

Planning Inquiry

Land to the North of Maple Cross Lodge, Maple Cross, Rickmansworth,

WD3 9SE

Appellant: BCL (Maple Cross) LLP

Planning Application Reference: 21/0573/FUL

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

Proof of Evidence - Appendices

in relation to Maple Lodge Nature Reserve

by Keith Pursall (Maple Lodge Conservation Society)

March 2022

Appendix A - Legal References

A.1 The Inspector will be required to have regard to the legal context when reaching his decision. This section includes the relevant legal references.

A.2 The water environment is protected by the Water Framework Directive (WFD). As an EU instrument, it is based on the precautionary, prevention and polluter pays principles - Recital (11):

“As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken, environmental damage should, as a priority, be rectified at source and that the polluter should pay”.

So, the Secretary of State can both (1) act pre-emptively to prevent environmental degradation, and (2) act on imperfect scientific information, refusing permission even if there is scientific uncertainty as to the likelihood / extent / timescale of any damage.

A.3 Article 1 affords protection to Groundwater Dependent Terrestrial Ecosystems:

Article 1

Purpose

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

A.4 Article 4(1)(b) of the WFD provides that, in making operational the programmes of measures specified in River Basin Management Plans for groundwater:

“(i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

A.5 Article 4(7) provides:

“7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the

physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or

- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.”

A.6 In interpreting the similarly – but not identically – worded provisions of Article 4(1)(a) of the WFD, the CJEU in *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland* (C-461/13) ECLI:EU:C:2015:433 said:

“50. It follows that, unless a derogation [Under Article 4(7)] is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer term planning provided for by management plans and programmes of measures. The obligation to prevent deterioration of the status of bodies of surface water remains binding at each stage of implementation of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted. The Member State concerned is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of good surface water status, unless the view is taken that the project is covered by a derogation under Article 4(7) of the directive.

51. In the light of all the foregoing considerations, the answer to the first and fourth questions is that Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.”

A.7 In that same case, the CJEU continued to consider that:

“69. That said, the view should be taken, as the Commission has done, that there is ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i) of Directive 2000/60, as soon as the status of at

least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i).

70. In the light of all the foregoing considerations, the answer to the second and third questions submitted is that the concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i).”

A.8 In *IL v Land Nordrhein-Westfalen* (C535/18) ECLI:EU:C:2020:391, the CJEU further confirmed that:

“74. Article 4 of Directive 2000/60 not only contains more long-term planning requirements provided for by management plans and programmes of measures, but also concerns specific projects to which the prohibition of deterioration of the status of bodies of water also applies. A Member State is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to

jeopardise the attainment of ‘good status’ for bodies of surface water or groundwater, subject to the derogations also provided for in Article 4 (see, to that effect, judgment of 1 July 2015, Bund für Umwelt und Naturschutz Deutschland, C-461/13, EU:C:2015:433, paragraphs 47, 48 and 50)”

A.9 In *IL v Land Nordrhein-Westfalen* (C535/18) ECLI:EU:C:2020:391, the CJEU further confirmed that:

“75. More specifically, as the Court has held, when a project is liable to have adverse effects on water, consent may be given to it only if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied. Without prejudice to the possibility of judicial review, the national authorities which are competent to authorise a project are required to review whether those conditions are satisfied before the grant of such an authorisation (see, to that effect, judgment of 1 June 2017, Folk, C 529/15, EU:C:2017:419, paragraphs 36 and 39).

76. It follows from the foregoing that, during the procedure for approval of a project, and therefore before the decision is taken, the competent authorities are required, under Article 4 of Directive 2000/60, to check whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater. That provision therefore precludes such a check from taking place only after that time.”

A.10 When the water body concerned is drinking water, Article 7 provides:

“1. Member States shall identify, within each river basin district:

- all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m³ a day as an average or serving more than 50 persons, and

- those bodies of water intended for such future use.

Member States shall monitor, in accordance with Annex V, those bodies of water which according to Annex V, provide more than 100 m³ a day as an average.

2. For each body of water identified under paragraph 1, in addition to meeting the objectives of Article 4 in accordance with the requirements of this Directive, for surface water bodies including the quality standards established at Community level under Article 16, Member States shall ensure that under the water treatment regime applied, and in accordance with Community legislation, the resulting water will meet the requirements of Directive 80/778/EEC as amended by Directive 98/83/EC.

3. Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water. Member States may establish safeguard zones for those bodies of water.”

A.11 The WFD is transposed to UK legislation via the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017/407 (the “WFD Regs”). Reg 12 requires the appropriate authority to submit proposals for environmental objectives for each river basin district and a programme of measures to be applied to achieve those objectives. Reg. 13 outlines those

environmental objectives. Reg. 13(5) provides that for groundwater bodies, the objectives are to:

“(a) prevent deterioration of the status of each body of groundwater;

(b) prevent or limit the input of pollutants into groundwater;

(c) protect, enhance and restore each body of groundwater, and ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater chemical status and good groundwater quantitative status, if not already achieved, by 22nd December 2021;

(d) reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order to progressively reduce pollution of groundwater.”

