



# Maple Lodge Conservation Society

Registered Charity No. 1153157  
[www.maplelodgenaturereserve.org](http://www.maplelodgenaturereserve.org)

Maple Lodge Conservation Society  
c/o Chess House  
Loudwater Lane  
Loudwater  
Rickmansworth  
Hertfordshire  
WD3 4HX

24<sup>th</sup> September 2021

Claire Westwood  
Three Rivers District Council  
Three Rivers House  
Northway  
Rickmansworth  
Hertfordshire  
WD3 1RL

**Re: 21/0573/FUL - Development Site, Maple Lodge, Maple Lodge Close,  
Maple Cross**

-  
**Response To Hertfordshire Ecology**

Dear Claire

I am writing in response to the letter you received from Herts Ecology, dated 14<sup>th</sup> September 2021, which was the latest in a number of discussions / communications relating to the calculation of Biodiversity Net Gain and the use of the DEFRA metric.

From these we have concerns about the advice being given to TRDC by Herts Ecology.

Section 54 sub-section (4) of the Planning and Compulsory Purchase Act 2004 imposes a duty on a statutory consultee to give a “substantive response” to any consultation.

Article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 defines a “substantive response” as:

- a) states that the consultee has no comment to make
- b) states that, on the basis of the information available, the consultee is content with the development proposed
- c) refers the consultor to current standing advice by the consultee on the subject of the consultation or
- d) provides advice to the consultor

In this case neither a) or b) apply and Herts Ecology has not, to our knowledge, referred to c) any current standing advice.

So what is d) the advice being provided by Herts Ecology to the consultant, TRDC?

Let us consider the sequence of events:

#### i) Appeal Decision

In the appeal decision for the previous planning application (19/1179/FUL) the Inspector reported Herts Ecology's position as follows:

*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.*

As we were present at the appeal, we can also confirm that Herts Ecology stated that, were they to be asked to respond again, they would use the DEFRA metric to calculate Biodiversity Net Gain

In our letter dated 9<sup>th</sup> April 2021 we referred to two occasions subsequent to the appeal (Dacorum Borough Council – 20<sup>th</sup> November 2020; East Herts District Council – 26<sup>th</sup> November 2020) where Herts Ecology advised other Hertfordshire councils to use the DEFRA metric, indicating that they were now confident in using it.

Apart from the evidence we submitted previously, Herts Ecology would also be contradicting the commitment they made at the appeal were they not to use the DEFRA metric for this planning application.

#### ii) Herts Ecology Letter – 13<sup>th</sup> April 2021

As far as this planning application is concerned, in their letter dated 13<sup>th</sup> April 2021, Herts Ecology state:

*2.4 Use of the current version of the NE Biodiversity Metric would enable this to be fully measurable, as recognised by the Inspector. Since our original comments, use of the updated Biodiversity Metric – published in July 2019 - has become more frequent where major development is proposed. Its use as part of the mandatory BNG proposal is needed to enable measured assessments of net gain to be determined, as outlined in the January 2020 Environment Bill. Nevertheless, whilst the expectations of the government have now become clearer, the Bill has not yet been enacted and the use of the metric or Biodiversity Net Gain is still not currently a mandatory requirement of planning law, also recognised by the Inspector at the Hearing.*

So, Herts Ecology are acknowledging that use of the DEFRA metric "is needed to enable measured assessments of net gain to be determined".

They mention that the use of the metric is still not currently a mandatory requirement of planning law, but this has not prevented Herts Ecology recommending its use to other councils within Hertfordshire, as evidenced above.

Also, more recently, within Three Rivers District itself, in the case of the planning application for Killingdown Farm (20/1881/FUL), Herts Ecology accepted the use of the DEFRA metric:

*However sufficient offsetting has been proposed (mainly for species-rich grassland, replacement orchard planting, and planting new hedgerows) to compensate for this loss and achieve measurable biodiversity net gain. This is demonstrated in the submitted Biodiversity Metric 2.0 spreadsheet and I have no reason to doubt this uplift can be delivered*

As the Case Officer responsible for the Killingdown Farm planning application, you will be aware of this.

