire Ecology	To establish baseline conditions	Largely semi-natural grassland not a significantly high quality grassland overall

Year	Year of Survey	Organisation Undertaking Survey	Reason for Survey	Findings of Survey
1996	Habitat Survey	Hertfordshire Ecology	To establish baseline conditions	Largely semi-natural grassland not a significantly high quality grassland overall
2009	Reptile Survey	ENTEC	To establish baseline conditions	No reptiles recorded - some incidental use might occur.
	Great Crested Newt	ENTEC	To establish baseline conditions	No GCN recorded.
2013	Extended Phase 1 Habitat / botanical survey	AMEC	To establish baseline conditions	Semi-improved grassland habitats dominate the site. Site is 'regularly mown and relatively species poor'
	Bat Emergence & Re-entry, and Bat Activity	AMEC	To establish baseline conditions	No bat roosting; moderate to low bat foraging
2014	Badger Survey	AMEC	To establish baseline conditions	Some badger activity indicated
	Reptile Survey	AMRC	To re-establish baseline conditions	Low population recorded



Year	Year of Survey	Organisation Undertaking Survey	Reason for Survey	Findings of Survey
2017 (July)	Preliminary Ecological Appraisal /NVC survey	RPS	To re-establish baseline conditions for planning application	Semi-improved grassland habitats dominate the site. No priority habitats or species recorded. 'Site comprises mown, relatively species poor, semi-improved grassland that has limited value for biodiversity..'
2017 (October)	Preliminary Ecological Appraisal	Greengage	To re-establish baseline conditions.	Semi-improved grassland habitats dominate the site
	Badger Survey	Greengage	To re-establish baseline conditions	Some badger activity.
2018	Reptile Survey	Greengage	To re-establish baseline conditions	No reptiles recorded.
	Bat Emergence & Re-entry, and Bat Activity surveys	Wardell Armstrong	To re-establish baseline conditions	No bat roosting; limited bat foraging.

Year	Year of Survey	Organisation Undertaking Survey	Reason for Survey	Findings of Survey
2019	Preliminary Ecological Appraisal	Wardell Armstrong	To re-establish baseline conditions	Semi-improved grassland dominate the site.
	Breeding bird survey	Wardell Armstrong	To identify notable breeding birds on site	Local importance only.
	Preliminary Ecological Appraisal	Greengage	To re-establish baseline conditions	Semi-improved grassland habitats dominate the site
	Reptile Survey	Greengage	To re-establish baseline conditions	No reptiles recorded
	Riparian Mammal Survey	Greengage	To re-establish baseline conditions	No riparian mammals presentation. Potential negligible.
	Bat Emergence & Re-entry; and Bat Activity	Greengage	Update to previous survey	No bat roosting; limited bat foraging.
2020	Preliminary Ecological Appraisal	Greengage	Update to 2019 PEA	Semi-improved grassland habitats dominate the site.
2021	Indicative NVC	Greengage	Habitat clarifications	No Priority Habitats Identified

Year	Year of Survey	Organisation Undertaking Survey	Reason for Survey	Findings of Survey
	Habitat Survey – NVC Clarifications	Hertfordshire Ecology	Habitat clarifications	Largely semi-natural grassland; not a significantly high-quality grassland overall

### SUMMARY

- 6.13 The baseline established in 1993 and more widely and consistently reported since 2009 has not changed. The habitats on site are modified habitats with little species diversity and ecological interest.
- 6.14 Furthermore, those species identified through the consultation process with HERC and Hertfordshire Ecology have been surveyed. The following conclusions in Table 6.1 below have been determined following surveys on the Appeal Site;

Receptor	Presence/Potential Presence	Comments
Designated Sites: Statutory	4 within 2km of site	Four statutory designated sites within 2km of the site, with the nearest 0.55km from the boundary.
Designated Sites: Non-Statutory	13 within 2km of site	A number of non-statutory sites within 2km of the site boundary including Maple Lodge LWS which is immediately southeast and connected to the site via the stream and associated terrestrial habitats.
Notable/Rare Habitats	Present	The hedgerow immediately adjacent to the site is considered a priority habitat. This area will be retained and protected from construction works.  The semi-improved grassland habitat has been subjected to an NVC survey in 2014

Receptor	Presence/Potential Presence	Comments
		which confirmed that it is not a BAP priority or S41 habitat. Hertfordshire Ecology undertook a survey in 2021 and also confirmed that this is not a BAP priority or S41 habitat.
Badger	Likely absent	Whilst badgers may use the site for foraging, their setts are considered to be likely absent from the site in light of abandonment of the outlier sett. Therefore, the proposals will not impact badgers.
Foraging bats	Present, site of local value	Activity surveys recorded low-moderate levels of activity by six species at the site, though almost exclusively soprano and common pipistrelles. In light of survey findings, mitigation is provided within the scheme design with no residual impacts post mitigation likely.
Roosting bats	Likely absent	Previous surveys confirmed the likely absence of roosting bats from buildings and trees on site. Additionally, proposals include retention of all trees with bat roost potential, therefore there are no impacts upon roosting bats.
GCN	Likely absent	Water samples were taken from Maple Brook in May 2017 which were returned as negative for GCN eDNA with a high degree of confidence. No other waterbodies are of relevance to the site. There are also no records of GCN within 2km of the site.
Reptiles	Low potential	Surveys undertaken in 2014 recorded a single grass snake on three visits indicating was likely a small, transient population of this species present at site.