A.12 Part 6 of the WFD Regs provides for River Basin Management Plans.

Reg 33 requires the Secretary of State, in exercising his functions, to have regard to the relevant RBMP:

River basin management plans: duties on public bodies

33. The Secretary of State, the Welsh Ministers, the Agency, NRW and each public body must, in exercising their functions so far as affecting a river basin district, have regard to—

(a) the river basin management plan for that district as approved under regulation 31, and

(b) any supplementary plan prepared under regulation 32.

A.13 The relevant River Basin Management Plan is the Thames River Basin District River Basin Management Plan (December 2015). In Part 1 it states:

“1.1. The purpose of a river basin management plan

Water is essential for life and livelihoods. It allows the natural environment to flourish, and businesses, agriculture and the economy to grow and prosper.

Rivers, lakes, estuaries, coastal areas, wetlands and water under the ground provide many different benefits to society; from supplying drinking water and supporting fisheries to providing an essential resource for business and agriculture, transport routes and a source of recreation that promotes wellbeing.

It is critical that this precious resource is managed properly to ensure that the needs of society, economy and wildlife can be met and maintained over the long-term.

The purpose of a river basin management plan is to provide a framework for protecting and enhancing the benefits provided by the water environment. To achieve this, and because water and land resources are closely linked, it also informs decisions on land-use planning.”

“• Baseline classification of water bodies

- One of the main purposes of this plan is to prevent water bodies deteriorating.

The first step to preventing deterioration is to understand the baseline status for all the quality elements in each water body. Deterioration from the baseline is not permitted, except in very specific circumstances that are described in this plan. Preventing deterioration is one of the biggest challenges in managing the water environment.

- *Statutory objectives for protected areas*

- This plan highlights the areas of land and bodies of water that have specific uses that need special protection. These include waters used for drinking water, bathing, commercial shellfish harvesting and those that sustain the most precious wildlife species and habitats. The plan ensures that these areas have the legally binding objectives in place that protect those uses from potentially harmful activities and new developments.”

A.14 Part 1, 2.2 Environmental objectives states:

“The environmental objectives of the WFD are:

- *to prevent deterioration of the status of surface waters and groundwater*
- *to achieve objectives and standards for protected areas*
- *to aim to achieve good status for all water bodies or, for heavily modified water bodies and artificial water bodies, good ecological potential and good surface water chemical status*
- *to reverse any significant and sustained upward trends in pollutant concentrations in groundwater*
- *the cessation of discharges, emissions and losses of priority hazardous substances into surface waters*
- *progressively reduce the pollution of groundwater and prevent or limit the entry of pollutants*

Environmental objectives have been set for each of the protected areas and water bodies in the river basin district. They were identified through a process

involving technical and economic appraisals and formal public consultation. Achieving the objectives will optimise the benefits to society from using the water environment.

The environmental objectives summarised in this section are legally binding. All public bodies must have regard to these objectives when making decisions that could affect the quality of the water environment.

In certain specific circumstances, exemptions from some of these objectives may be applied. These exemptions are considered in the process used to set these objectives.”

A.15 Part 1, 2.3. Preventing deterioration states:

“To protect the many uses and benefits the water environment provides it is essential to prevent it deteriorating. The water industry and many of the businesses essential to the economy have invested billions of pounds in infrastructure that rely on secure supplies of clean water. Preventing deterioration also protects wildlife and people’s health and wellbeing.”

A.16 Part 1, 2.4. Protected area compliance and objectives states:

“Drinking water protected areas

The objectives for drinking water protected areas are to ensure that:

- under the water treatment regime applied, the drinking water produced meets the standards of the Drinking Water Directive plus any UK requirements to make sure that drinking water is safe to drink*
- the necessary protection to prevent deterioration in the water quality in the protected area in order to reduce the level of purification treatment required*

These objectives are at risk when increasing pollution levels caused by human activity could lead to more treatment being needed in the future and where measures are needed to reduce pollution. For groundwater bodies only, not meeting these objectives may also mean the water body is classed as poor chemical status.”

A.17 Part 1, 2.7. Progressive reduction of pollution of groundwater states:

“Hazardous substances must be prevented from entry into groundwater and the entry into groundwater of all other pollutants must be limited to prevent pollution. Hazardous substances means substances or groups of substances that are toxic, persistent and liable to bioaccumulate, and other substances or groups of substances which give rise to an equivalent level of concern”

A.18 Part 2, 3.1.1 Preventing deterioration states:

“Deterioration from one status class to a lower one is not permitted.

