IN THE HIGH COURT OF JUSTICE **Claim No. CO/4860/2022**
KINGS'S BENCH DIVISION
PLANNING COURT

CHALLENGE PURSUANT TO SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

TAYTIME LIMITED

Claimant

- and –

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING, AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN

Defendants

BUNDLE FOR HEARING ON 22 FEBRUARY 2024

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Planning Statutory Review

Part 8 Claim Form (CPR8.1(6) and Practice Direction 8C)

In the High Court of Justice
Planning Court in the Administrative Court

For Court use only	
Planning Court Reference No.	CO/4860/2022
Date filed	28/12/2022

HIGH COURT OF JUSTICE
29 DEC 2022
LONDON
ADMINISTRATIVE COURT

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name(s) and address(es)

name
TAYTIME LIMITED as the appointed agent for and on behalf of MONK LAKES LIMITED

address
Camburgh House 27 New Dover Road, Canterbury, Kent, CT1 3DN

Telephone no.

Fax no.

E-mail address

Claimant(s) or claimant(s) legal representative(s) address to which documents should be sent.

name
James Kon, Asserson

address
Suite 50, Churchill House, London NW4 4DJ

Telephone no.
0203 691 4797

Fax no.

E-mail address
james.kon@asserson.co.uk

Claimant(s) Counsel's details

name
James Pereira KC, Charles Streeten

address
Francis Taylor Building
Inner Temple
London EC4Y 7BY

Telephone no.
020 7353 8415

Fax no.

E-mail address
clerks@ftbchambers.co.uk

1st Defendant

name
SECRETARY OF STATE FOR LEVELLING UP, COMMUNITIES AND LOCAL GOVERNMENT

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

name
GOVERNMENT LEGAL DEPARTMENT

address
102 Petty France
Westminster
London
SW1H 9GL

Telephone no.
020 7210 8500

Fax no.

E-mail address
newproceedings@governmentlegal.gov.uk

2nd Defendant

name
MAIDSTONE BOROUGH COUNCIL

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

name
Mid-Kent Legal Services

address
Maidstone House, King St, Maidstone ME15 6JQ

Telephone no.
01622 602247

Fax no.

E-mail address
legalqueries@midkent.gov.uk

SECTION 2 Details of other interested parties as set out in paragraph 4 of PD 8C

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name

address

Telephone no.

Fax no.

E-mail address

name

address

Telephone no.

Fax no.

E-mail address

SECTION 3 Details of the decision to be statutorily reviewed

Decision:

The appeal decision under reference APP/U2235/W/20/3259300 relating to Monk Lakes, Staplehurst Road, Maidstone

This claim for statutory review is being made under the following section as set out in CPR PD 8C 1.1:-

- ☐ section 287 of the Town and Country Planning Act 1990
- ☑ section 288 of the Town and Country Planning Act 1990
- ☐ section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- ☐ section 22 of the Planning (Hazardous Substances) Act 1990
- ☐ section 113 of the Planning and Compulsory Purchase Act 2004
- ☐ other, please state

Date of decision:

21 November 2022

Name and address of the authority, tribunal or minister of the Crown who made the decision to be reviewed.

name

O S Woodwards, Planning Inspector

address

Planning Inspectorate, The Square, Temple Quay, , Temple Quay House, 2, Bristol BS1 6PN,

SECTION 4 Permission to proceed with a claim for a planning statutory review

I am seeking permission to proceed with my claim for a planning statutory review.

Are you making any other applications? If Yes, complete Section 8.	☐ Yes	☑ No
Is the claimant in receipt of a Civil Legal Aid Certificate?	☐ Yes	☑ No
Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Section 8.	☐ Yes	☑ No
Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below.	☑ Yes	☐ No

Does the claim include any issues arising from the Human Rights Act 1998?
If Yes, state the articles which you contend have been breached in the box below. ☐ Yes ☑ No

SECTION 5 Detailed statement of grounds

☐ set out below ☑ attached

SECTION 6 Aarhus Convention Claim

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

☐ set out below ☑ attached

SECTION 8 Other applications

☐ set out below ☐ attached

I wish to make an application for:-

SECTION 9 Statement of facts relied on

☐ set out below ☑ attached

SECTION 10 Supporting documents

If you intend to use a document to support your claim but do not presently have that document, identify it, give the date when you expect it to be available and give reasons why it is not presently available in the box below.

Please also tick the following boxes in relation to the papers you are filing with this claim form and any you will be filing later.

☑ Detailed statement of grounds	☐ set out in Section 5	☑ attached
☐ Application for directions	☐ set out in Section 8	☐ attached
☑ Statement of the facts relied on	☐ set out in Section 9	☑ attached
☐ Written evidence in support of the claim		☐ attached
☑ Where the claim for a planning statutory review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision		☑ attached
☑ Copies of any documents on which the claimant proposes to rely		☑ attached
☐ A copy of the legal aid or Civil Legal Aid Certificate *(if legally represented)*		☐ attached
☑ Copies of any relevant statutory material		☑ attached
☑ A list of essential documents for advance reading by the court *(with page references to the passages relied upon)*		☑ attached

Reasons why you have not supplied a document and date when you expect it to be available:-

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name JAMES HON

Name of claimant's legal representative's firm ASSELSON

Signed _____ Position or office held SENIOR ASSOCIATE

Claimant ('s legal representative) (if signing on behalf of firm or company)

Senior Associate

Print form Reset form

The Planning Inspectorate

Hearing held on 5 October 2022
Site visit made on 6 October 2022

by O S Woodwards BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/U2235/W/20/3259300
Monk Lakes, Staplehurst Road, Marden, Kent TN12 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Monk Lakes Ltd against the decision of Maidstone Borough Council.
- The application Ref 11/1948, dated 4 November 2011, was refused by notice dated 12 March 2020.
- The development proposed is the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. An interested party, David Padden, considers that the appeal was not valid because the appellant is different from the applicant. It is therefore necessary to establish whether the planning appeal was correctly made and is thus capable of being lawfully determined. This matter was discussed with all parties at the hearing. This procedural matter forms the main issue in this case.

Reasons

3. Section 78 of the Town and Country Planning Act 1990 (the Act) provides the right to appeal against planning decisions but this is explicitly limited to 'the applicant'. No alternative options are provided and there are no third party rights of appeal to a refusal of planning permission.

4. The original planning application was made by Monk Lakes Ltd (MLL). MLL has since entered into liquidation proceedings. However, the second Gazette notice has not yet been issued, which is the point at which MLL would be dissolved. MLL therefore still exists as a going concern and can, in principle, pursue the appeal as the appellant.

5. However, the liquidator, Quantuma, has submitted a letter, dated 22 September 2021, appointing a separate company, Taytime Ltd (Taytime), to take over full responsibility for the appeal. The letter also confirms that Pegasus Planning (the agents) and James Pereira KC (the legal representative) are instructed by Taytime, not MLL. It was also verbally confirmed at the hearing by some of the consultant team that they had been instructed by

Taytime and not MLL. In addition, the Statement of Common Ground (SoCG), dated December 2021, has been signed by Taytime, not MLL. The appellant has offered to re-sign the SoCG this time by MLL, but this would not change the existing document, which is what has been submitted in support of the appeal. I do not view Taytime as an agent for MLL. The appointed agent is the Pegasus Group, as set out in the appeal form, and supporting documents. The combination of the Quantuma letter and the instruction of consultants by Taytime demonstrate that it is now Taytime pursuing the appeal, as the appellant, and not as an agent.

6. MLL is listed as the appellant on the appeal form, dated 11 September 2020, but this has now been overtaken by events, as described above. I acknowledge that the persons behind both MLL and Taytime are the same, ie Mr and Mrs Harrison, who are also listed on the application form. However, the applicant was explicitly listed as MLL and Mr and Mrs Harrison are no longer empowered to act for MLL due to the insolvency proceedings. For the reasons above, it is clear that the party now pursuing the appeal is Taytime, not MLL. The appellant is, therefore, not the applicant, despite the common thread of Mr and Mrs Harrison, who were not the applicant in an individual capacity and were not listed at all on the appeal form.

