

THREE RIVERS DISTRICT COUNCIL

DEVELOPMENT SITE: MAPLE LODGE, MAPLE LODGE CLOSE,
MAPLE CROSS, HERTFORDSHIRE

PLANNING APPEAL

PINS APPEAL REFERENCE: APP/P1940/W/21/3289305

LPA REFERENCE: 21/0573/FUL

THE COUNCIL'S STATEMENT

26/04/2022

THE DEVELOPMENT PLAN

1. The appeal site forms part of the allocated employment¹ site in Policy SA2/E (d) Maple Cross/Maple Lodge in the Site Allocations LDD (CD4.14).
2. The appeal proposals for comprehensive redevelopment to provide 2 no. warehouse Class E(giii)/B2/B8 units including ancillary E(gi) office space, accord with the development plan allocation of the site for employment.
3. It follows that (NPPF 2021:47)² planning permission shall be granted for the appeal development unless material considerations indicate otherwise.

THE MAIN ISSUES

4. The main issues in the appeal are those identified in the CMC Note (CD5.22:7):
 - a. the effect on groundwater with regard to the hydrological impact on the Maple Lodge Nature Reserve and public water supply;
 - b. biodiversity interests, biodiversity net gain and the Forester moth;
 - c. noise impacts on the living conditions of the occupiers of local residential properties; and
 - d. the planning balance including the benefits of the proposed development.

¹ CD...: 5.11: 'business, industrial and storage or distribution

² S.38(6) Planning and Compulsory Purchase Act 2004

THE EFFECT ON GROUNDWATER

5. The allocation Policy SA2/E(d) Maple Cross/ Maple Lodge (CD4.14: p.20-21) recognises the employment development will be undertaken within a Source Protection Zone 1 and 'adjacent to a wildlife site;' and acknowledges the need to take measures to avoid adverse impacts and to enhance biodiversity. These issues were not found to be impediments to the allocation of the E (d) site for employment in the local plan process.

PUBLIC WATER SUPPLY

6. As to the likely impact of the appeal development on public water supply, the Council have been guided by Inspector Coffey's observations on piling and groundwater (CD3.9: 125-154) and taken account of the subsequent lengthy technical dialogue between Affinity Water Ltd and H Fraser Consulting resulting in the water company's confirmation (CD2.1.8) that, subject to conditions C16, C17, C18 and C19 (CD5.23), any risks to public water supply can be managed.
7. For the reasons set out in the Committee Report CD3.10 paragraphs 4.2.7, 7.14.15 – 7.14.19, Inspector Coffey's concerns have been addressed and, subject to draft conditions C7 (OEMP), C8 (Contamination), C9 (Monitoring), C13 (CEMP), C16 (PMS), 17 (Boreholes), C18 (Dewatering), C19 (Conditions), C32 (Flood Risk), C34 (Unidentified Contamination) and C35 (Infiltration) the appeal development would cause no material detriment to nor any unmanageable impact on, public water supply.³

MLNR: HYDROGEOLOGICAL IMPACT

8. The Environment Agency (the agency/EA) as consultee:
 - in the exercise of its relevant statutory functions and having regard to the purpose of conserving biodiversity (NERC Act 2006: S.40) (CD7.2.2);
 - recognising its role in protecting the priority habitat of the MLNR and the reserve's status as a Groundwater Dependent Terrestrial Ecosystem groundwater receptor (CD2.1.13); and
 - the need to secure compliance with the stipulations of the WFD⁴ to prevent deterioration of the surface water status or groundwater status of a body of water (Water Environment (WFD) (E&W) Regulations 2017: Reg.3) (CD7.1.44); and
 - having had regard to the Maple Cross Contaminated Land Assessment and DQRA, the location of the appeal site within a WFD groundwater body with 'poor' classification (CD2.1.3), email correspondence from Tier Consult 19th May 2021 (CD2.1.15) and the H Fraser report 07/06/2021 (CD1.3.6)

³ This is agreed common ground between the Council and the Appellant (CD5.11:6.56)

⁴ The production of a WFD assessment is not a statutory requirement. The EA has explained its decision not to carry out an assessment (CD2.1.17).

have advised the Council (CD2.1.18) that the hydrogeological importance of the MLNR can be protected by draft planning conditions C5, C7, C8, C9, C16, C17, C34 and C35 (CD5.23). The consultation engagement with the EA is set out in the committee report at CD3.10:4.2.3.