Receptor	Presence/Potential Presence	Comments
		Surveys undertaken in 2018 and 2019 found no evidence of reptiles at the site.
Dormouse	Likely absent	Not considered further.
Water Vole and Otter	Likely absent	Not considered further.
Birds	Confirmed present	Surveys completed in 2018 recorded a number of breeding bird territories around the peripheries of the field. These were predominantly common species however, breeding territories of S41 species dunnock and song thrush were also recorded.
Invertebrates	Low potential	Habitats of value include the stream and stands of deadwood which are both likely to be retained, protected and enhanced as part of the works.  Loss of the grassland habitats may result in a small loss of value for pollinators.
Protected plant species	Likely absent	Not considered further.
Invasive/Non-native species	Likely absent	Not considered further.
Other BAP species	Moderate potential	Potential for species such as hedgehog, stag beetle, common toad and common toad within habitats onsite.

6.15 I consider the habitats and species on the Appeal Site to be of low ecological value and I consider none are considered a constraint to the proposed development. This conclusion is shared with HE, and we agree on the ecological status and value of the Appeal Site (CD2.2.1).

6.16 HE has been consulted through the application on the Appeal Site and as the statutory nature conservation consultant on the application have not objected to the proposals. They

have been supportive of the surveys undertaken, the findings associated with these surveys and proposed mitigation and offsite enhancements.

- 6.17 A Statement of Common Ground (SOCG) (see Appendix 1 of this document) has been drafted based on the agreed position on the biodiversity value of the site, the provision of onsite habitats and enhancement features, the offsite enhancement to deliver a biodiversity net gain, the mechanism and costs associated with the offsite mitigation based on available guidance, and specifically the position with regards to the Forester Moth.
- 6.18 The previous ecological surveys and assessments have not identified the presence or potential presence of the Forester moth. The HERC biological records (CD7.1.54) do not identify the presence or previous presence of the Forester moth on the Appeal Site or in the wider areas. Further details on the conservation status of the Forester moth and nature conservation activities to provide habitat for the Forester moth is given in Section 9.0.

## 7.0 APPLICATION HISTORY:

### PREVIOUS APPEAL DECISION APP/P1940/W/19/3243565

7.1 The previous Appeal Decision APP/P1940/W/19/3243565 (CD3.9) with regards to biodiversity considered:

- The effect of the proposal on biodiversity with particular regard to potential dewatering;
- Whether the proposal would deliver a net gain in biodiversity, including its relationship with other biodiversity mitigation schemes.

7.2 The Inspector found that the biodiversity value of the site was low and that biodiversity net gain was not mandatory although this would be delivered through a unilateral undertaking towards offsite biodiversity enhancements. As such there were no ecological issues associated with the proposed development. In particular the Inspectors comments were outlined in paragraphs 83-100 of the appeal decision and given below;

*95. The appellant's ecological assessment is consistent with previous reports and surveys, over a considerable period of time and is based on a rigorous and detailed assessment, including a NVC survey. It also took account of the species on the nearby Maple Lodge Wildlife Site. I therefore consider that it provides a reliable assessment of the ecological interest on the appeal site.*

*96. The proposed development will result in the loss of much of the existing grassland, however, the hedgerows and Maple Lodge Ditch will be retained. The proposals include an 8 metre deep buffer zone adjacent to Maple Lodge ditch. It is intended that this area will be managed and enhanced in order to promote biodiversity. A number of other measures are proposed which would protect and/or enhance biodiversity on the site. Since the assessment was prepared the proposals have been amended and the trees towards the eastern boundary of the site will largely be retained. The retention of these mature trees would be beneficial to biodiversity. The appellant has also submitted a unilateral undertaking that proposes the sum of £17,725 towards off-site biodiversity enhancements.*

*97. The appellant submits that the enhancements on site, together with the financial contribution would deliver a biodiversity net gain. It was intended that the financial contribution would be used at Maple Lodge Wildlife Site. However, concerns were raised as to whether this would be an appropriate use of funds given the recent work that has taken place at this location. Therefore the unilateral undertaking proposes that the funds be used towards the creation and future management of species rich grassland.*

*98. Mr Dodds, on behalf of the Wildlife Trust, submitted that in order to ascertain whether the proposal would deliver a biodiversity net gain, a biodiversity metric should be used, in accordance with best practice. His view was that any loss and gain should be measurable.*

99. Hertfordshire Ecology explained that while it generally supported the use of the DEFRA metric, at the time at which the application was assessed they were not confident of it, and therefore it was assessed based on their expert judgement. The financial contribution represents the cost of recreating a 2.26 hectare area of species rich grassland and maintaining it for 25 years. This represents 2/3 of the area of that lost at the appeal site plus 10% additional to represent a net gain.

100. I agree with Mr Dodds that the benefits arising from the proposal are not measurable and that it may be beneficial to use a metric such as that produced by DEFRA. However, the use of a metric is not mandatory. The proposal includes mitigation and enhancement measures on the appeal site as well as sufficient funds to provide an area of grassland of greater ecological interest than the appeal site and to maintain it for 25 years. The appeal scheme would provide a more coherent ecological network within the site as consequence of the enhancements adjacent to Maple Lodge Ditch. Given that the appeal site has low ecological interest overall and does not comprise any priority or protected habitats, I consider that the measures put forward by the appellant, including the planning obligation would combine to provide a net biodiversity gain. Consequently the proposal would comply with Core Strategy policy CP9 and LDD policy DM6, as well as the advice in the Framework.

## **APPLICATION PROCESS FOR THE APPEAL SITE**

- 7.3 Following the decision from the Inspector on the previous appeal a new application was submitted for the site. An updated PEA was undertaken and updated biological records obtained from the HERC (CD1.2.128) used to reconfirm the wider baseline conditions.
- 7.4 The updated PEA was submitted with additional updated reports for Badgers, Bats, Riparian mammals. The PEA included a recommendation for an updated National Vegetation Classification (NVC) survey to identify localised areas of habitat with greater floral diversity to inform the Landscape Ecological Management Plan that had formed an agreed planning condition, with the intention that any localised areas could be relocated within the site as part of the enhancements onsite.

