

Three Rivers District Council

Town and Country Planning Act 1990 (as amended)

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

Planning Appeal

Appeal Reference: APP/P1940/W/21/3289305

LPA Reference: 21/0573/FUL

---

THE COUNCIL'S REPRESENTATIONS TO THE INQUIRY

---

Introduction

1. As set out in the Council's Statement of Case (SOC) (CD5.9), following the Planning Committee's deferral of its decision on the appeal application 21/0573/FUL in October 2021 in order that independent hydrogeological advice could be received by the Council in respect of the impacts of the proposed development on water supply including groundwater, the Committee resolved on the 8<sup>th</sup> February 2022 to advise PINS, inter alia, that but for the appeal:  
*the Council would have approved the application if the hydrogeologist's report ("the report") is received prior to the deadline [24 February 2022] for the service of the Council's Statement of Case and the report does not indicate that there would be an unmanageable negative hydrogeological impact on any interests of acknowledged planning importance and that such approval would have been subject to the conditions and s.106 Agreement set out in the Committee report but subject to amendments/additions to the conditions as discussed in the Committee minutes. (CD5.10, Appendix TR04).*
2. Consistent with the Planning Committee's resolution, the SOC paragraph 6.7 stated that:

*It is the Council's intention, therefore, following receipt of "the report," to submit to the Planning Inspectorate, at the earliest opportunity, an Addendum Statement of Case to confirm whether its concerns with regard to the impact of the proposed development on water supply remain.*

3. The agreed and signed Statement of Common Ground (SoCG) (01/03/2022) (CD5.11) between the Council and the Appellant listed, in section 6, 'Matters Not in Dispute' including at paragraph 6.56, 'Groundwater':

*It is therefore agreed that there would be no adverse impact on the quality of local groundwater and that the quantity and quality of groundwater resource is protected from pollution in respect of the public water supply in accordance with Development Management Policies DM8 and DM9.*

4. Section 7 'Matters in Dispute' of the SoCG recorded as follows:

*7.1 It is not agreed whether the hydrological impacts of the development on the Maple Lodge Nature Reserve have been fully understood or that the suggested conditions to control such impacts would meet the requirements of the NPPF (paragraph 174) and Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).*

*7.2 The Draft conditions set out within the committee report are not agreed.*

*7.3 It is not agreed that draft Condition 7 (Groundwater Levels), as drafted by the LPA in the planning committee report (CD3.1) meets the test of Paragraph 55 of the NPPF.*

5. The Inspector's note of the Case Management Conference held on the 1<sup>st</sup> March 2022, identified in paragraph 7 'the main issues' in the appeal, namely, the effect of the proposed development on:
  - a) *groundwater with regard to the hydrogeological impact on the Maple Lodge Nature Reserve and public water supply;*
  - b) *biodiversity interests, in particular biodiversity net gain and the Forester Moth;*
  - c) *the living conditions of the occupiers of local residential properties by way of noise from traffic and the operation of the proposal; and*

*d) the planning balance (including the benefits of the scheme if not a separate issue) and the conclusion.*

6. As recorded in paragraph 4 of the note, it is the intention of the Appellant and the Council that an agreed and signed S.106 agreement between them shall secure necessary planning obligations relating to biodiversity net gain (main issue (b)) and also a travel plan.
7. As regards main issue a), the note (paragraph 5) correctly identified the groundwater issue, so far as it was raised by the Council, as concerning the Maple Lodge Nature Reserve and not public water supply; and that this was:  
*the subject of the result of a hydrogeological review that is due at the start of next week.*

#### The Hydrogeological Review

8. The Council's instructed hydrogeologist, McCloy Consulting, published their review, 'The Maple Lodge, Hertfordshire Planning Application Peer Review' (CD5.15, Appendix TR21) on the 9<sup>th</sup> March 2022 ('the Review'). The documents reviewed included the H Fraser Consulting, 16 December 2021 – Maple Lodge Reserve Hydrogeological Impact Assessment December 2021 Update (CD1.3.7).
9. The Review makes recommendations / conclusions in respect of the impact of the proposed development on groundwater and the Maple Lodge Nature Reserve including the securing by planning conditions of:
  - A Construction Environmental Management Plan ('CEMP');
  - A Piling Method and Risk Assessment and Dewatering Method Statement (if applicable);
  - An Operational Environmental Monitoring Programme ('OEMP');
  - A monitoring programme of the surface water environment (Maple Lodge Ditch) to be implemented during the construction and operational stages of the development (within the CEMP and the OEMP), to be in appropriate locations to determine whether or not there is a direct or indirect impact on the Maple Lodge Nature Reserve; and
  - The mitigation measures detailed in the HFC 2021 DQRA.