7. Consequently, there is no valid appeal capable of being determined. As the appeal has not been withdrawn, it must be dismissed. There is no merit, therefore, in assessing the planning merits of the case, whether these relate to character and appearance, heritage harm, flooding and groundwater, harm to living conditions, or any other matter.

Other Matter

8. A number of revised and additional documents and drawings were received prior to, during and after the hearing. In addition, an engrossed s106 planning agreement, dated 7 April 2021, has been submitted. However, because I have found the appeal to be invalid, it is not necessary to consider these further, other than those that relate directly to consideration of the validity of the appeal, which are listed at Annex B.

Conclusion

9. I conclude that the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits. For the above reasons, the appeal should be dismissed.

O S Woodwards
INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

James Pereira KC	Francis Taylor Building
Jim Tarzey MRTPI	Planner – Pegasus Group
Claire Gayle IHBC	Heritage Consultant – Pegasus Group
Trevor Furse CMLI	Owner - Furze Landscape Architects Ltd
Andrew Dannatt MICE	SLR Consulting
Liz Mcfadyean	EIA Consultant – Pegasus Group
Beth Lambourne	Planner - Pegasus Group
Emily Harrison	Owner

FOR THE LOCAL PLANNING AUTHORITY:

Megan Thomas KC	Six Pump Court
Richard Timms MATCP MRTPI	Principal Planning Officer – Maidstone Borough Council (MBC)
Jeremy Fazzalaro IHBC	Principal Ecology Officer – MBC

INTERESTED PERSONS:

James Maurici KC	Landmark Chambers
David Padden	Local resident
Rebecca Lord MRTPI	Director - Rebecca Lord Planning
Christopher Griffiths IHBC	Associate Director - HCUK Group
Andrew Smith CMLI	Fabrik UK
Dr Paul Ellis CGeol	Managing Director - Geosmart Information Ltd
Alison Armstrong	Local resident
Darryl Parker	Local resident
Lee Highwood	Local resident

ANNEX B: DOCUMENTS

1 Letter from Duncan Best, Quantuma Advisory Limited, dated 22 September 2021
2 Letter from Richard Max & Co, dated 22 September 2022
3 Procedural Application in Respect of the Appeal by James Maurici KC, dated 30 September 2022, and associated appendices

IN THE HIGH COURT OF JUSTICE **CO/4860/2022**

KING'S BENCH DIVISION

PLANNING COURT

BETWEEN:

TAYTIME LIMITED
(as appointed agent for and on behalf of MONK LAKES LIMITED)
Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

Defendants

CONSENT ORDER

HAVING REGARD to the reasons set out in the Schedule to this Order.

TAKE NOTICE that we the undersigned HEREBY CONSENT to an Order on the following terms:

1. Permission is granted for the Claimant to bring planning statutory review proceedings pursuant to s.288 Town and Country Planning Act 1990.

2. The decision of the 1st Defendant, dated 21 November 2022, to dismiss an appeal at Monk Lakes, Staplehurst Road, Marden, Kent, TN12 9BS (APP/U2235/W/20/3259300) is quashed.

3. The Claimant's planning appeal under s.78 Town and Country Planning Act 1990 is remitted for reconsideration by the 1st Defendant.

4. The 1st Defendant shall pay the Claimant's reasonable costs up to the point it indicated that it would consent to judgment, to be assessed if not agreed.

SCHEDULE

1. These proceedings concern an application for leave to bring planning statutory review proceedings pursuant to s.288 Town and Country Planning Act 1990. Within that claim the Claimant seeks an order quashing the decision of the 1st Defendant to dismiss a planning appeal brought pursuant to s.78 Town and Country Planning Act 1990.

2. The planning application sought permission for the retention of two lakes known as Bridges and Puma and works to create three additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.

3. The Inspector dismissed the appeal concluding the appeal was no longer being pursued by the applicant for planning permission, Monk Lakes Ltd. The Inspector made no assessment of the planning merits of the appeal.

4. The Claimant contends that decision was unlawful on three grounds:

    a. Ground 1: the Inspector had no jurisdiction to make that decision as he was precluded from doing so by operation of s.284(1)(f) Town and Country Planning Act 1990.

    b. Ground 2: (i) the Inspector made an error of law to conclude that the appeal was not correctly made and (ii) was in error to find Taytime Ltd were not acting as Monk Lakes Ltd's agents.

    c. Ground 3: the Inspector acted in breach of a legitimate expectation arising on 17 November 2021 that the appeal would be allowed to proceed.

5. The 1st Defendant has carefully considered the Claimant's claim and accepts that the Inspector failed to supply adequate reasons for his conclusion that Taytime Ltd were not acting as the appointed agent for Monk Lakes Ltd (the applicant for planning permission). The 1st Defendant therefore accepts the claim should be allowed on Ground 2 and the decision quashed on that basis.

6. The Parties do not agree that Grounds 1 and 3 should lead to the quashing of the decision. However, given the agreement that the error identified in Ground 2 alone necessitates the quashing of the decision letter, it would not further the overriding objective to require the Court to consider that issue.

We consent to an Order in the above terms on behalf of the parties named below.

Dated this 26th day of January 2023

In the High Court of Justice
King's Bench Division
Planning Court

CO/4860/2022

In the matter of an application for Planning Statutory Review

TAYTIME LIMITED
as the appointed agent for and on behalf of
MONK LAKES LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN

Defendants

UPON the filing of a draft Consent Order allowing the claim, signed by the Claimant and the First and Second Defendants, on 26 January 2023;

AND UPON the application by Mr David Padden, dated 23 January 2023, to be joined as the Third Defendant and to be given an opportunity to contest the claim;

Following consideration of the documents lodged by the parties;

Order by the Honourable Mrs Justice Lang DBE

1. Mr David Padden is joined as the Third Defendant, pursuant to CPR 19.2. The draft Summary Grounds of Resistance, filed on 24 January 2023, are to stand as the Third Defendant's Summary Grounds of Resistance.

2. The application for permission to apply for statutory review is to be determined at an oral hearing, to be listed on a date when counsel are available. Time estimate: 2½ hours.

3. The Claimant must file and serve a skeleton argument at least 14 days before the hearing.

4. The Third Defendant, and any other party that wishes to participate in the proceedings, must file and serve a skeleton argument at least 7 days before the hearing, together with a bundle of any authorities relied upon.

Reasons:

I have granted Mr Padden's application to be joined as the Third Defendant, for the following reasons. As this is a CPR Part 8 claim for statutory review, not a claim for judicial review under CPR 54, there is no provision for him to be joined as an Interested Party.

His property neighbours the site, and he has been directly and adversely affected by its development, which he has actively opposed. He was represented at the appeal hearing before the Inspector, and the Inspector accepted his submissions in the decision letter dated 21 November 2022. That decision is the subject matter of this claim for statutory review.

The Third Defendant wishes to defend the Inspector's decision and contest the Claimant's claim for statutory review.

Therefore the draft consent order signed by the other parties, in which permission for statutory review is granted and the Inspector's decision is quashed, cannot be approved by the Court.

Signed: *Mrs Justice Lang*

Dated: 24 March 2023

The date of service of this order is calculated from the date in the section below

---

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendants

or the Claimant's, and the Defendants' solicitors

Date: 24/03/2023

Solicitors:
Ref No.

Claim No: CO/4860/2022

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

BEFORE SIR ROSS CRANSTON SITTING AS A HIGH COURT JUDGE

BETWEEN:

TAYTIME LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

ORDER

UPON the Claimant's application for leave to bring a statutory review pursuant to s.288 Town and Country Planning Act 1990 on three Grounds

AND UPON the Third Defendant having asserted that the Claimant (originally known as Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) has no authority to bring the claim.