## **FURTHER ECOLOGICAL SURVEYS UNDERTAKEN AS PART OF THE APPLICATION**

- 7.5 HE identified the recommendation within the PEA and requested that the NVC survey be undertaken prior to determination. This was undertaken by Greengage 7th June 2021 and reported to HE with confirmation that the grassland communities were consistent with previous NVC survey results that the grassland is 'generally species poor' and not considered as a 'habitat of principal importance'.



- 7.6 HE visited the site and undertook their own NVC survey and reported in the HE letter to Claire Westwood dated 26th July 2021 (CD2.2.11). This confirms:

*'In very broad terms, the surveys have similar results. The single most acidic area was very localised and limited in extent; much of the remaining grassland was characterised by greater or lesser abundance of false oat grass, where in places a more species-rich community was present.... However, we do not consider that the abundance of many indicator species and general coarse grass character, meets the status expected of a Priority Grassland habitat.'*

### **HERTFORDSHIRE ECOLOGY FINAL POSITION**

- 7.7 The HE letter of the 26th July 2021 (CD2.2.11) set out their position with regards to the biodiversity value of the site, the basis for their previous assessment for a biodiversity net gain offsite payment and BNG legal position, and the issue of the Forester moth having been reported on the Appeal Site.

- 7.8 Their position on the biodiversity net gain requirement was that this was not mandatory and not a requirement of planning, although HE do provide their own BNG calculation based on their site visit to the Appeal Site in July 2021 using the Natural England (NE) Biodiversity Metric (Defra 2.0).

- 7.9 HE attached the NE V2 metric to their letter and stated (CD 2.2.10):

- The existing site scores 20.40 Biodiversity Units (BU)
- The BU lost due to development = 16.98 BU
- Retained onsite BU = 3.42
- The proposed landscape plan shows BU gained on site = 7.12 BU
- This leaves an on-site score of 10.54 BU.
- This results in a net loss of 9.86 BU, or a net loss of 48.35%.

*To achieve a measurable net gain in biodiversity of at least 10% as stated in the Environment Bill, this will require achieving a net total of 22.44BU, which would need an offsite contribution of 11.90 BU. At £12,000 per BU (the average DEFRA consultation figure HE have advised LPAs apply in Herts) this would amount to a cost of £142.8k.*

- 7.10 HE further wrote (CD2.2.11) to confirm their position with regards to the Forester moth and the BNG contributions:

*We suggest that in any event the compensation for loss of the habitat should be increased, which will also contribute to the need to address the S41 moth species now known to be present within the site. Opportunities for this should be found locally if possible, to secure any population of the moth with its foodplants and sufficient habitat resource to maintain a viable population.*

- 7.11 HE wrote in September 2021 (CD2.2.21) to reconfirm their position on BNG, and the Forester moth compensation proposals and the appropriate financial contribution based on their own calculations.

### THREE RIVERS OFFICERS REPORT - NATURE CONSERVATION

- 7.12 The Officers Report (CD3.1 recommended that Planning Permission be granted subject to the completion of a S106 Agreement. With regards to Habitats & Biodiversity Offsetting the Officers Report stated (paragraph 7.12.47 – 7.12.60-):

*There is no evidence to show that the proposed development of the application site would cause any demonstrable material deterioration of the MLNR (Maple Lodge Nature Reserve) wetland ecosystems or the GWDTE (Groundwater Dependent Terrestrial Ecosystem). And as seen in the consultation responses ..., the discussion regarding the potential impact of the proposed development on species that are either found on or use the site, concludes that there would be no material adverse impact on species of fauna or flora at or using the site where biodiversity compensatory measures are secured by appropriate planning conditions and obligations.*

*It is recognised that the proposed development would have a direct biodiversity impact on the application site by reason of the loss of grassland. At the time of the previous application (ref. 19/1179/FUL), HECO considered that it would be appropriate to determine the appropriate financial contribution by reference to the cost of creating and managing, over a 25-year period, a smaller area of more species-rich grassland as a comparable ecological resource. HECO recommended that this should be an area of 2.26 hectares (two-thirds of the size of that being lost at the application site) plus 10% to represent a net gain of that resource. The total cost of this provision amounted to £17,725.*

*This recommendation did not follow any formal Biodiversity Metric assessment, which calculates the existing habitat on site in terms of biodiversity units, as well as the impact of the development and related compensation and enhancement measures. It is recognised that the HECO approach would probably have identified a lower monetary value than an approach using the metric with its defined biodiversity unit costs. In particular, it focused only on the conservation measures considered to benefit an existing local site. However, at the time, it was considered that if the measures could be secured, the potential benefits generated from restoring an otherwise degraded but formerly valuable Local Wildlife Site would adequately compensate locally for the loss of a poor grassland site which did not justify LWS status. This was considered to be a reasonable and proportionate compensatory approach at the time, taking account of what was known of the nature of the application site.*

*In the subsequent appeal, new photographic evidence was submitted which appeared to show higher quality grassland was present on the site than had been previously identified.*

*This was viewed by HMWT<sup>1</sup> as indicative of the grassland meeting Priority Habitat status, based upon species identified in the photographs.*

*In the interim period between the HECO response to the original application and the appeal, the Government published its updated biodiversity metric and the Environment Bill, promoting the need for developments to demonstrate a measured BNG of 10%. Consequentially, at the appeal, HECO stated that if a similar application was now made, they would advise that it was reasonable for the LPA to expect that a 10% BNG be calculated using the NE metric V2.*

*In her decision letter, Inspector Coffey (paragraph 100) observed that: “the benefits arising from the proposal are not measurable and that it may be beneficial to use a metric such as that produced by DEFRA [NE]. However, the use of a metric is not mandatory. The proposal*

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<sup>1</sup> Herts and Middlesex Wildlife trust

*includes mitigation and enhancement measures on the appeal site as well as sufficient funds to provide an area of grassland of greater ecological interest than the appeal site and to maintain it for 25 years.” Accordingly, the Inspector did not find that the absence of the application of a biodiversity metric to the proposed biodiversity compensation measures excluded the probability of them contributing to biodiversity gain.*

*Since the Appeal Inquiry, in July 2021 NE published V3 of the metric. And, when this planning application was submitted in 2021, HECO undertook a site survey to update its own understanding of the site given the local concerns and assessed the proposals using V2 of the NE Metric, to determine what contributions to biodiversity net gain might be made. The total contribution based on HECO’s 10% calculation was £142,800. In their comments of 14.09.2021 (Section 4.2.5.3 above), HECO set out that they consider there to be a number of options with regard to delivering BNG, and these are considered in turn: Firstly, to maintain the existing original contribution of £17,725. This is not considered to take into consideration the evidence relating to the Forester Moth and necessary mitigation, and is therefore not supported by the LPA.*

*Secondly, to secure a greater contribution of £34,410. In order to ensure that BNG is achieved and the loss of Forester moth habitat is accounted for, the applicant proposes to include mitigation and enhancement measures on the application site as well as sufficient funds to provide an area of grassland of greater ecological interest than the application site and to maintain it for 25 years. Given that without appropriate management of the site the habitat conditions needed by the moth are unlikely to be maintained and the greater ecological interest of the proposed compensating grassland, it is concluded that the proposed development would comply with Core Strategy policy CP9 and LDD Policy DM6, as well as the advice in the Framework if a biodiversity contribution of £34,410 was secured. It is proposed, accordingly, to increase the financial contribution to take account of up-dated biodiversity information using the same methodology for an additional area of grassland. This would approximately double the area of compensatory grassland. On this basis the total figure sought would be £34,410. This follows the approach and methodology taken at the time of the previous application and is considered development plan policy compliant by officers.*

*Thirdly, to apply the NE V2 Metric and seek a contribution of £142,800. Both the NPPF (para. 174 (d)) and the Development Management Policies LDD are clear that development proposals should seek to secure net gains for biodiversity. The emerging biodiversity policy of Government is also clear, as set out in the Environment Bill; not only should there be ‘net gains for biodiversity,’ the bill proposes to require a measurable gain of 10% BNG. The NPPF and DMP LDD do not currently set out a quantum or percentage of BNG, and 10% BNG is not currently mandatory. However, emerging policy supported by Government is clearly supportive of the achievement of measurable biodiversity gains and the Defra Metric provides a tool for calculating measurable BNG. It is also noted that the applicant has*

*confirmed in writing that should the LPA, having regard to the development plan and other material considerations consider it, necessary and appropriate to determine the biodiversity compensation based on HECO's 10% calculation utilising the NE V2 Metric, they would be willing to make a financial contribution towards BNG of up to £142,800. Officers consider that having regard to Policy DM6 seeking to incorporate measures for biodiversity enhancement wherever possible and the provision of compensation for the loss of habitat, and the support given by NPPF 174 (d) to providing net gains for biodiversity the LPA can find that it is necessary and appropriate to require that the development provides the measured contribution to biodiversity net gain calculated by reference to the NE V2 Metric to secure 10% BNG through a contribution of £142,800.*

*The HECO options, 4 and 5, relate to a compromise figure between options 2 and 3 above. Whilst comments from HECO regarding a compromise between the various figures are noted, as they also note themselves, such a compromise figure cannot be directly justified and therefore the LPA does not consider that such a figure would meet the CIL Regulation 122 tests. As such options 4 and 5 are not considered appropriate.*

*A number of objections, including from Herts and Middlesex Wildlife Trust (HMWT) have been received that the proposed development is not consistent with national or local planning policy in achieving a measurable net gain to biodiversity. Officers advise that the provision of the measured contribution of £142,800 to achieve 10% BNG meets that objection and is in line with the NPPF and Development Management Policies LDD and the CIL Regulation 122 tests. The £142,800 contribution would be secured by way of a S106 Agreement. The monies would be paid to the Council and spent by the Council or an instructed third party following agreement of a written costed scheme, with any amount not spent or committed to be spent after 10 years returned.*

*The applicant has confirmed agreement in principle to payment of this sum and a S106 agreement is being progressed. Subject to such agreement being put in place, it is considered that the proposed development meets the requirements of Policy CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and accords with the guidance in the NPPF (2021).*

## **POSITION IN THE STATEMENT OF CASE AND STATEMENT OF COMMON GROUND**

- 7.13 Three Rivers consider that subject to such a S106 agreement being put in place, it is considered that the proposed development meets the requirements of Policy CP9 of the Core Strategy (adopted October 2011), Policy DM6 of the Development Management Policies LDD (adopted July 2013) and accords with the guidance in the NPPF (2021).
- 7.14 As such the only Statement of Case to consider is that of the Rule 6 Party.

- 7.15 The Rule 6 Party (Maple Cross Residents Environment Group) set out in their SOC that their prime issues and context with regards to nature conservation are:
- 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.
- 7.16 Since the issue of the Rule 6 Party SOC no longer include their concern on the Maple Lodge Nature Reserve & Maple Lodge Marsh protection as part of their SOC. As such the SOC relates to that BNG must be demonstrated to be achievable using a recommended tool.

### **CURRENT POSITION ON S.106 CONTRIBUTION ON BNG**

- 7.17 The Planning Officer's report outlined in section 0 above provides the current position with regards to the S106 contribution. This is based on the calculated figure of £142.8k provided by HE in their assessment of the BU needed to provide a biodiversity net gain of 10%. This uses the average DEFRA consultation figure of £12,000 per BU that HE as the statutory advisors to Hertfordshire Local Planning Authorities, have applied based on Defra guidance.. I consider this a reasonable approach to take and the S106 contribution will deliver a biodiversity net gain on site.