- While deterioration within a status class does not contravene the requirements of the WFD, (except for Drinking Water Directive parameters in drinking water protected areas, and provided that the objectives and requirements of other domestic or European Community legislation are complied with) action should be taken to limit within status class deterioration as far as practicable. For groundwater quality, measures must also be taken to reverse any environmentally significant deteriorating trend, whether or not it affects status.*

- Where the water body is already in the lowest status class (bad ecological status or potential, fail to achieve good chemical status, poor groundwater chemical status, poor groundwater quantitative status or protected area not achieving relevant standards) no deterioration will be permitted.”*

A.19 Part 2, 3.1.4. Exemptions to the environmental objectives provides:

“iii. New modifications or new sustainable development

New modifications or new sustainable human development activities may be permitted even though they might compromise the achievement of certain WFD objectives (Article 4.7 of the WFD). Certain new developments provide valuable benefits to society that outweighs the environmental or societal benefits of achieving WFD objectives.

Such benefits may include those provided by activities such as:

- public water supply*
- flood defence*
- navigation and transport*
- urban development*
- rural land management*

Any modifications or activities considered likely to compromise WFD objectives must undergo a thorough assessment before they can be permitted under Article 4.7 and must also ensure other related objectives are not compromised as a result of the proposed activities.

An assessment must provide evidence to satisfy the following conditions:

- all practicable steps are taken to mitigate the adverse impact on the status of the water body*

- *the benefits to human health or human safety or sustainable development outweigh the benefits of achieving WFD objectives or the activity is of overriding public interest*
- *there are no other means of providing the services offered by the activity that are technically feasible or of a proportionate cost and provides a significantly better environmental option”*

A.20 The PPG for Water provides, in relevant part:

“Assessing impacts on water quality

Where water quality has the potential to be a significant planning concern an applicant should be able to explain how the proposed development would affect a relevant water body in a river basin management plan or designated sites of importance for biodiversity, and how they propose to mitigate the impacts.

Where it is likely that a proposal would have a significant adverse impact on water quality then a more detailed assessment will be required. The assessment should form part of the environmental statement, if one is required because of a likely significant effect on water.

When a detailed assessment is needed, the components are likely to include:

- *the likely impacts of the proposed development (including physical modifications) on water quantity and flow, river continuity and groundwater connectivity, and biological elements (flora and fauna)*
- *how the proposed development will affect measures in the river basin management plan to achieve good status in water bodies to ensure local*

authorities discharge their duty to have regard to river basin management plans when exercising their duties, including making planning decisions

- how it is intended the development will comply with other relevant regulatory requirements relating to the water environment (such as those relating to bathing waters, shellfish waters, freshwater fish, drinking water, internationally and nationally designated sites of importance for biodiversity) bearing in mind compliance will be secured through the Environment Agency's permitting responsibilities*

Paragraph: 016 Reference ID: 34-016-20140306"

"Can planning permission be granted for developments that harm water bodies?

Changes to scheme design and mitigation will often avoid harm to water bodies. In the few cases where a detailed assessment indicates that development will have a significant adverse impact on water quality then the proposed development will only be acceptable where the conditions in Article 4.7 of the Water Framework Directive 2000/60/EC having regard to the river basin management plan are satisfied. The Environment Agency may be able to advise on meeting those requirements. [...]

Paragraph: 018 Reference ID: 34-018-20161116"

Appendix B – Maple Lodge Nature Reserve Water Levels

- B.1 Maple Lodge Nature Reserve has 2 lakes, fed by the inlet stream, direct rainfall and groundwater. Unlike most other lakes in the Colne Valley there is no direct feed from either the River Colne or the Canal.
- B.2 The inlet stream feeds into the upper lake – Clubhouse Lake, which runs out over a sluice, when levels are high enough, into the lower lake – Marsh Lake.
- B.3 Marsh Lake then has a further sluice where excess water can run out via a stream behind the sewage works and into the River Colne – but this only runs when water levels are high enough, normally in winter.
- B.4 The Clubhouse Lake sluice was installed in 2014 to help maintain a higher level in Clubhouse Lake. In recent drier years the inlet stream has dried up, groundwater has been low and then water levels have fallen very quickly.
- B.5 In the years between 2005/6 and 2011/12 there were 2 extremely dry winters in 2005/6 and to a lesser degree in 2011/12. These resulted in a complete dry-out of both lakes the first time and a near dry-out the second time. There were 6 years between these events.
- B.6 But in the last 10 years the pattern has become more extreme, with a shorter winter “wet” period and an increasingly sharper drop in levels during the summer months. In 2018 and 2019 Marsh Lake dried out completely again, and in 6 out of the last 10 years water levels have been much lower than in the previous 10 years.
- B.7 Maple Lodge’s existence as a wetland nature reserve depends entirely on its water supply from groundwater, direct rainfall and the input from the stream.

As can be seen from the graph below, the reserve is very vulnerable to any fluctuation in these supplies.

B.8 Any water that is prevented from reaching the reserve, either by reducing groundwater levels or preventing water from soaking into the ground in the catchment area, will threaten Maple Lodge’s ability to exist as a wetland reserve and the Section 41 habitats and rare species within it.

B.9 Water Levels Graph:

