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1.0 REVIEW OF THE BIODIVERSITY INTEREST OF THE APPEAL SITE

APPEAL SITE DESCRIPTION AND ECOLOGICAL CHARACTERISTICS

- 1.1 The Appeal Site is an allocated employment site within the Three Rivers Core Strategy (adopted 17th October 2011).
- 1.2 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.
- 1.3 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 as shown in CD7.1.54.
- 1.4 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.
- 1.5 I have visited the Appeal Site throughout 2021 and in March 2022 to verify the findings reported 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 are poor semi-improved neutral grassland being the dominant habitat type across the site. The potential for protected species to be on site is likely absent or having low potential to be on site.

PREVIOUS ECOLOGICAL ASSESSMENTS AND SURVEYS

- 1.6 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. Previous ecological surveys are contained in CD7.1.58.
- 1.7 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.

SUMMARY

- 1.8 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.
- 1.9 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).

- 1.10 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.

2.0 APPLICATION HISTORY:

HERTFORDSHIRE ECOLOGY FINAL POSITION

2.1 HE position on the biodiversity net gain requirement was that this was not mandatory and not a requirement of planning, although 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).

2.2 HE attached the NE V2 metric to their letter and stated (CD2.2.10):

- 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.

2.3 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.

THREE RIVERS OFFICERS REPORT - NATURE CONSERVATION

2.4 The Officers Report recommended that Planning Permission be granted subject to the completion of a S106 Agreement. With regards to Habitats & Biodiversity Offsetting the Officers Report stated;

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....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.

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....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. HECO set out that they consider there to be a number of options...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 and 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 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.

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. 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.

3.0 BIODIVERSITY NET GAIN

EMERGING LEGISLATION

- 3.1 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.
- 3.2 The Defra 3.0 Biodiversity Metric calculation tool has been released 7th July 2021. 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.
- 3.3 Recent Inspectors Decision letters (CD7.1.61) set out the position with regards to BNG which are relevant to the Appeal Site. The Inspectors 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 yet law and is not applicable to these appeals. ... A net gain of just 1% would be policy compliant in these circumstances. This could be secured by a planning obligation.*
- 3.4 Further guidance is taken from the Inspectors letter for the Appeal Decision APP/Y0435/W/20/3251121 dated 14th October 2020. 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

- 3.5 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.
- 3.6 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%

3.7 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%

3.8 The S106 contributions of shown in Section **Error! Reference source not found.** will provide the payment required to deliver the 6.52BU using the updated Biodiversity Metric 3.0.

4.0 THIRD PARTY ISSUE NATURE CONSERVATION ISSUE - FORESTER MOTH

INTRODUCTION

4.1 I was made aware of a single Forester moth (*Adscita statices*) being observed at the Appeal Site in July 2021 by Mr Martin Parr. Mr Parr accessed the site without authorisation and 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.

4.2 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.

4.3 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

4.4 The Forester moth is a rare moth, a UK BAP species and S41 Priority Species. 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).

4.5 It was 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), 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.

ECOLOGICAL REQUIREMENTS

4.6 The Forester moth habitats, 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.

4.7 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.

- 4.8 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.
- 4.9 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 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. Scrub invasion across the site will remove the habitat value.

CONSERVATION POTENTIAL

- 4.10 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 Middlesbrough.
- 4.11 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.

5.0 SUMMARY AND CONCLUSIONS

5.1 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.”

5.2 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.

5.3 The Council issued an Addendum Statement of Case on 10th March 2022 (CD5.14) which confirms that the Council does not intend to present any reasons for refusal in relation to the Appeal subject to conditions.

5.4 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.

5.5 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.

5.6 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.

5.7 The ecological assessment of the site has also been informed by survey work undertaken by other third-party and ecological consultancies since 1993.

5.8 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.

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- 5.9 Accordingly, the appeal proposals fully accord with national policy under the NPPF and Three Rivers District Council local policy.
- 5.10 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.
- 5.11 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.
- 5.12 Accordingly, I consider that ecological matters are fully addressed.