9. Further, as noted in the Council's 'Representations' (CD6.3.1: 8-12), the Council has had regard to the 16th December 2021 H Fraser Consulting – Maple Lodge Reserve Hydrogeological Impact Assessment Update (CD1.3.7) and Tier Consult's 24/02/2022 commentary on findings of the update (CD2.1.15), and has been advised by McCloy Consulting (CD5.15) that, subject to planning conditions, the appeal development's effects on groundwater and the Maple Lodge Nature Reserve can be managed and appropriately mitigated.
10. In summary, the potential impacts (if any) of the appeal development on groundwater and the groundwater dependent ecosystems of the MLNR have been comprehensively addressed by the EA and by three hydrological consulting engineers. Their technical assessments (which are not understood to be materially challenged) demonstrate that, subject to planning conditions, the appeal development would not cause any harm to the MLNR wetland ecosystems or the GWDTE (CD3.10: 4.2.3, 7.12.24 - 7.12.41, 7.14).
11. The content of the technical and other relevant hydrogeological evidence before the inquiry demonstrates, accordingly, that the Secretary of State can conclude that the appeal development, subject to conditions, would not cause a deterioration of the status of the 'poor' class groundwater⁵ or any material detriment to the natural groundwater supply into the MLNR or the ecological interest of the reserve; and that the development accords with development plan Policy DM9 (b) (CD4.27) and the NPPF 2021: 174, 183, 185 (CD4.10–12).

BIODIVERSITY

12. The majority of the 3.4 hectares of the appeal site is covered by grass, with a mixture of shrubs and mature trees on its boundaries (SoCG (CD5.24)). The development of the site in accordance with the development plan employment allocation SA2/ E (d) for warehousing and distribution (CD4.14), must involve the loss of grassland and associated biodiversity.
13. The appeal site is of low ecological value dominated by semi-improved grassland.⁶ The loss of grassland and associated biodiversity, including food plants and habitat resource for the Forester Moth, can be compensated for by on-site (CD5.23: C5, C28)

⁵ CJEU Case C-461/13

⁶ The Herts Ecology visit to the appeal site in June 2021 led to the conclusion that the abundance of many grassland indicator species and general coarse grass character did not meet the status expected of Priority Grassland Habitat (CD3.10: 4.2.5.3/2.5).

and off-site local provision of 2 ha + of suitable grassland species composition and management (CD5.26: draft S.106) (CD3.10: 4.2.5.3/2.5:3.1-3.4, 7.12.42-7.12.60).

14. The Herts Ecology Natural England Biodiversity Metric Version 2 biodiversity net gain calculation set out at CD3.10: 4.2.5.3/2.5:6-9 requires an off-site contribution of £142.8K. Herts Ecology have advised that this figure represents 'a reasonable approach to assessing the existing value of the site and BNG requirements...' (CD3.10:4.2.5.2/10).
15. It is the evidence of Herts Ecology, the independent expert nature conservation consultee advising the Council on the ecological and biodiversity issues relevant to the appeal development, that the proposed on-site (CD5.23:C5, C28) and off-site (CD5.26: S.106 (provision of species rich grassland)) compensatory habitat creation will deliver requisite compensation for the loss of the semi-improved grassland of the appeal site, including foodplants and habitat resource for the Forester moth, and a biodiversity net gain.
16. The Secretary of State, accordingly, can find on the expert evidence before the inquiry that the appeal development, subject to conditions and the S.106, accords with the development plan Policy DM6 (CD4.25) and his guidance in NPPF 2021: 174, 180 (CD4.10).

NOISE

17. The proximity of the allocated employment site SA Policy 2/E(d) to residential development is shown on the allocation map (CD4.14:p.28). The design of the appeal development, in particular, the siting of the 2 warehouses, has had specific regard to the need to avoid 'unacceptable adverse impacts' (CD4.27:DM9 (d)) on the acoustic environment of the nearby residential development.
18. The Committee Report (CD3.10: 7.7.10) confirmed that, in view of the specialist advice received, the evidence before the Council demonstrated that the issue of noise affecting residential amenity could be addressed and resolved by planning conditions in conformity with the NPPF 2021: 174(e) (CD4.10) and Policy DM9 (CD4.27). The technical noise evidence before the inquiry demonstrates this to remain the case.
19. The issue of noise has been given recent further consideration by the Council in its email 12/04/2022 to the parties and PINS relating to draft planning conditions C20 and C37.
20. Following its review of the noise evidence now before the inquiry, the Council no longer proposes the imposition of draft condition 37 Hours of Use/Operation (CD5.23) as it is unnecessary and unreasonable applying the guidance in NPPF 2021: 56. The draft noise condition C20 below circulated by the Council to the parties and

PINS on the 20th April 2022, along with draft conditions C13 (CEMP) and C36 (refrigerated HGVs / tugs) (CD5.23) will ensure that the appeal development would not cause any unacceptable adverse impact on the indoor and outdoor acoustic environment of nearby residential properties.

C20 (Noise Assessment)

The rated noise level from any fixed or mobile mechanical plant in or on the buildings and from the commercial activity, including all noise associated with deliveries and vehicle movements (including parking within the car park and lorry park) and service yards, hereby permitted shall not at any time exceed 5 dB above the background sound level representative of any period being assessed applying the methodology within BS4142:2014+A1:2019 or 45dB L_{Ar, 1hour} during the day (07.00-23.00) and 40dB L_{Ar, 15min} at night (23.00-0700) whichever is the higher calculated at assessment position AP1 (Maple Lodge Farm) and assessment position AP2 (19 Longmore Close) – as identified in the Cole Jarman Planning Noise Assessment Ref. 19/0333/R2 (paragraphs 3.4.1, 3.4.2 and figure 19/0333/SP2) using a suitably calibrated noise meter for the purpose. The ‘rated’ noise level shall be determined as in accordance with BS4142:2014+A1:2019.

Reason: This is a condition to ensure that nearby residential properties are not subjected to excessive noise and disturbance having regard to Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).

21. The Council’s Environmental Health Officer, Greg Pilley, will attend the conditions RTS.
22. In summary, subject to the conditions identified, the Secretary of State should grant planning permission in accordance with development plan policy DM9(d) (no unacceptable adverse impact on the acoustic environment of existing development) (CD4.27) and NPPF 2021: 174(e) (CD4.10).

PLANNING BALANCE INCLUDING THE BENEFITS OF THE PROPOSED DEVELOPMENT

23. It is the Council’s submission that the technical and other evidence before the inquiry demonstrates that the appeal development, subject to planning conditions and the S.106 undertaking (biodiversity / travel plan), accords with the development plan. In the context of S.38(6) of the 2004 Act, that accordance is a significant planning benefit to be put in the planning balance.
24. The appeal site is allocated for employment development in the Site Allocations LDD site Policy SA2 E (d) (CD4.14). It follows that, in the absence of material considerations to the contrary supported by substantive evidence, the appeal development for employment makes ‘efficient use’ of the appeal site (CD4.15: CP1) and ‘effective use of land’ (NPPF 2021: 119).

25. Specific benefits of the appeal development, including meeting the need for B1c, B2 and B8 floorspace in the District, creating employment and delivering highway and drainage improvements, are noted in the committee report (CD3.10: 717.7) and should be afforded substantial weight in favour of the appeal being allowed when considered in the context of the development plan policies read as a whole.
26. As noted, the Site Allocations LDD Policy SA2/E (d) employment allocation (CD4.14) acknowledges the appeal site's proximity to a 'wildlife site' and its location within a Source Protection Zone 1 and thereby recognises that measures to avoid adverse impacts and to enhance biodiversity must necessarily form part of any employment development of the site. These material considerations can be addressed and resolved by the imposition of planning conditions and the S.106 undertaking without material harm being caused to any interests of acknowledged planning importance.
27. In summary, the planning balance overwhelmingly favours allowing the appeal and the grant of conditional planning permission for the appeal development.

CONCLUSION

28. The appeal development accords with the development plan. There are no sound or clear cut reasons for refusal of planning permission or material planning considerations that indicate other than that the appeal should be allowed.

Tim Comyn
26/04/2022