

**LAND TO THE NORTH OF MAPLE CROSS LODGE  
MAPLE CROSS, RICKMANSWORTH, WD3 9SE**

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**OPENING SPEECH OF  
MAPLE CROSS RESIDENTS ENVIRONMENT GROUP  
("MCREG")**

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**Introduction**

1. This is an Appeal seeking permission for

"Comprehensive redevelopment to provide 2 no. warehouse Class E(giii)/B2/B8 units comprising a total of 16,115 sqm including 1,882 sqm ancillary E(gi) office space, access, landscaping and associated works." <sup>1</sup>

2. As outlined in the CMC note<sup>2</sup> there are four main issues:

- a. Issue 1: Groundwater with regard to hydrogeological impact on Maple Lodge Nature Reserve ("MLNR") and public water supply;
- b. Issue 2: Biodiversity interests, in particular biodiversity net gain ("BNG") and the Forester Moth;
- c. Issue 3: The living conditions of occupiers of local residential properties by way of noise; and
- d. Issue 4: The planning balance.

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<sup>1</sup> CD 1.2.1 p.2

<sup>2</sup> CD5.22

## MCREG

3. Before I delve into the issues, it is worth noting MCREG and why they are here. This is a coalition of groups representing both local residents and The Maple Lodge Conservation Society ("**MLCS**"). The Local Residents are, understandably, concerned about the impact of this on their homes. The MLCS is a charity whose trustees are bound, by law, to further the charitable objectives which include managing it in a manner which conserves its flora and fauna.<sup>3</sup> There has been a lot of willingness, on both sides, to try and progress matters between the Appellant and MCREG, agreeing matters that can be agreed, agreeing where conditions would address our concerns and, as at last night, agreeing a SOCG. So as we turn to the issues you will find sir that many of them are, now, quite narrow.

### Issue 1: Hydrogeological impact

4. This matter concerns the potential impacts to MLNR, a 40 acre stretch of land comprising lakes, marshes, hedgerows and woodlands, home to a rich variety of wildlife.<sup>4</sup> It is beautiful and, as with all land in the UK, unique. MLNR lies to the south of the Site, and consists of two lakes – Clubhouse Lakes, and Marsh Lake. Clubhouse is the upper lake, Marsh the lower. Water flows into Clubhouse Lake, and from Clubhouse Lake to Marsh Lake (over a sluice when the levels are high enough). When levels are high, water flows from Marsh Lake, over a second sluice, into the River Colne. MLNR is fed by an inlet stream, direct rainfall, and groundwater. It is not fed by the River Colne or Grand Union Canal.<sup>5</sup> As Mr Pursall tells you, the MLNR is sensitive to water level variation. It is a wetland reserve. Water is quite important to that.<sup>6</sup>
5. The MLNR contains two s. 41 habitats (Reedbed and Wet Woodland), which are in turn Groundwater Dependant Terrestrial Ecosystems ("**GWDTEs**") as classified under the Water Framework Directive ("**WFD**").<sup>7</sup>

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<sup>3</sup> Appendix B to CD1.3.6

<sup>4</sup> Pursall POE para 1.4

<sup>5</sup> Pursall POE Appendix B.

<sup>6</sup> Pursall POE Appendix B

<sup>7</sup> Pursall POE paras. 3.4-3.5; CD2.1.13

6. So, sir:

- a. Under s. 41 NERC act there is a legal duty on the Secretary to State to take such steps as are reasonably practicable to further the conservation of those habitats, or to promote the taking by others of such steps;<sup>8</sup> and
- b. Under the Water Framework Directive (as transposed) there is a legal obligation on the Secretary of State to have regard to the relevant River Basin Management Plan (the “**Thames RBMP**”)<sup>9</sup> and generally the UK’s ability to comply with the WFD.<sup>10</sup> The WFD imposes an obligation to “protect, enhance and restore all bodies of groundwater[...] with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force this Directive.”<sup>11</sup> Whether bodies, such as groundwater, achieve “good” status depends in part, on whether it is subject to alterations or pollutants which would result in any significant damage to GWDTEs.<sup>12</sup>

7. To the South-East of the Site lies Maple Lodge Marsh. MCREG understands, though is happy to be corrected, that this also contains wet woodland (a section 41 habitat). There has been some confusion over why MCREG has raised this<sup>13</sup> in circumstances where MLCS is not responsible for it and it was not raised at the earlier appeal. If I may briefly clarify: the Appellant’s December 2021 updated Hydrogeological Impact Assessment<sup>14</sup> suggested, for the first time, that the flow in one of the two aquifers in issue (the River Terrace Deposit or “**RTD**” aquifer) flows toward the south-east of the Site for about 50% of the time.<sup>15</sup> MCREG understood that would take it to be flowing toward Maple Lodge Marsh, which is to the south-east of the site.<sup>16</sup> If it is right that there are section 41

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<sup>8</sup> See s. 41(3) NERC Act, CD7.2.19

<sup>9</sup> CD7.2.17

<sup>10</sup> See the summary in paras. 1.1-1.10 of the PINS Technical Advice Notice 18 CD7.2.18

<sup>11</sup> CD7.1.45 Article 4(b)(ii)

<sup>12</sup> See CD 7.1.45 Annex V paras 2.1.2 and 2.3.2

<sup>13</sup> See e.g. Fraser POE 4.1.47ff

<sup>14</sup> CD1.3.7

<sup>15</sup> See p; 8

<sup>16</sup> See Appendix D to Fraser POE

habitats on site, or that it is a GWDTE, that would appear to be a matter that engaged the two duties I set out above with regard to MLNR, which have to be considered. MCREG is more than happy to be wrong on any of that – its main concern is MLNR rather than Maple Lodge Marsh – but it thought it was a matter which appeared to be pertinent to the inquiry and so should be raised.

8. Against that background the SOCG details only 3 issues on which the parties disagree:
9. One is Maple Lodge Marsh. I have dealt with that.
10. The second is what condition is required to protect MLNR. MCREG has accepted that if the conditions first proposed by the Environment Agency<sup>17</sup> is imposed, MLNR's Section 41 habitats should be protected from harm.<sup>18</sup> The Appellant and Council, however, seek a different version of that condition,<sup>19</sup> and it is one that, in fairness, I must note the EA now agrees (although we did not see that letter until this weekend).<sup>20</sup>
11. But again sir the difference between us is in fact pretty small – it comes down to whether the Appellant should be required to undertake monitoring on MLNR in advance of works commencing and then during the works.<sup>21</sup> The Appellant contends it has reliable baseline data and does not need to measure matters on the reserve., MLCS disagrees. MCREG's position is simply that if a reliable baseline can be established in advance of works, the MLNR itself is monitoring throughout the works, and the various piling, monitoring and maintenance plans include the taking of relevant protective steps if issues do arise, then it accepts MLNR can be protected.

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<sup>17</sup> CD 2.1.18 as developed in CD7.2.24, Condition 2

<sup>18</sup> CD5.15

<sup>19</sup> CD5.23, Condition 7

<sup>20</sup> CD2.1.27

<sup>21</sup> Something might be said about the fact that MCREG is seeking a condition, originally suggested by the EA, requiring monitoring of water at MLNR itself. While this is third party land, imposition of conditions relating to land outside of an application site is permissible provided it is capable of being complied with: See *Planning Encyclopaedia* (Loose-Leaf) paras. 72.27 – 72.28. Here, MLCS has a lease of the land. It is willing to grant the Appellant access to undertake the monitoring works.

12. The final point is whether a WFD compliance assessment is required and the consequences of not having done one. The proposed development site is in Groundwater Source Protection Zone 1. The underlying groundwater body (Mid Chilterns Chalk) is already classified as “poor”.<sup>22</sup> MLNR of course contains GWDTEs. We have set out, above, the legal obligations on the Secretary of State. It is common ground a WFD Compliance Assessment has not been undertaken. The Appellant claims it needn’t do one,<sup>23</sup> in part basing this on its view that a robust assessment on water quality and quantity of the MLNR has already been undertaken. For reasons that have been and will be explored,<sup>24</sup> MCREG considers the assessment undertaken so far anything but robust. You cannot therefore be sure, at present, that the site will not lead to deterioration of the water body, and should refuse permission in line with the precautionary principle.<sup>25</sup>

## **Issue 2: Biodiversity**

13. Again sir the issues are relatively narrow. They cover:

- a. Whether the development must be refused because it will result in the local extinction of the Forester Moth and no compensatory habitat can be designed;
- b. The sums required to achieve a BNG of 10%. Here there are two sub issues:
  - i. Whether the proposal’s baseline has been adequately calculated, and
  - ii. How best to calculate the sums required for compensation.

14. As to the first issue, the Forester Moth has been discovered on site.<sup>26</sup> We do not understand that it is disputed that the Forester Moth is (a) a species that was identified as being in need of conservation by the UK Biodiversity Action Plan<sup>27</sup> and (b) a priority

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<sup>22</sup> Pursall POE para 3.3, CD7.1.12

<sup>23</sup> Fraser POE para 4.1.42

<sup>24</sup> See e.g. Pursall POE section 5

<sup>25</sup> As per the ECJ Bund ruling set out at appendix A.6 and A.7 of Mr Pursall’s POE Appendix A.

<sup>26</sup> Some issue was taken with this in the Mr Cooke’s POE. See, however, Mr Dodds’ RPOE and enclosures.

<sup>27</sup> The Council recognises this – see para 3.1 of CD 2.2.21

species under s. 41 NERC Act.<sup>28</sup> So, sir, there is a legal duty on the Secretary to State to take such steps as are reasonably practicable to further its conservation, or to promote the taking by others of such steps.<sup>29</sup> It is also Mr Dodds' expert view, supported by various other experts (to which he refers in his POE), that no viable mitigation or compensation scheme has been proposed. It will, therefore, lead to the local extinction of the Forester Moth in that area. This would conflict with Three Rivers Local Plan Policy DM6, NPPF para. 180, and the s. 41 duty.

15. Turning to the second issue, as Mr Dodds will outline for you, Herts Ecology has erred in calculating the baseline:

- a. mis-classifying large areas of land as modified grassland, when it should be "other neutral grassland". When this error is corrected, the baseline of the habitat units doubles;
- b. Failing to detail any analysis supporting the condition of the grassland baseline; and
- c. Artificially dividing the baseline area into three.

16. Compounding that problem, it is our case that you can have little faith in the unit cost relied upon by the Appellant in calculating the biodiversity net gain itself. Instead, as Mr Dodds will outline, there is a legitimate, costed tool in the Hertfordshire Biodiversity Offsetting Cost Calculator which can provide an actual sum for the actual habitats that are required. This results in a significantly higher sum, of £425,098.00 , than the £142,800 agreed between the Appellant and LPA.

17. A failure to put in place a properly calculated BNG sum would, we say, contradict paras. 174 and 180 of the NPPF.

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<sup>28</sup> Ditto – see CD 2.2.21. See too 7.2.19

<sup>29</sup> See s. 41(3) NERC Act, CD7.2.19

### **Issue 3: Noise**

18. Turning to the third issue it is MCREG's case, as set out in the evidence of Mr Bryant, that the proposed operations would likely have an adverse impact on the existing residents particularly given the possibility of 24/7 operating hours. Mr Bryant highlights numerous issues in the reports prepared by RSK Acoustics for the Appellant, including<sup>30</sup>:

- a. That the incorrect commercial noise limits have been adopted;
- b. That there has been insufficient Noise Character Corrections; and
- c. Disagreement with the proposed planning condition. On this last point, with the aim of being helpful to you, Mr Bryant has outlined proposed amendments to these conditions which would more appropriately protect the amenity of those in the area.<sup>31</sup>
- d. A fourth issue – consideration of the residents to the east of the site, has, we accept, now been dealt with in Mr Heyes' Rebuttal POE, through the impact on them remains open for discussion.

19. We say that, as presently proposed, the development will be contrary to policy DM9(d) of the TRDCLP. We also, of course, have issues to discuss on conditions.

### **Issue 4: Planning balance**

20. And so we come to the fourth issue. It will not, of course, have escaped your notice that we do not have a professional planning witness. However, areas of planning judgment are

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<sup>30</sup> As set out in Bryan POE para 5.2

<sup>31</sup> Bryan POE Appendix 3

quintessential areas where you can and will exercise your own expertise, so this makes no difference to the strength of our case.

21. MCREG accepts, of course, that the development will have some benefits. It is even acknowledged in our statement of case.<sup>32</sup> However, if

- a. You cannot be sure that there will be no adverse impacts on MLNR or Maple Lodge Marsh – which I reiterate are unique local assets – contrary to NPPF para. 174, Policy CP9 of the Core Strategy (2011)<sup>33</sup> and DM9<sup>34</sup> of the DMPLDD;
- b. The development results in an adverse impact on the priority species of the Forester Moth, without adequate mitigation contrary to DM6(a) and para. 180(a), and the BNG has been significantly over-egged;
- c. It will result in significant adverse noise effects on local residents, contrary to Policy DM9(d);

Then, we say, permission should be refused. MCREG has been very fair about admitting when, in its view, these issues can be managed by condition or s.106 contributions, but crucially these have to be the right conditions and contributions. MCREG says, as currently proposed, they are not.

**NICK GRANT**  
**26 April 2022**

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<sup>32</sup> MCREG SOC para 8

<sup>33</sup> CD4.19

<sup>34</sup> CD4.27