10. The Review's 'Final Statement' that, subject to the conditions outlined above, 'the proposed development's effect on the groundwater and Maple Lodge Nature Reserve can be managed and appropriately mitigated,' is accepted by the Council. This conclusion is considered well founded on the basis of the technical information reviewed including the H Fraser Consulting Maple Lodge nature reserve Hydrological impact assessment December 2021 update (CD1.3.7) to the effect that the potential impacts of piling on water levels have been shown to be 'negligible.'

11. In addition to these considerations, the Council has taken into account the letter received from Tier Consult 24/02/2022 (CD2.1.15) addressing issues raised by draft condition C7 'Groundwater Levels' (CD5.10, Appendix TR03 (Appendices Page 406)) and discussed in the Environment Agency's ('EA') letter dated 15<sup>th</sup> February 2022 (CD2.1.13). Tier Consult's letter draws attention to the findings of the H Fraser Hydrological Impact Assessment (December 2021) (CD 1.3.7) that:

- Calculations show that any impacts to groundwater levels due to piling will not be measurable beyond 10 m of the piled zone
- Groundwater in the River Terrace deposits, does not flow towards the Maple Lodge nature reserve in the summer months, when lake levels are lowest, so impacts would not be observed in the lakes during this most sensitive time
- The average flow through the volume of ground to be piled is less than 1% of the total inflow to the lake, indicating that risks are in any case negligible
- Natural lake levels vary by 7-8mm on a daily basis/200mm on a seasonal basis
- The maximum change in water level around the piling zone is within this range noted
- The natural variability of groundwater and lake levels is substantially higher than any change resulting from piling at the site, hence no impact is likely to be observed from the development activity

As noted by Tier Consult, the EA's letter (CD2.1.13) advised the Council that it should decide whether to keep or remove draft condition C7 once

it had received advice back from its instructed hydrogeologist McCloy Consulting.

12. Having had regard to the findings of the H Fraser Consulting Maple Lodge nature reserve Hydrological impact assessment December 2021 update (CD 1.3.7), the review conducted by McCloy Consulting contained in “the Report” (CD5.15, Appendix TR21) and Tier Consult’s letter 24/02/2022 (CD2.1.15), and following the guidance of the EA (CD2.1.13), the Council has concluded that there is no necessity (NPPF 2021: 56) for draft condition C7 to require monitoring of groundwater levels across the Maple Lodge nature reserve.

#### The Council’s Addendum Statement of Common Ground (CD5.14)

13. For the reasons set out in paragraph 4.1 of this addendum update of the Council’s Statement of Case (CD5.14) and subject to issues relating to biodiversity net gain and travel plan matters being satisfactorily addressed and resolved by a section 106 agreement, the Council has concluded that there are no sound and clear cut reasons for refusal of conditional planning permission for the appeal proposals.
14. The Council, accordingly, does not propose ‘to give or call another person to give evidence at the inquiry by reading a proof(s) of evidence’ (Rule 14: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 20000 (as amended)). It shall be submitted that the Council’s analysis and conclusions in respect of the material planning considerations relevant to the determination of the appeal are set out in the ‘Planning Analysis’ in section 7 of the planning officer’s report to the Extraordinary Planning Committee - 8<sup>th</sup> February 2022 (CD3.10) as amended or added to by the Council’s Statement of Case and Addendum Statement of Case and the Statement of Common Ground.

#### Maple Cross Residents Environment Group (‘the Rule 6 party’)

15. The Council has had regard to the case put forward by the Rule 6 party set out in its Statement of Case dated 04/03/2022 (CD5.12) and to its email to PINS dated 25 March 2022 (CD5.15) identifying paragraphs

7.2.1 to 7.2.6 of the document as relevant. In so far as it necessary to do so, the Council will respond to the points made by submission. In particular, it will be contended that, on the strength of the evidence before the inquiry, no WFD Compliance Assessment was required by law or otherwise to be carried out in this case.

#### Summary

16. It is the Council's position, having regard to the weight of the evidence before the inquiry and all other material considerations, that there are no sound and or clear cut reasons for refusal of the appeal development; and that its measurable benefits outweigh any material harm (if any) that it is suggested it might cause. The Council will make submissions to the Inspector in the inquiry to this effect and otherwise assist in round table discussions on matters including planning conditions, as necessary and appropriate.

Tim Comyn  
Francis Taylor Building  
Temple  
London  
EC4Y 7BY  
29<sup>th</sup> March 2022