### iii) Herts Ecology Letter – 14<sup>th</sup> September 2021

In this letter Herts Ecology confirm their statement at the appeal for planning application 19/1179/FUL:

*Furthermore, in the interim period between the HE response to the original application and the appeal, as outlined above, the Government published its updated metric and the Environment Bill, giving greater weight to the need for developments to demonstrate a measured BNG of at least 10%. To acknowledge this, at the appeal, Hertfordshire Ecology stated that if a similar application was now made, we would advise it was reasonable for the local authority to expect that a 10% net gain be calculated using the NE metric V2.*

They also confirm that the use of the DEFRA metric is needed to demonstrate measurable net gain:

*However, BNG continues to emerge and over the timescale of the applications has been further endorsed by Govt guidance and intention. This has also changed the weight that could be given to delivering BNG and how, to the extent that use of the metric would now be needed to demonstrate that measurable net gain can be achieved*

However, having clearly stated their position, Herts Ecology then present TRDC with 5 options, 4 of which are not in accord with their recommended advice to use the DEFRA metric to calculate Biodiversity Net Gain, as defined in their letter to TRDC dated 26<sup>th</sup> July 2021:

*5 ...At the Inquiry this was also acknowledged by Herts Ecology, given the published Metric V2 update and the weight clearly given to its use and BNG by Govt in the Environment Bill. If providing comments again in 2020, HE stated they would advise using the NE metric to assess BNG impacts and requirements*

*6. Provision of a Biodiversity Metric is not a requirement of planning law; NE state this will not become law until autumn 2023 when the TCPA is amended. However, we consider that for a site of this size, nature and impacts, it is now reasonable for the LPA to consider*

assessing the current application proposals using a Biodiversity Metric, consistent with the comments made at the Inquiry.

7. Consequently, HE have completed the Biodiversity Metric V2 to provide a view on this

Therefore, of the following five options, only one (Option 3) is actually consistent with previous statements made by Herts Ecology:

1. *Maintain the existing original contribution, as originally calculated to create a suitable area of compensation grassland which could also be potentially suitable for the Forester. This would be £17,725*

2. *To ensure that BNG and the Forester are properly considered independently using the previous approach (technically BNG doesn't directly assess species conservation requirements), increase the contribution along the same lines for an additional area for grassland. This would essentially double the area of compensation grassland. This would be £34,410*

3. *Apply the NEV2 metric calculation to determine BNG requirements. This is based upon new evidence of grassland value confirmed by HE survey and the increased emphasis placed upon using the metric to determine BNG, despite the current lack of planning requirement. This should, by default, provide for a larger grassland compensation, which should also substantially benefit the moth's colonising and establishment potential. This would be £142,800.*

4. *A compromise between any one of these. Such a figure cannot be directly justified as it simply reflects the weight attached to a planning judgement which takes into consideration the different contributions currently assessed through different methodologies. However, whilst each of these could be justified on their own merits, the latest approach to BNG by using a metric would be more consistent with the current expectation of Govt should BNG be applied to this new proposal.*

5. *To reflect the changing circumstances, it is suggested a compromise between 2 (the agreed proposed figure) and 3 (the metric V2 figure) may be appropriate. This would amount to £54,195.*

Options 4 and 5 are contradictory. Having said in Option 4 that a compromise figure "cannot be directly justified as it simply reflects the weight attached to a planning judgement which takes into consideration the different contributions currently assessed through different methodologies", Herts Ecology then suggest precisely that in Option 5 - a compromise "taking into consideration the different contributions currently assessed through different methodologies"!

Also, in Option 5, how is £54,195 a compromise between £34,410 and £142,800? This figure is stated without any reasoned explanation.

We believe that the advice being given here is unclear and, at times, contradictory. As the advice given by a statutory consultee will be used to inform a local authority's decision, then it needs to be clear and well-reasoned. This was emphasised in a recent High Court ruling (*Swainsthorpe Parish Council v Norfolk County Council*) when the judge stated:

*If the product of consultation has to be conscientiously taken into account and given great weight, it follows that it must be an intelligible response which is adequately reasoned, bearing in mind its purpose of providing advice to the decision maker, and informing its decision.*

Only Herts Ecology's Option 3 would comply with this ruling.

So we agree with Herts & Middlesex Wildlife Trust who have stated in their letter dated 21<sup>st</sup> September 2021:

*Of the 'options' provided by HE, the only figure with legitimacy is the sum that is supported by a NE biodiversity metric and unit cost estimate (although HMWT have demonstrated that it needs correcting).*

We trust you will take all this into account in reaching your decision.

Yours sincerely

  
Chairman  
Maple Lodge Conservation Society