### **MAIN ISSUES IDENTIFIED BY THE INSPECTOR IN THE CASE MANAGEMENT CONFERENCE**

- 7.18 The Pre-conference note identified the Main Issues to include the effects on biodiversity interests, in particular biodiversity net gain and the Forester moth.
- 7.19 These are dealt with in section 8.0 and 9.0 below.

## 8.0 BIODIVERSITY NET GAIN

### INTRODUCTION

8.1 The concept of biodiversity net gain is set out in policy, with paragraphs 174d and 179b of the NPPF encouraging the delivery of net gains for biodiversity:

- '174d Planning policies and decisions should contribute to and enhance the natural and local environment by [...] minimising impacts on and providing net gains for biodiversity;
- 179b To protect and enhance biodiversity and geodiversity, plans should [...] identify
- and pursue opportunities for securing measurable net gains for biodiversity'.

### EMERGING LEGISLATION

8.2 The concepts of biodiversity mitigation and compensation are the subject of new legislation in the form of the Environment Act 2021 (CD7.1.55) which seeks to advance the delivery of biodiversity benefits and proposes that it will become mandatory for all development sites to provide a net gain for biodiversity, with a level of a 10% net gain proposed.

8.3 There is currently a consultation on the Biodiversity Net Gain Regulations and Implementation (CD7.1.59) that closes on 5th April 2022. It states within the consultation document that the UK Government will set out in secondary legislation a list of habitats considered to be irreplaceable for the purposes of mandatory biodiversity net gain. This list will be accompanied by short supporting guidance on what constitutes irreplaceability and a set of principles to guide the implementation of bespoke compensation approaches. As such no formal guidance or draft guidance is in place.

8.4 At the time of the application submission, the Environment Act was still in draft bill form. There is currently no specific policy requirement within Three Rivers for delivery of a 10% biodiversity net gain. Accordingly, no quantitative assessment of biodiversity net gain was provided as part of the application submission.

8.5 Although the mandatory requirement for biodiversity net gain under the Environment Act is still to come into force (requiring secondary legislation), to quantify the level of biodiversity net gain that would be delivered under the scheme, an assessment has been undertaken using Defra 2.0 Biodiversity Metric calculation tool, as this was the most up to date calculator version at the time. This calculation was undertaken by HE rather than Greengage and based on their site visit of July 2021.

8.6 The Defra 3.0 Biodiversity Metric calculation tool has been released 7th July 2021. Further to this release 2no. further updates were made. These were

- Biodiversity Metric 3.0 Update (09/07/21) – Updated to correct an error in the 'on-site post-intervention – habitat units' cell in the Headline results tab & a G2 data tab error affecting the offsite rivers element of the detailed results tab.



- Biodiversity 3.0 Update (13/08/21) – NE have identified a labelling error for intensive and extensive green roofs. NE will correct the error in a subsequent update. In the meantime please use the 'Intensive green roof' category for projects looking to create 'biodiverse green roofs' i.e. those with a varied topography of between 80 and 150mm and planted and seeded with a wide range of wildflowers and sedums. NE recommend that for other projects seeking to create less biodiverse green roofs that do not have these attributes, please use the Low distinctiveness extensive green roof type.
- 8.7 The changes between the Defra 2.0 Biodiversity Metric calculation and the 3.0 metric are summarised by NE in an accompany note (CD7.1.60). There are no changes in the calculations that affect the grassland habitats but there are changes in relation to the way in which the 3.0 metric considers bramble. These are outlined in Section 0 below.
- 8.8 Recent Inspectors' Decision letters (CD7.1.61) set out the position with regards to BNG which are relevant to the Appeal Site. The Inspector's letter dated 5th January 2022 in the Appeal Decision for APP/Y3940/W/21/3278256 outlines:
- In this regard, although The Environment Act 2021 has now passed, secondary legislation is required for it to be implemented. Therefore, the 10% biodiversity net gain requirement set out in the Act is not yet law and is not applicable to these appeals. Policy CP50 of the CS, and Paragraph 174 of the Framework, both seek a net gain in biodiversity without identifying a specific percentage. A net gain of just 1% would be policy compliant in these circumstances. This could be secured by a planning obligation.*
- 8.9 Further guidance is taken from the Inspectors letter for the Appeal Decision APP/Y0435/W/20/3251121 dated 14th October 2020 (CD7.1.61). This is useful as it indicates that the S106 contributions would allow for a scheme to be agreed and staged payments to be made for that scheme to deliver the offsite biodiversity net gain.

## METHODOLOGY

- 8.10 To quantify the level of biodiversity net gain that can be delivered under the proposed development, the change in biodiversity value resulting from the scheme has been calculated using the Defra 2.0 Biodiversity Metric calculation tool, associated user guide (CD7.1.62) following best practice guidance from DEFRA, and joint guidance from CIEEM, IEMA and CIRIA (CD7.1.63).
- 8.11 This takes account of the size, distinctiveness and ecological condition of existing and proposed habitat areas to provide a proxy measure of the present and forecast biodiversity value of a site, and therefore determine the overall change in biodiversity value.
- 8.12 To establish the habitat baseline, broad habitat areas have been identified based on the survey work undertaken at the site, with habitat condition and connectivity scores assigned based on the guidance set out in the Technical Supplement and professional judgement.



This has been informed by specific survey work undertaken by Hertfordshire Ecology during their July 2021 survey.

- 8.13 HE completed the Biodiversity Metric V2 and in doing so considered that two thirds of the grassland (the most disturbed and species-poor sections) to be scored as 'Modified grassland' to reflect their lower and disturbed quality, but one third and the sedge bed as 'Other neutral grassland' to reflect the higher quality areas and more distinctive habitats.
- 8.14 The results of this metric are in CD7.1.64 and shows the following:
- The existing site scores 20.40 Biodiversity Units (BU)
  - The BU lost due to development= 16.98 BU
  - Retained onsite BU = 3.42
  - The proposed landscape plans shows BU gained on site = 7.12BU
  - This leaves an on-site score of 10.54 BU.
  - This results in a net loss of 9.86BU, or a net loss of 48.35%
- 8.15 Since HE undertook their own assessment an updated version of the Biodiversity Metric has been released (July 2021). I have recalculated the BU position (CD7.1.65) using the same habitat classifications and areas within the HE calculator. The Biodiversity Metric 3.0 changes the results and shows the following:
- The existing site scores 16.00 Biodiversity Units (BU)
  - The BU lost due to development= 12.58 BU
  - Retained onsite BU = 3.42
  - The proposed landscape plans shows BU gained on site = 6.06BU
  - This leaves an on-site score of 9.48 BU.
  - This results in a net loss of 6.52BU, or a net loss of 40.73%
- 8.16 The S106 contributions of shown in Section 0 will provide the payment required to deliver the 6.52BU using the updated Biodiversity Metric 3.0. This will secure grassland and habitats equal to or greater in habitat value to those that are being lost through redevelopment of the Appeal Site. The S106 contribution will be used to fund a project that restores or creates these habitats to deliver the biodiversity net gain illustrated through the metric. Control over the delivery of the project lies with the Council.

### **CONCLUSION ON BIODIVERSITY NET GAIN.**

- 8.17 HE undertook the BNG calculations using the ecological information from their own site survey in July 2021. This indicated that there would be a net loss of 48.8% (a net loss of 9.86BU) and applying the £12,000 average cost per BU from the Defra consultation range a contribution of £142.8k would be required to deliver a biodiversity net gain through funding an offsite project.

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- 8.18 Therefore, in the absence of a formal statutory requirement for 10% and upon a thorough review of the BNG approach taken on the Appeal Site, I consider this is wholly consistent with the emerging regulatory regime and with national and local planning policy. The proposals meet national and local policy requirements and achieve a net gain for biodiversity, which is a benefit which should be inserted on the positive side of the planning balance.

## 9.0 THIRD PARTY ISSUE NATURE CONSERVATION ISSUE - FORESTER MOTH

### INTRODUCTION

9.1 I was made aware of a single Forester moth (*Adscita staitices*) being observed at the Appeal Site in July 2021 by Mr Martin Parr. Mr Parr accessed the site without authorisation. I do not know Mr Martin Parr but he describes himself on online profiles as a Wildlife Photographer and Conservationist, as well as a trustee and volunteer at the Maple Lodge Conservation Society.

9.2 The photograph shown as evidence of the single Forester moth at the Appeal Site has no reference points to indicate that the moth was recorded on site and the record has not been corroborated by any of the multiple previous surveys nor any of my subsequent surveys.

9.3 The photograph shows a Forester moth on Yarrow (*Achillea millefolium*) which is commonly found across the UK (Europe and North America) and is recorded on the Appeal Site.

### CONSERVATION STATUS

9.4 The Forester moth is a rare moth, a UK BAP species and S41 Priority Species. Due to a marked decline 1980 – 2005 considered to be due to agricultural intensification, it was added to the UK BAP list – originally created 1995-99 - in 2007. However, no action plan was produced for this or any other species added in 2007, and no such plan was ever proposed given changes to the BAP process at the time, which eventually ceased to be actively supported by Government nationally and locally.

9.5 The Forester moth has never been common in Hertfordshire and as the last record was 1947, it was considered extinct in the county (Ref. Herts Moth Group 2021).

9.6 It was allegedly recorded on 12 July 2021 at Maple Lodge and on 16 and 19 July at Chorleywood Common (2.7km to the north of the Appeal Site [https://www.instagram.com/p/CRi8feGhkgT/?utm\\_medium=twitter](https://www.instagram.com/p/CRi8feGhkgT/?utm_medium=twitter)), also in the south west of the county (Hertfordshire Moth Group 2021). In Middlesex it was recorded at Bushey Park (west London) on 20 June 2020 and Trent Park (north London) on 16 July 2021. Their distribution trend since 1970's is stated as declining, and it described as widespread, but absent over wide areas (<https://ukmoths.org.uk/species/adscita-staitices/>).

### ECOLOGICAL REQUIREMENTS

9.7 The Forester moth habitats, as described by Butterfly Conservation, include damp neutral grassland, to chalk downland, heathland, sand dunes and woodland clearings, and as such have a very wide habitat range. They are found in England, Wales, Scotland, and Ireland

and are well distributed in England, Wales, also in western Scotland and parts of Northern Ireland.

- 9.8 Chorleywood Common comprises acid, neutral and chalk grassland, and is different in nature to the grassland found at the Appeal Site, which are more associated with its river valley setting.
- 9.9 As the Forester moth is a species listed in Section 41 of the NERC act the Local Planning Authority (LPA) should 'have regard' to its conservation during planning, which has been the case with regards to biodiversity at the Appeal Site. Whilst it is likely that the habitats on site are sub-optimal given the extent of species poor, semi natural grassland, areas of grassland associated with the Forester moth habitat requirements are small and interspersed with larger areas that do not have the habitat composition suitable for the moth.
- 9.10 The single siting of a single moth is based on a photograph taken and is not corroborated. In addition, no previous surveys on site had recorded it and it is was not provided in the biological records for the Appeal Site.
- 9.11 Common Sorrel (*Rumex acetosa*) and Sheep's Sorrel (*Rumex acetosella*) are reported as the foodplants for the Forester moth caterpillar. On the Appeal Site, Common Sorrel is common across the area, but Sheep's Sorrel is found only in one small location. UK Butterfly Conservation indicate that the Forester moth is often found feeding on flowers such as those of Devil's-bit Scabious, Field Scabious and Marsh Thistle, which are not recorded at the Appeal Site. However, whilst it is likely that it will feed on other flowering plants, the absence of those species favoured by adults reduces the value of the habitat at the Appeal Site.
- 9.12 It should also be noted that the site had previously been mown annually, and usually towards the end of the summer months. There was a hiatus in the usual maintenance regime because of the lockdown. However, I understand that it will resume this year. As such Common and Sheep's Sorrel would be cut and therefore not available for the Forester moth larvae to over winter. It has only been in the last 18months or so that the annual mow has not been carried out which could potentially allow Forester moth larvae to overwinter. It should also be noted that without management, the site at the Appeal Site will become less favourable as the sward become dominated by more aggressive grasses or affected by scrub invasion which is already evident to the western and southern borders. The presence of the moth (if any) would therefore become more unlikely overtime if the site is not maintained.

## CONSERVATION POTENTIAL

- 9.13 Conservation work nationally has been variously successful; it was lost from Warwickshire despite measures taken to conserve it, but the Forestry Commission (08/07/2011) reported

over 1,200 adults following creation of a 2.5 ha wildflower meadow grassland from former agricultural land at Long Newton near Middlesborough. The Upper Thames moth group reports (2019) Bucks sites with over 40 individuals, 16 individuals on a previously known site and 19 on a new site. These sites were on old ridge and furrow meadows on the clay and records more than doubled previous sighting numbers. This suggests that the species is potentially capable of having better years and may indicate why it has been recorded at the Appeal Site and Chorleywood Common in 2021. Whilst the Bucks sightings were associated with old well-established grasslands, the Forestry Commission experience also suggests that new habitat can be created which is capable of being colonised by the species. This suggests that appropriate compensation measures may be successful in providing new suitable habitat resources.

## LEGAL REQUIREMENTS

- 9.14 As a S41 NERC Act species “of principal importance for the purpose of conserving biodiversity” covered under section 41 (England) of the NERC Act (2006) it therefore needs to be taken into consideration by a public body when performing any of its functions with a view to conserving biodiversity.
- 9.15 Consequently, in considering an application on land supporting the moth, Three Rivers must seek to secure its conservation. The possibility that the site has been used for breeding by the Forester cannot be definitively ruled out given the presence of its foodplant and current rather rank nature of the sward. However, the absence of sightings at any formal approved site assessment means that only very limited weight can be attached to the suggestion that the moth has been present on the site in the past. Nevertheless, it would seem that there are examples which demonstrate that habitat compensation could work if a suitable grassland species composition and management regime could be secured elsewhere locally. It would also ensure that TRDC has complied with its NERC Act obligations relating to its Biodiversity Duty and S41 species responsibilities.
- 9.16 For this to happen, a suitably sized species-rich grassland supporting common sorrel and sheep’s sorrel if the ground is acidic, as well as other flowering herbs, would need to be created locally. Hay cutting and or grazing should seek to retain a short length of grass sufficient to enable overwintering of the caterpillar or pupa. Given the moth is currently recorded on a grassland of just over 2 ha, a grassland of similar size and improved composition would seem be appropriate to accommodate sufficient habitat, larval foodplants and nectar sources. This is the view of Hertfordshire Ecology (CD2.2.21 and I am in agreement with this conclusion, on the basis that the presence of the Moth is assumed (contrary to the survey evidence).
- 9.17 Such a solution is also consistent with the allocation of the site in an up to date development plan. The principle of development is consistent with the development plan. Any such

development would (as a matter of principle) have an impact on the moth (assuming it is present on the site, contrary to all the survey information).

9.18 Guidance has been sourced where specific management activities are for habitat management directed at providing conditions suitable for the Forester moth. No advice relates to the physical relocation of individuals as this would not be reflective of the habitat requirements required for its life cycle, and as such all guidance relates to the establishment of habitat structure, composition, and management to favour conditions suitable for adults and larvae. It has been the intention that the Landscape and Ecology Management Plan (LEMP) proposed condition, based on the integration of biodiversity objectives (one of which will include measures to provide managed habitat on site) will direct the habitats retained or re-provided within the site boundary. Inclusion of targeted and appropriate planting and seed mixes to include both Common and Sheep's Sorrel across the site and, rotational cutting after flowering has occurred, and keeping areas where larvae have the potential to over winter will be included within the onsite LEMP measures. This will also ensure that scrub does not encroach.

9.19 Conservation activities elsewhere suggest 'Maintenance of a medium-tall sward with abundant sorrel and nectar plants is essential' (ref <https://butterflyconservation.org/sites/default/files/habitat-burnetandforester-moths-scotland.pdf>) and the LEMP will include these within it so that there are opportunities for the Forester moth onsite. However, whilst there are relatively small areas within the existing habitat on site, that include plant species that the Forester moth favours, the areas of proposed landscaping are unlikely to be able to re-provide the same area once the proposed development has come forward. As such and in addition to the onsite measures, the previous application included a unilateral undertaking under section 106 of the Town and Country Planning Act, which covenanted to make a payment of £17,725 for the provision of offsite biodiversity enhancements to offset any biodiversity losses on site.

9.20 In the appeal the Council considered this contribution appropriate for the offsite provision and the Inspector in the appeal decision stated that the proposals would deliver a net biodiversity gain. This previously agreed S106 payment was based on the advice of HE that outlined

*"... it would be appropriate to determine the contribution based on the cost of creating and managing, over a 25-year period, a smaller area of more species-rich grassland as a comparable ecological resource. I would recommend this should be an area of 2.26 hectares (two thirds of the size of that being lost at Maple Lodge) + 10% to represent a net gain of that resource. This payment would be made available to an appropriate local project to be identified as part of the S106 and held by the LPA for this purpose or refunded to the developer if after a period of 5 years the project has not commenced. I consider a sum of £17,725 would be appropriate to achieve this."*

- 9.21 Therefore, if the S106 was identified for the creation and management of grassland then this could again be secured to be used to provide habitat enhancement offsite. The habitat requirements for the Forester moth can be delivered in a location that demonstrates more of the habitat characteristics that it favours, than is currently within the proposed development site at the Appeal Site. This is a matter for the LPA to justify through a CIL compliance statement.
- 9.22 In addition, and as noted earlier, there is no current land management in place at the Appeal Site and without this the area will scrub up with the loss of Common and Sheep Sorrel on site. As such the food plants for the caterpillars, and those of the adult will be lost through nature succession, in a relatively short period of time. The creation and / or management of grassland offsite will provide long term habitats favoured by the Forester moth and provide the opportunity for its future success. Accordingly, the grant of consent on this allocated site represents the best chance of encouraging the Forester Moth.

## **RECOMMENDATIONS AND CONCLUSIONS**

- 9.23 The above demonstrates how appropriate measures can be secured for the conservation of the Forester moth through the provision of the LEMP for onsite mitigation and an offsite S106 payment. Furthermore, this would provide the measures for Three Rivers District Council as the LPA to be satisfied that its duty under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 has been carried out accordingly, and 'having regard' to this species during planning.
- 9.24 It also shows that any favoured habitat at the Appeal Site will be lost through nature succession in a relatively short period of time. The S106 provision will provide the opportunity for the creation and / or management of grassland offsite specifically focused on enhancing biodiversity and habitats favoured by the Forester moth, and so provide the opportunity for its future survival. These measures will also ensure a biodiversity net gain, as required by policy and demonstrating further planning benefits of this development.
- 9.25 This approach is complies with the statutory requirements with regards to in ensuring that the conservation of the Forester moth is protected. Furthermore, it complies Three Rivers District Core Strategy 2011 policies CP9 and DM6.

## 10.0 SUMMARY AND CONCLUSIONS

- 10.1 The Appeal Site is subject to a full detailed planning application (ref: 21/0573/FUL) for  
*“Comprehensive redevelopment to provide 2 no. warehouse Class E(giii)/B2/B8 units comprising a total of 16,115 sqm including 1,882 sqm ancillary E(gi) office space, access, landscaping and associated works.”*
- 10.2 This is being appealed on the grounds of non determination.
- 10.3 The Application was taken to Planning Committee on 21st October 2021 with a recommendation for approval. Members resolved to defer the determination of the application. The sole issue being the hydrological impact on the Maple Lodge nature reserve. The approved minutes cite the reason for the deferral being:  
*“for the Council to instruct their own expert hydrologist or similar to review the application on the grounds that Members are not satisfied that the risks of development to the Maple Lodge Nature Reserve had been fully understood and the suggested conditions would meet the requirements.”*
- 10.4 The Council’s hydrogeological report, prepared by McCloy Consulting, was received on 8th March 2022 (CD5.13). The report confirms that subject to conditions, the proposed development’s effect on the groundwater and Maple Lodge Nature Reserve can be managed and appropriately mitigated.
- 10.5 The Council issued an Addendum Statement of Case on 10th March 2022 (CD5.14) which confirms that the Council it does not intend to present any reasons for refusal in relation to the Appeal subject to conditions
- 10.6 However, the Maple Cross Residents Environment Group (as a Rule 6 Party) has identified matters relating to biodiversity net gain and the Forester moth, and biodiversity net gain and the Forester moth are identified by the Inspector as a main issue to be considered at the appeal.
- 10.7 The policy framework against which the appeal proposals should be assessed is set out in the NPPF and NPPG and within the current Three Rivers Local Plan policies CP9 and DM6. I discuss the key policy tests of relevance to the appeal proposals and provide consideration of these in my evidence.
- 10.8 Greengage have undertaken surveys at the Appeal Site between 2017-2021 and comprise specifically a desktop study, Preliminary Ecological Appraisal (to include Phase 1 habitat surveys and general faunal surveys), badger surveys, reptile surveys, bat emergence & re-entry surveys, bat activity surveys, mammal riparian surveys, and botanical (NVC) surveys.
- 10.9 The ecological assessment of the site has also been informed by survey work undertaken by other third-party and ecological consultancies, including Phase 1 habitat surveys in 1993, 1996, 2013, 2017, and 2019. Reptile surveys in 2009, 2014, 2018 and Great Crested



Newt surveys in 2009, protected species survey of the appeal site undertaken in April 2014, and Great Crested Newt surveys in 2009. Furthermore, NVC / botanical surveys were carried out in 2013 and 2021, with breeding bird surveys carried out in 2019.

- 10.10 The Appeal Site was revisited in October 2021 and March 2022 to verify the findings of the previous survey work, and on the basis that there has been very little recent change to habitats or faunal opportunities at the site, I consider the survey information available is 'adequate' in nature and fit for purpose to inform a planning decision.
- 10.11 In regard to the overall biodiversity outcome of the proposals, I have reviewed the effects on designations and habitats and species supported by the Appeal Site and conclude that based on the mitigation and enhancements proposed, the appeal proposals would not result in significant effects on ecology and with the S106 contributions for offsite mitigation it would deliver a number of benefits for biodiversity. This is confirmed by calculations undertaken by HE using the Defra 2.0 metric, and by calculations undertaken by myself using the Defra 3.0 metric which provide a quantitative measure of biodiversity change and the £142.8k S106 figure calculated by HE to offset the 48.35% (or 40.73% using Defra 3.0 metric) on site loss.
- 10.12 Accordingly, the appeal proposals fully accord with national policy under the NPPF and Three Rivers District Council local policy.
- 10.13 A review of consultation responses has also been undertaken, which finds that matters have been addressed as part of the application documents, whilst no new matters are identified.
- 10.14 In conclusion, I find that the survey work undertaken is robust and appropriate, and the appeal proposals can clearly demonstrate a positive outcome in terms of ecology which would give rise to a biodiversity net gain in line with national and local policy.
- 10.15 Accordingly, I consider that ecological matters are fully addressed. Indeed, that conclusion is agreed with the LPA.

**APPENDIX 1: DRAFT HE STATEMENT OF COMMON GROUND**