AND UPON the application by the Third Defendant for Security for Costs.

AND UPON the parties agreeing, prior to the hearing of the application, that the Claimant will provide Security for Costs in the sum of £50,000 on the terms set out below.

AND UPON hearing Counsel for the Claimant and Counsel for the Third Defendant.

IT IS ORDERED THAT:

Substitution of the Claimant

1. Pursuant to Rule 3.3(4) of the Civil Procedure Rules, Taytime Limited shall be substituted as the Claimant in this claim in place of Monk Lakes Limited.

The application for leave

2. Leave to bring a statutory review is refused on Grounds 1, & 3 but granted on Ground 2, that is in respect of the Claimant's submission that the Inspector's conclusion that the Claimant was not acting as the agent of Monk Lakes Limited was wrong in law.

Security for Costs

3. The Claimant do give security for the Third Defendant's costs of the claim in the sum of £50,000 by:

    a. Paying the sum of £25,000 into the Court Funds Office by no later than 4 p.m on the date seven days from the date of this Order.

    b. Paying the further sum of £12,500 by no later than 4 p.m on the date fourteen days after the day on which the Third Defendant files his Detailed Grounds of Resistance (or, if none are filed, on the date upon which he indicates that his Summary Grounds of Resistance shall stand as his Detailed Grounds of Resistance).

    c. Paying the further sum of £12,500 on the same date that the Claimant files its skeleton argument for the substantive hearing of this claim.

4. Unless security is given as ordered:

    a. The claim be struck out without further order, and

    b. On production by the Third Defendant of evidence of default, there be judgment for the Third Defendant without further order with costs of the claim to be the subject of a detailed assessment if not agreed.

5. There be no order as to costs in respect of the Third Defendant's application for Security for Costs.

Case Management Directions

6. The Defendants shall file and serve Detailed Grounds of Resistance and/or any evidence within 35 days of this order.

7. Any application by the Claimant to serve evidence in reply shall be filed and served within 21 days of the date on which the Defendants serve evidence pursuant to paragraph 3 above.

8. The parties shall agree the contents of the hearing bundle and the Claimant must file it with the Court not less than 21 days before the date of the substantive hearing of this claim. The electronic version of the bundle shall be prepared and lodged by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant must also lodge a hard-copy version of the hearing bundle at the Administrative Court Office, not less than 21 days before the date of the hearing.

9. The Claimant must file and serve a Skeleton Argument not less than 14 days before the date of the substantive hearing of this claim.

10. The Defendants must Skeleton Argument not less than 7 days before the date of the substantive hearing of this claim.

11. The Claimant must file and serve an agreed authorities bundle, not less than 5 days before the date of the substantive hearing. The electronic version of the bundle shall be prepared by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant must also lodge a hard-copy version of the authorities bundle at the Administrative Court Office, not less than 5 days before the date of the substantive hearing.

BY THE COURT

Dated:

21 June 2023

Claim No: CO/4860/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

BETWEEN:

TAYTIME LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

CONSENT ORDER

UPON the Claimant's application for leave to bring a statutory review pursuant to s.288 Town and Country Planning Act 1990 on three Grounds

AND UPON Sir Ross Cranston (sitting as a High Court Judge) having granted leave on certain grounds and made directions for the onwards management of the claim by way of an order dated 21 June 2023.

AND UPON the Claimant having made an application to the Court of Appeal for permission to appeal the decision of Sir Ross Cranston to refuse leave on certain other grounds.

AND UPON the parties agreeing that it would not be in accordance with the overriding objective for the Defendants to file and serve Detailed Grounds of Resistance and/or any evidence until the Claimant's appeal has been determined.

BY CONSENT IT IS ORDERED THAT:

1. Paragraph 6 of the order of Sir Ross Cranston be varied as follows: "The Defendants shall file and serve Detailed Grounds of Resistance and/or any evidence within 35 days of date

on which the Court of Appeal makes an order allowing or dismissing the Claimant's appeal".

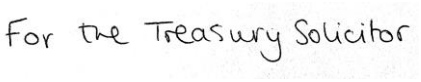
We consent to an Order in the above terms on behalf of the parties named below.

Dated this 24th day of July 2023

On behalf of the Claimant:

Asserson, Suite 50 Churchill House London NW4 4DJ

On behalf of the 1St Defendant:



Governmental Legal Department, 102 Petty France, Westminster London SW1H 9HL

On behalf of the 2nd Defendant:

Mid Kent Legal Services, Maidstone House, King Street, Maidstone, ME15 6JQ

On behalf of the 3rd Defendant:

Richard Max & Co LLP, 87 Chancery Lane, London WC2A 1ET

Approved by Sir Ross Cranston sitting as a High Court judge

BY THE COURT

PTA Template 269J1 - OCT16 - Planning

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2023-001247**

Taytime Limited –v– Secretary of State for Levelling Up, Housing and Communities & Ors

CA-2023-001247

ORDER made by the Rt. Hon. Lord Justice Stuart-Smith

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for a planning statutory review, the order of Sir Ross Cranston (sitting as a HCJ) dated 21 June 2023.

Decision: Appeal allowed. Permission to advance and rely upon Ground 2(i) as advanced in the SFG at [29]-[32].

This permission to advance and rely upon Ground 2(i) is limited to reliance upon the facts and reasons advanced in support of that ground (i) in the SFG and/or (ii) at the hearing before Sir Ross Cranston. If the appellant wishes to advance any other facts or reasons, it may not do so without obtaining the permission of the Administrative Court either before or at the substantive hearing.

Permission to appeal: ☐ **Granted** ☐ **Refused** ☐ **Adjourned**

OR

Permission to apply for a planning statutory review: [x] **Granted**

Where permission to apply for a statutory review is granted, the application should be returned to the Administrative Court [x]

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

In my judgment, Ground 2(i) has reasonable prospects of success.

Where permission has been granted and the matter will be retained in the Court of Appeal

(a) time estimate (excluding judgment)

(b) any expedition

Signed: BY THE COURT
Date: 13 November 2023

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number:

Claim No: CO/4860/2022

AC-2022-LON-003687

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

BETWEEN:

TAYTIME LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

CONSENT ORDER

UPON the Claimant's application for leave to bring a statutory review pursuant to s.288 Town and Country Planning Act 1990 on three Grounds

AND UPON Sir Ross Cranston (sitting as a High Court Judge) having granted leave on certain grounds and made directions for the onwards management of the claim by way of an order dated 21 June 2023.

AND UPON the Claimant having made an application to the Court of Appeal for permission to appeal the decision of Sir Ross Cranston to refuse leave on certain other grounds.

AND UPON paragraph 6 of the order of Sir Ross Cranston having been varied by consent on 26 July 2023 pending the outcome of the Claimant's appeal.

AND UPON the Court of Appeal having allowed the Claimant's appeal and granted permission to rely on upon Ground 2(i), such permission being limited to reliance upon the facts and reasons advanced in support of that ground (i) in the Claimant's Statement of Facts and Grounds and/or (ii) at the hearing before Sir Ross Cranston

AND UPON the substantive hearing having been listed for 22 February 2024

BY CONSENT IT IS ORDERED THAT:

1. Paragraph 6 of the order of Sir Ross Cranston be further varied as follows:

> "6A. The Claimant shall file an Amended Statement of Facts and Grounds by 4pm on 22 December 2023;
>
> 6B. Such amendments must be limited to the facts and reasons which were advanced by the Claimant in support of Ground 2(i) at the hearing before Sir Ross Cranston;
>
> 6C. Any party who wishes to contest the claim shall file and serve Detailed Grounds of Resistance and/or any evidence by 4pm on 19 January 2024."

2. Paragraph 7 of the order of Sir Ross Cranston be varied as follows:

> "Any application by the Claimant to serve evidence in reply shall be filed and served by 4pm on 8 February 2024"

3. No order shall be made as to costs in connection with the production of the Claimant's Amended Statement of Facts and Grounds.

We consent to an Order in the above terms on behalf of the parties named below.

Dated this day of December 2023

On behalf of the Claimant:

Asserson, Suite 50 Churchill House London NW4 4DJ

On behalf of the 1st Defendant:

For the Treasury Solicitor

Governmental Legal Department, 102 Petty France, Westminster London SW1H 9HL

On behalf of the 2nd Defendant:

Claudette Valmond

Mid Kent Legal Services, Maidstone, Swale and Tunbridge Wells Borough Councils

On behalf of the 3rd Defendant:

Richard Max & Co LLP, 87 Chancery Lane, London WC2A 1ET

ADMINISTRATIVE COURT OFFICE BY CONSENT ORDER AS ASKED

Carin Coombe

Administrative Court/Planning Court Lawyer
21/12/2023

In exercise of powers delegated by the President of the King's Bench Division pursuant to s67B of the Courts Act 2003
CPR 3.1 and 54.1A

BY THE COURT

IN THE HIGH COURT OF JUSTICE **Claim No. CO/ /2022**
KINGS'S BENCH DIVISION
PLANNING COURT

CHALLENGE PURSUANT TO SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

TAYTIME LIMITED
as the appointed agent for and on behalf of
MONKS LAKES LIMITED

Claimant

- and –

FOR LEVELLING UP, HOUSING, AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

Defendants

STATEMENT OF FACTS AND GROUNDS OF CLAIM

References to the Claim Bundle are in the format [TAB/PAGE NUMBERS]

Essential Reading: *Statement of Facts and Grounds [2], Decision [3], September 2021 letter [4], Correspondence between PINS and objector (October - November 2021) [12-13]*

A. Introduction

1. This is a challenge under section 288 of the Town and Country Planning Act 1990 ("the **1990 Act**") to a decision letter dated 21 November 2022 ("the **DL**") **[3/19-22]** by which O S Woodwards, a planning inspector appointed by the Secretary of State ("the **Inspector**") dismissed appeal reference APP/U2235/W/20/3259300 ("the **Appeal**") in relation to land at Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("the **Land**").

B. The Claimant

2. The Claimant, Taytime Limited ("**Taytime**"), is (and has since 15 July 2021) the appointed agent of Monk Lakes Limited ("**MLL**") in relation to the Appeal.

3. MLL is in creditors' voluntary liquidation. The Joint Liquidators (Duncan Beat and Andrew Watling of Quantuma Advisory Limited) were appointed on 15 July 2021.

4. By a letter dated 22 September 2021 ("the **September 2021 Letter**") **[4/23]**, and in exercise of the power under Paragraph 12 of Part III of Schedule 4 to the Insolvency Act 1986, Mr Beat (in his capacity as liquidator of MLL) appointed Taytime as the agent for MLL in connection with the planning appeal to which these proceedings relate.

5. Taytime also itself has an interest in the Land.

6. There can be no doubt, therefore, that Taytime is a person aggrieved for the purposes of section 288 of the 1990 Act.

C. Factual Background

7. On 9 December 2011 Maidstone Borough Council ("the **Council**"), the relevant local planning authority, validated a planning application made by MLL in relation to the Land **[5/24-29]**.

8. The application sought part retrospective and part prospective permission for recreational fishing related development at a site known as Monks Lakes in Staplehurst, Kent. The application was initially granted **[6/30-37]** and then quashed by the High Court on 22 January 2014 **[7/38-67]**.

9. The updated Environmental Statement prepared for the redetermination of the application set out the project team and confirmed that Taytime was responsible for the project management of the application (volume 1, part A, paragraph 1.13, February 2019) **[8/78]**.

10. Upon redetermination by the Council on 12 March 2020, the application was refused, contrary to officer recommendation **[9/79-81]**.

11. By appeal notice dated 11 September 2020, MLL appealed against the refusal of planning permission **[10/82-89]**.

12. On 15 July 2021, MLL filed for voluntary liquidation **[11/90]**.

13. Quantuma Limited were appointed liquidators for MLL. By the September 2021 Letter,

Mr Beat, wrote, as liquidator for MLL, to the Planning Inspectorate ("**PINS**") as follows **[4/23]**:

> *"Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal. Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land."*

14. On 12 October 2021, solicitors acting for a local resident objector named Mr. Padden, wrote to PINS drawing attention to the liquidation of MLL and stating as follows **[12/92]**,

> *" ... the Inspector should be made aware that the appellant, Monk Lakes Limited has now filed for voluntary liquidation. Notices were published in the Gazette on 21 July 2021 confirming the resolution to appoint liquidators, and notice of the proposed striking off of the company was filed at Companies House on 27 July. Section 78 of the Town and Country Planning Act 1990 is clear that only the applicant for planning permission may pursue an appeal. The original application was made in the name of Monk Lakes Limited. Given that that company is in the process of being dissolved pursuant to voluntary liquidation, we consider that the appeal should be automatically dismissed. Please would you confirm by return what action the Planning Inspectorate intends to take given the liquidation of the appellant."*

15. On 17 November 2021 PINS responded with its decision ("the **November 2021 Decision**") on this request, stating as follows **[13/94]**:

> *"I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal."*

16. The appeal never was withdrawn, nor was any second notification letter ever published in the Gazette.

17. Accordingly, the parties to the appeal (MLL, the Council and objectors including Mr. Padden) all prepared for the appeal which was held on 5 October 2022, with a site visit on 6 October 2022. Also attending the appeal were Mr and Mrs Harrison, who are directors of MLL and TT.

18. Three working days prior to the appeal, on 30 September 2022, Counsel acting for Mr Padden submitted a document headed "Procedural Application in Respect of the Appeal" arguing again that the appeal should be dismissed because of circumstances related to the liquidation and Taytime's involvement in it [**14/95-101]**.

19. On the morning of the hearing, the inspector heard submissions from the three main parties. Mr Padden argued that the appeal should be dismissed for the reasons set out in the procedural application note. MLL and the Council argued that the appeal was valid: it had been lawfully brought by MLL, PINS had already decided the matter, and MLL were lawfully acting as agent appointed by the liquidator.

20. The Inspector indicated that he would not make a decision there and then, but would hear the planning merits evidence and then deal with the matter in his decision letter. The inspector therefore heard the merits of the appeal and conducted a site visit the following day.

21. On 21 November 2022 the Inspector published his decision letter **[3]**. Paragraph 1 under the heading "Decision" states that "The appeal is dismissed." There was no consideration of the planning merits. Instead, the Inspector dismissed the appeal for the following reasons:

> *"**Reasons***
> *3. Section 78 of the Town and Country Planning Act 1990 (the Act) provides the right to appeal against planning decisions but this is explicitly limited to 'the applicant'. No alternative options are provided and there are no third party rights of appeal to a refusal of planning permission.*
>
> *4. The original planning application was made by Monk Lakes Ltd (MLL). MLL has since entered into liquidation proceedings. However, the second Gazette notice has not yet been issued, which is the point at which MLL would be dissolved. MLL therefore still exists as a going concern and can, in principle, pursue the appeal as the appellant.*

5. However, the liquidator, Quantuma, has submitted a letter, dated 22 September 2021, appointing a separate company, Taytime Ltd (Taytime), to take over full responsibility for the appeal. The letter also confirms that Pegasus Planning (the agents) and James Pereira KC (the legal representative) are instructed by Taytime, not MLL. It was also verbally confirmed at the hearing by some of the consultant team that they had been instructed by Taytime and not MLL. In addition, the Statement of Common Ground (SoCG), dated December 2021, has been signed by Taytime, not MLL. The appellant has offered to re-sign the SoCG this time by MLL, but this would not change the existing document, which is what has been submitted in support of the appeal. I do not view Taytime as an agent for MLL. The appointed agent is the Pegasus Group, as set out in the appeal form, and supporting documents. The combination of the Quantuma letter and the instruction of consultants by Taytime demonstrate that it is now Taytime pursuing the appeal, as the appellant, and not as an agent.

6.MLL is listed as the appellant on the appeal form, dated 11 September 2020, but this has now been overtaken by events, as described above. I acknowledge that the persons behind both MLL and Taytime are the same, ie Mr and Mrs Harrison, who are also listed on the application form. However, the applicant was explicitly listed as MLL and Mr and Mrs Harrison are no longer empowered to act for MLL due to the insolvency proceedings. For the reasons above, it is clear that the party now pursuing the appeal is Taytime, not MLL. The appellant is, therefore, not the applicant, despite the common thread of Mr and Mrs Harrison, who were not the applicant in an individual capacity and were not listed at all on the appeal form.

7. Consequently, there is no valid appeal capable of being determined. As the appeal has not been withdrawn, it must be dismissed. There is no merit, therefore, in assessing the planning merits of the case, whether these relate to character and appearance, heritage harm, flooding and groundwater, harm to living conditions, or any other matter.

Other Matter

8. A number of revised and additional documents and drawings were received prior to, during and after the hearing. In addition, an engrossed s106 planning agreement, dated 7 April 2021, has been submitted. However, because I have found the appeal to be invalid, it is not necessary to consider these further, other than those that relate directly to consideration of the validity of the appeal, which are listed at Annex B.

Conclusion

9. I conclude that the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits. For the above reasons, the appeal should be dismissed."

E. <u>Ground 1: Jurisdiction</u>

22. The Inspector had no jurisdiction to make the decision he made.

23. There was no dispute that an appeal was validly brought by MLL.[1]

24. The question of whether Taytime were validly pursuing that appeal was considered by PINS and decided on 17 November 2021. As PINS made clear, the appeal was to continue unless withdrawn, or the second notice in relation to MLL's liquidation was published in the Gazette. Neither of these events happened.

25. The November 2021 Decision, taken on 17 November 2021, was a decision falling within the scope of section 284(3)(b) of the 1990 Act **[15/103]**.

26. By virtue of section 284(1)(f), the validity of that decision could not be questioned in any legal proceedings whatsoever, other than in accordance with section 288 of the 1990 Act **[15/102]**.

27. No challenge was brought to PINS decision that Taytime was validly pursuing the appeal, within the six weeks required by section 288 of the 1990 Act or otherwise.

28. In the circumstances, it simply was not open to the Inspector to reconsider the issue. The issue had been decided and the decision had not been challenged. It could not be questioned by Mr Padden or the Inspector.

F. <u>Ground 2: Error of Law</u>

29. Further, and in any event, the Inspector's decision that the Appeal "was not correctly made and this is not capable of being lawfully determined under section 78 of the Act, irrespective of the planning merits" was wrong in law.

30. *First*, the Appeal was made by MLL on 11 September 2020 (see DL para. 6). MLL did not file for liquidation until 15 July 2021. Quantuma did not write to PINS, as liquidators for MLL, until 22 September 2021. Mr Padden did not dispute that the appeal was brought by MLL (see para. 9 of the Procedural Application dated 30 September 2022). There can thus be no question that the appeal was validly made, and the Inspector's decision to the contrary is obviously wrong in law.

[1] See para. 7 of Mr Padden's Procedural Application dated 30 September 2022

31. As the DL itself recognises at para. 7, that appeal was never withdrawn.

32. The Inspector conflates the question of whether the appeal was validly made (which clearly it was) with whether Taytime's actions in pursuing that appeal (on MLL's behalf) were valid. Even if they were not (and were rather a nullity in accordance with *Park Associated Developments v Kinnear* [2013] EWHC 3617 (Ch)) that would not have the effect of withdrawing the appeal. Rather MLL had validly made an appeal which remained live and which it remained entitled to have determined. Had PINS considered the actions of Taytime ineffective in pursuance of the appeal (which at the time they plainly did not), PINS would have been required to write to MLL and its liquidators seeking confirmation as to whether they were proceeding with the appeal or wished to withdraw it. Unless and until withdrawn, the appeal (which had been validated) remained valid. The Appeal was made by MLL who were the application and remained in existence. It was validated as such. There was no lawful basis for the Inspector's decision that the appeal "was not correctly made" and that it should therefore be dismissed. The DL is for this reason alone, unlawful.

33. *Second*, the Inspector erred in law in concluding that Taytime were not acting as MLL's agent:

    (1) By paragraph 12, Part III of Schedule 4 to the Insolvency Act 1986 **[17/113]**, the liquidator has power to appoint an agent to act for a company in liquidation. The September 2021 Letter was legally effective to appoint TT as agent for MLL. This was the purpose of the letter and this is what it did. Mr Beat expressly states that "*I am writing to <u>appoint</u> Taytime Limited … to take over full responsibility for the above-listed planning appeal*". The only context in which he could have purported to "appoint" TT was as MLL's agent under Paragraph 12, Part III of Schedule 4 to IA 1986. There is no other obvious context falling within his powers as liquidator in which TT might otherwise have been appointed by him. If there is any ambiguity, the validation principle applies such that the letter must properly be understood to have been the appointment of Taytime as agent.

    (2) This is reinforced by Mr Beat's statement that "*I am satisfied that [Taytime] is best placed to <u>manage that process</u> from this point forward …*" (emphasis added). Mr Beat was expressly concerned with the "management" of the appeal process. It would be nonsensical to refer to the ongoing management of the process if, instead, he were intending to discontinue the appeal on behalf of MLL.

(3) There is no evidence that the Joint Liquidators took any decision to discontinue the planning appeal. It does not appear from the Appeal Decision that PINS or even the Inspector consider this to be the proper construction of the letter (by virtue of the November 2021 Decision and DL para. 7).

(4) As a matter of general law, it is wrong to suggest (as the Inspector appears to at para. 5) that Taytime (as agent for MLL) would not have power to appoint further persons to act in connection with the appeal (including Pegasus Group, consultants and legal representatives). On the contrary:

i. Agents are entitled to delegate their authority in whole or in part or to appoint sub-agents with the express or implied authority of the principal (being the Joint Liquidators acting on behalf of MLL).[2] This is illustrated by the following rules set out in Bowstead & Reynolds on Agency (22nd Ed.) at 5-009 to 5-011.

ii. Taytime can only act through its director. Mr Harrison (a Director of Taytime who was present at the appeal) must have impliedly been given the power to give instructions and carry out all necessary acts relating to the conduct of the appeal.

(5) There has been no suggestion on behalf of the Joint Liquidators that the sub-agents or other persons to whom authority was delegated in connection with the conduct of the appeal were acting without authority (whether express or implied). On the contrary, the 2021 Letter expressly recognises that Taytime instructed Pegasus Planning and James Pereira of Francis Taylor Building for the submission of the appeal. In any event, if this point were raised, the Joint Liquidators could ratify any alleged absence of authority;

(6) It is irrelevant to questions of agency whether Taytime (or some other third party) is funding or has any interest in the planning appeal. The question of funding is completely separate to the question of whether Taytime was validly appointed as agent to conduct the appeal on behalf of MLL; and

[2] See Bowstead & Reynolds on Agency (22nd Edition) at 5-001 to 5-011.

(7) It is also irrelevant that Mr and Mrs Harrison or Taytime might have considered that Taytime should have been named as the applicant / appellant from the beginning. PINS have proceeded on the basis that MLL is entitled to bring the application / appeal. The only relevance of Taytime's separate interest in and knowledge of the appeal is, that it supports that Mr Beat was taking a proper commercial decision to appoint Taytime as agent to conduct and manage the appeal in accordance with his powers and duties as liquidator.

(8) The Inspector's reasoning at DL paras. 5 and 6 provide no legally valid basis for concluding that Taytime was not acting as an agent for MLL or that "the party no pursuing the appeal is Taytime, not MLL". The material was all consistent with Taytime continuing to act as the project manager of the appeal and the liquidator's appointment of TT as agent for MLL on the appeal. The irrational and grossly unfair outcome of the Inspector's decision was to deem upon Taytime the formal status of appellant which neither Taytime, nor MLL, nor the liquidator had ever claimed for it, and to disregard the liquidator's formal appointment of Taytime as agent for MLL which had been made so that the appeal could continue.

34. For these reasons, the Inspector again erred in law.

G. Ground 3: Legitimate Expectation

35. Further, and in the alternative, both MLL and Taytime had a legitimate expectation that the appeal would proceed to be determined on its merits as a result of the November 2021 Decision.

36. PINS statement that it could "*confirm that [having considered the status of the appellant company] unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal"* was clear, unambiguous, and devoid of relevant qualification. It created a legitimate expectation that the appeal would be regarded as continuing.

37. The legitimate expectation that the appeals were validly proceeding was relied upon by Taytime and others (including the Taytime, MLL, and their directors).

38. Had PINS stated in November 2021 that it was treating MLL's liquidators as having withdrawn or otherwise discontinued the appeal, the liquidator's decision to take such action (i.e. to withdraw or otherwise discontinue the appeal) would have been liable to challenge under section 168(5) Insolvency Act 1986 by a person "aggrieved" by that decision. On such a challenge, the court has power to "*confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just*"**[17/114].** Had PINS found in November 2021 that the September 2021 Letter had the effect of withdrawing the appeal (despite the clear intention to the contrary), the liquidators' decision to withdraw the appeal could (and in all likelihood would) have been challenged.

39. The DL therefore breached that legitimate expectation and no justification for that breaching of legitimate expectation has been provided. That is unlawful.

H. <u>Procedure</u>

40. Given that the appeal was made by MLL, confirmed as valid by PINS in November 2021 and purportedly dismissed by the Inspector at paragraph 1 of the DL, the Claimant considers that this claim is properly to be brought under section 288 of the Town and Country Planning Act 1990. If, for whatever reason, it were the case that the Inspector's comments on validity at paragraph 7 of his decision letter were to mean that the claim should have been commenced by way of judicial review, the court will be asked to exercise its case management powers to treat the claim as though it were so brought.

I. <u>Conclusion</u>

41. For the reasons set out above, the Claimant/ Appellant seeks an order:
    (i) Granting permission for statutory review pursuant to sections 288 of the 1990 Act;
    (ii) Quashing the DL;
    (iii) For costs; and
    (iv) Such further and other relief as the court may think fit.

JAMES PEREIRA KC
CHARLES STREETEN
24 December 2022

IN THE HIGH COURT OF JUSTICE **Claim No. CO/4860/2022**
KINGS'S BENCH DIVISION
PLANNING COURT

CHALLENGE PURSUANT TO SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

TAYTIME LIMITED

Claimant

- and –

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING, AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN

Defendants

REPLACEMENT STATEMENT OF FACTS AND GROUNDS OF CLAIM

A. Introduction

1. This is a challenge under section 288 of the Town and Country Planning Act 1990 ("the **1990 Act**") to a decision letter **[3]** dated 21 November 2022 ("the **DL**") by which O S Woodwards, a planning inspector appointed by the Secretary of State ("the **Inspector**") dismissed appeal reference APP/U2235/W/20/3259300 ("the **Appeal**") in relation to land at Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("the **Land**").
2. This Replacement Statement of Facts and Grounds is produced following:

    (1) The Order of Sir Ross Cranston dated 21 June 2023 substituting Taytime Limited as the Claimant, granting leave on Ground 2(ii), and making directions towards a final hearing **[4/30-32]**;

    (2) The Order of Stuart-Smith LJ (under reference CA-2023-001247) granting leave to rely on Ground 2(i) to include "reliance upon the facts and reasons advanced in support of that ground (i) in the SFG and/or (ii) at the hearing before Sir Ross Cranston **[5/33]**; and

    (3) The Consent Order filed by the Parties at Court on 13 December 2023, varying paragraph 6 of the Order of Sir Ross Cranston such that by virtue of paragraph 6A "the Claimant Shall file and Amended Statement of Facts and Grounds by 4pm on 22 December 2023 **[6/34-36]**.

B. Dramatis Personae

3. The Claimant is Taytime Limited ("**Taytime**").

4. The Appeal was brought in the name of Monk Lakes Limited ("**MLL**").

5. The Claimant's primary case is that Taytime is and was at all material times the appointed agent of MLL in relation to the Appeal.

6. MLL is in creditors' voluntary liquidation. The Joint Liquidators (Duncan Beat and Andrew Watling of Quantuma Advisory Limited) were appointed on 15 July 2021.

7. Taytime is a creditor of MLL, as is apparent from the Statement of Affairs dated 9 July 2021 in which Taytime is shown as a creditor in Section B 'Company Creditors' under reference CT00 **[7/43]**.

8. Taytime also itself has an interest in the Land.

9. Mr David Padden applied to be joined as a party and filed Summary Grounds of Resistance on 23 January 2023 **[8/45-61]**. He was joined as a party to the proceedings on 24 March 2023 with the question of permission to be determined at an oral hearing **[9/62-63]**.

C. Facts

10. The Claimant relies upon the facts set out in the Witness Statements of Emily Harrison **[10/64-75]**.

The Application

11. On 9 December 2011 the Council, as the relevant local planning authority, validated a planning application ("the **Application**") in relation to the Land **[11/76-81]**.

12. The Land was owned by Taytime, who held an Asset Purchase Agreement for the rights to any planning permission, application, or appeal associated with it.

13. The planning application was made by Mr and Mrs Harrison and MLL, which at that time operated a fishery business on the Land.

14. The application sought part retrospective and part prospective permission for recreational fishing related development.

15. Planning permission was initially granted **[12/82-89]** and the works were largely completed. However, following a claim for judicial review by Mr Padden, the decision to grant permission was quashed by the High Court on 22 January 2014 **[13/90-119]**. Both MLL and the Appellant, as well as Mr and Mrs Harrison, were Interested Parties in that litigation.

16. The updated Environmental Statement prepared for the redetermination of the application set out the project team and confirmed that the Appellant was responsible for the project management of the application **[14/120-129]**.

17. Upon redetermination by the Council on 12 March 2020, officers recommended that planning permission be granted and there were no objections by any statutory consultee. The application was refused by the Council's planning committee, however, contrary to officer recommendation **[15/130-132]**.

The Appeal

18. By appeal notice dated 11 September 2020, MLL appealed against the refusal of planning permission **[16/133-140]**.

19. The appeal form was completed by Pegasus Planning Group Limited ("**Pegasus**") who had been appointed to act in relation to the planning appeal. Because MLL had been an applicant for planning permission, it was the company which brought the appeal. As Mrs Harrison explains in her witness statement **[10/66-67]**, planning appeal forms are completed online and follow a strict pro-forma which directs questions to the person completing the appeal form, using the second person singular. Once an appeal form has been created, the first question asked is "are you the appellant?". Having answered no and given the Appellant's details the form displays a page headed "agent details" which enables the details of one agent to be entered. The form does not enable multiple agents to be identified. It is usual for the planning consultant conducting the appeal to provide

their details on that page. That is what happened in this case. In accordance with common practice, Pegasus completed the appeal form and entered their own details. This did not mean that they would be MLL's sole agent for all purposes throughout the determination of the appeal, but rather were the planning consultant dealing with the appeal.

20. From that time until 15 July 2021 Pegasus' fees and those of Counsel instructed by them, James Pereira KC of Francis Taylor Building, were paid by MLL.

Liquidation of MLL and the Appointment of Taytime as Agent

21. On 15 July 2021, MLL filed for voluntary liquidation **[17/141]** and Quantuma Advisory Limited ("**Quantuma**") were appointed liquidators for MLL.

22. That being so, in July and August 2021, Mrs Harrison approached Quantuma to discuss whether Taytime could take over conduct of the ongoing appeal.

23. Following discussions, the Appellant and William Morgan Edward Kinsey-Jones (the Appellant's sole director) entered into an indemnity agreement with Quantuma, by which the Appellant and Mr Kinsey-Jones indemnified Quantuma in relation to any costs and expenses of and occasioned by the Appeal or any damages arising therefrom, in consideration of which Quantuma consented to the Appellant having conduct of the Appeal at its own expense and agreed to sign, do and permit all documents and things reasonably necessary for that purpose **[18/142-145]**.

24. By a letter dated 22 September 2021 ("the **September 2021 Letter**"), and in exercise of the power under Paragraph 12 of Part III of Schedule 4 to the Insolvency Act 1986, Duncan Beat of Quantuma (in his capacity as liquidator of MLL) appointed Taytime to take over full responsibility for the Appeal **[19/146]**.

25. The September 2021 Letter said:

> *"Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal. Taytime Limited owns the land to which the original planning application and*

subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land."

26. On 12 October 2021, solicitors acting for Mr. Padden, wrote to PINS drawing attention to the liquidation of MLL **[20/147-148]**.

27. On 17 November 2021 PINS responded with its decision ("the **November 2021 Decision**") on this request, stating as follows **[21/149-150]**:

> *"I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal."*

28. The appeal never was withdrawn, nor was any second notification letter ever published in the Gazette.

29. Accordingly, the parties to the appeal (MLL, the Council and objectors including Mr. Padden) all prepared for the Appeal which was heard on 5 October 2022, with a site visit on 6 October 2022. Also attending the Appeal hearing were Mr and Mrs Harrison.

Mr Padden's Objection

30. Mr Padden has consistently, and by any means, opposed development on the Land and has taken (and continues to take) an active and often leading role in planning applications, appeal and/or Court processes with regard to permissions sought.

31. Three working days prior to the appeal, on 30 September 2022, Counsel acting for Mr Padden submitted a document headed "Procedural Application in Respect of the Appeal" arguing again that the appeal should be dismissed because of circumstances related to the liquidation and the Appellant's involvement in it **[22/151-157]**.

32. On the morning of the hearing, the inspector heard submissions from the three main parties. Mr Padden argued that the appeal should be dismissed for the reasons set out

in the procedural application note. Taytime, on behalf of MLL, and the Council argued that the appeal was valid: it had been lawfully brought by MLL, PINS had already decided the matter, and Taytime were lawfully acting as agent appointed by the liquidator.

33. The Inspector indicated that he would not make a decision there and then, but would hear the planning merits evidence and then deal with the matter in his decision letter. The inspector therefore heard the merits of the appeal and conducted a site visit the following day.

The Decision Letter

34. On 21 November 2022 the Inspector published the DL **[3]**. There was no consideration of the planning merits. Instead, the Inspector characterised "the main issue" as being "whether the planning appeal was correctly made and is thus capable of being lawfully determined" (DL2).

35. At DL6 the Inspector said that "MLL is listed as the appellant on the appeal from, but this has now been overtaken by events" because "it is clear that the party now pursuing the appeal is Taytime not MLL" and "the appellant is, therefore, not the applicant".

36. On this basis at DL7 the Inspector went on to say that "Consequently, there is no valid appeal capable of being determined" before concluding that, "the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits" (DL9).

The Position of the Secretary of State and the Local Planning Authority

37. Both the Secretary of State and the local planning authority consented to judgment. This was on the basis that the Inspector had failed to give adequate reasons for his decision.

38. The Secretary of State's skeleton argument for the permission hearing before Sir Ross Cranston made clear that this error was two-fold **[23/158-161]**.

39. Para. 8 of the Secretary of State's skeleton argument concerned Ground 2(ii) and stated "The Secretary of State accepts that the Inspector failed to supply adequate

reasons for his conclusion that Taytime Ltd was not acting as the appointed agent for Monk Lakes Ltd (the applicant for planning permission)".

40. Para. 9 of the Secretary of State's skeleton argument concerned Ground 2(i). It made clear that "In any event, even if the Inspector were correct that Taytime Ltd was not the appointed agent for Monks Lakes Ltd (in-spite of its submissions to the contrary), there remained a valid appeal made by Monks Lakes Ltd, which had not been withdrawn, and which remained an active company at the point of the decision. The Inspector failed to supply any reasons for dismissing the appeal on its merits".

41. The Secretary of State confirmed this position at the oral permission hearing before Sir Ross Cranston, making clear that to dismiss the appeal without considering the merits, the Inspector would have been required to follow the procedure in section 79(6A) of the 1990 Act. In dismissing the appeal without following the procedure in section 79(6A) the Inspector in circumstances where there was a valid appeal before him which had not been withdrawn, the Inspector had erred in law.

D. <u>The Statutory Scheme</u>

42. Section 78 of the 1990 Act provides that "the applicant may by notice appeal to the Secretary of State" **[24/162-163]**. The procedure for giving such notice is prescribed by Articles 36 and 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 **[25/175-178]**. The statute restricts the person empowered to bring an appeal by giving such notice to the applicant.

43. There is no authority whatsoever for the proposition that this restricts who may subsequently pursue that appeal, or that an appeal once validly brought may not be assigned. On the contrary, in *Muorah v Secretary of State* [2023] EWHC 285 (Admin) at paras. 48 – 53 **[26/188]** the High Court confirmed in the analogous context of a statutory right of appeal under section 289 (which is confined by section 289(1) to a person who was an appellant against the enforcement notice or the local planning authority or any other person having an interest in the land to which the notice relates), statutory rights of appeal under the 1990 Act *are* capable of assignment.

44. As all parties accepted at the hearing before Sir Ross Cranston, section 79 of the 1990 Act **[24/169-170]** governs the determination of appeals brought under section 78.

45. Of particular relevance is section 79(6A) which states "if at any time before or during

the determination of such an appeal [under section 78] it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of that appeal, he may – (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly".

46. At the hearing before Sir Ross Cranston Mr Padden's counsel, Mr Maurici KC, referred to section 79(6A) as the power to dismiss an appeal "for want of prosecution" and accepted that the process it prescribes had not been followed in this case.

47. There seems to be no dispute therefore that section 79(6A) sets out the procedure that must be followed if a validly made appeal is to be dismissed for failure to pursue it.

E. <u>Ground 2</u>

48. The Inspector's decision that the Appeal "was not correctly made and this is not capable of being lawfully determined under section 78 of the Act, irrespective of the planning merits" was wrong in law and his decision to dismiss it on that basis was in error.

<u>Ground 2(i) – Error of Law – the Validity of the Appeal</u>

Appeal Validly Made

49. In dismissing the appeal, the Inspector:

(1) Identified the main issue as requiring him "to establish whether the planning appeal was correctly made and is thus capable of being lawfully determined" (DL2).

(2) Held that "the appellant is, therefore, not the applicant and that "consequently, there is no valid appeal capable of being determined" (DL6-7).

(3) Concluded that "the planning appeal was not correctly made and thus is not capable of being lawfully determined under section 78 of the Act, irrespective of the planning merits" (DL9).

50. This analysis is obviously wrong.

51. Section 78 of the 1990 Act provides that "the applicant may by notice appeal to the Secretary of State". The procedure for giving such notice is prescribed by Articles 36 and 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The statute restricts the person empowered to bring an appeal by giving such notice to the applicant.

52. The Appeal was made by MLL on 11 September 2020 (see DL6). It was MLL who paid Pegasus' fees and those of counsel in relation to bringing and prosecuting that appeal until July 2021. It was not until 15 July 2021, some 10 months after the appeal was made, that MLL filed for liquidation.

53. In those circumstances, there could never have been any issue as to whether the Appeal had been properly or correctly made. Indeed, Mr Padden itself made that point stating "there can be no issue but that this appeal was made by MLL".

54. That appeal was never withdrawn (as the Inspector himself recognised at DL7).

55. In those circumstances, it was impossible for the Inspector lawfully to conclude as he did that the appeal was "not correctly made" (DL9) and/or that there was "no valid appeal capable of being determined" (DL7).

56. Indeed it appears no party disputes that:

    (1) the Appeal was validly made by MLL and never withdrawn.

    (2) MLL has not been dissolved, and remains an active company, albeit in liquidation.

57. In those circumstances, there was a valid appeal before the Inspector requiring determination on its merits. The Inspector's statement that the Appeal "was not correctly made and this is not capable of being lawfully determined" was wrong as a matter of both fact and law. It was not a conclusion open to the inspector being as it was irrational, an error of fact, and/or predicated on a misunderstanding of the scheme of the 1990 Act. Of necessity the Inspector proceeded by flawed logic, reached a conclusion contrary to all of the evidence, and/or the agreed position between the

parties, and/or made a decision which did not add up. That alone is sufficient basis to quash the DL.

Failure to Follow Section 79(6A)

58. Further, all parties also agree that the procedure pursuant to section 79(6A) of the 1990 Act is and was at all material times the appropriate procedure for dismissing a section 78 planning appeal for want of prosecution.

59. There is no dispute that that procedure was not followed.

60. This serves to reinforce the fact that the Inspector erred in dismissing the appeal for the reasons he gave.

61. The Inspector's approach cut directly across the statutory procedures set out in section 79(6A) which would have required him to give notice to MLL that the appeal would be dismissed and to give MLL an opportunity to take steps to avoid the appeal being dismissed because it was not being pursued. He did not do that.

62. That is especially prejudicial because:

    (1) The last correspondence from PINS to MLL had confirmed on 17 November 2021 **[21]** that "the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal"; and

    (2) The last correspondence from MLL to PINS had indicated Taytime were appointed to pursue the appeal but also concluded by saying "should you have any queries in this regard the please do not hesitate to contact me" **[19]**. PINS never responded to MLL or its liquidators, but instead dismissed the appeal on the grounds MLL were not pursuing it. It is at least arguable that in those circumstances the Inspector's approach ran contrary to section 79(6A) of the 1990 Act.

Materiality of the Error

63. The Secretary of State (at para. 9 of his skeleton argument) and orally with reference to section 79(6A) expressly accepted this argument; namely that the appeal having

been validly made and not withdrawn the merits of the section 78 appeal fell to be considered. Indeed, Taytime's understanding is even Mr Padden conceded before Sir Ross Cranston that section 79(6A) was the appropriate procedure to follow and that the Inspector had not followed it.

64. Mr Padden's submission was that remitting the appeal to the Inspector was pointless, because as a matter of insolvency law MLL "shouldn't, wouldn't, and couldn't" pursue it.

65. That contention is unsustainable.

66. The function and powers of liquidators in a winding up (including a creditors' voluntary liquidation) may be summarised as follows:

    (1) Upon a winding up, the powers of the company's directors are displaced and their functions are assumed by the liquidator(s). Liquidators take over the functions of the directors as the decision-making body of a corporate entity. They act as the agents of the company: the company's assets do not vest in the liquidators themselves (see *Re Silver Valley Mines Ltd* (1882) 21 Ch. D. 381 CA) **[27/190-202]**;

    (2) In a creditors' voluntary liquidation, the liquidator's powers are regulated by s. 165 Insolvency Act 1986 ("**IA 1986**"), which are subject to s. 166 IA 1986 **[28/206-208]**. In particular, under s. 165(2) IA 1986, the liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4 to the IA 1986 **[28/209-210]**;

    (3) The powers specified in Parts 1 to 3 of Schedule 4 IA 1986 include express powers to:

        a. Compromise, on such terms as may be agreed, all questions in any way relating to or affecting the assets or the winding up of the company (Schedule 4, Part I, Para 3);

        b. Bring or defend any action or other legal proceeding in the name and on behalf of the company (Schedule 4, Part II, Para 4);

c. Sell any of the company's property by public auction or private contract (Schedule 4, Part III, Para 6); and

d. appoint an agent to do any business which the liquidator is unable to do himself (Schedule 4, Part III, Para 12).

67. There is no requirement (whether under IA 1986 or otherwise) for a liquidator in a voluntary winding up to obtain any sanction (whether of the court or of creditors) before exercising any of the powers contained in Schedule 4.

68. The exercise by liquidators of their powers is a matter for their commercial judgment, in what they consider to be in the best interests of the company and all those with an interest in its estate – a decision on which the Court will not give directions or generally interfere unless it is a decision that was taken in bad faith or that no reasonable liquidator could have taken (see *Re Longmeade Ltd* [2016] EWHC 356 (Ch); [2017] B.C.C. 203 at para. 66) **[29/224-225]**.

69. While it is correct that s. 87(1) (which applies in the case of a voluntary winding up) provides that "*the company shall from the commencement of the winding up cease to carry on business, except so far as may be required for its beneficial winding up*" **[28/203]**, this is again a matter for the liquidator's own *bona fide* judgment: see *Sealy & Milman: Annotated Guide to the Insolvency Legislation* (25th ed, 2022). Moreover, this only restricts the ability of a company to carry on a "*trading business*" (which trading obviously might increase liabilities): see *Secretary of State for Business, Innovation and Skills v PAG Management Services Ltd* [2015] EWHC 2404 (Ch) at paras. 47-48 **[30/243]**.

70. If MLL were not in liquidation, there would (and could) be no suggestion that the Court in these proceedings could override any decision of its directors to continue the Appeal and related proceedings. That decision could only be set aside by a successful claim (in the Chancery Division) by somebody with standing to bring it. For example, a member of MLL might in theory be able to obtain the permission of the Court to bring a derivative claim on behalf of MLL against its directors under Part 11 Companies Act 2006 **[31/250-259]** for breach of their statutory duties owed to MLL, and potentially seek an injunction extending to the pursuit of the Appeal as part of those proceedings. However, a third party with no interest in MLL has no standing to

interfere in decisions made by its decision-making body, let alone to seek to do so in collateral proceedings in the Planning Court. Indeed, the Planning Court (forming as it does a specialist list within the Administrative Court of the King's Bench Division) has no jurisdiction to consider or determine applications which seek to challenge the actions of a private company on that basis.

71. The position is no different simply because MLL is in liquidation. The Court has no power, absent a successful application by somebody with standing, to interfere in the winding up of MLL or in the exercise by its liquidators of their powers of management. There has been no suggestion that Mr Padden has brought or has any standing to bring such an application (which, in any event, would need to be commenced in the Business and Property Courts of England and Wales (Chancery Division)). The relevant provision which applies in a voluntary winding up is s. 112(1) IA 1986 **[28/205]**, which permits only the "*liquidator or any contributory or creditor*" to "*apply to the court to determine any question arising in the winding up of a company...*". Again, Mr Padden has no standing to make such an application, and the Administrative Court of the King's Bench Division has no jurisdiction to hear it.

72. Mr Padden's submissions are themselves an abuse of the Court's process. They seek to subvert the statutory scheme which dictates the court's jurisdiction to supervise the lawful operation of corporate entities, whether solvent or in liquidation.

73. Moreover, even if a person with standing under s. 112(1) IA 1986 applied in the Chancery Division and sought to complain (as Mr Padden does) that the liquidators of MLL are in violation of s. 87(1) and that the Court should therefore give some form of direction to the liquidators, the Court would still be highly unlikely to accede to that application (see *Re Longmeade Ltd* (supra)).

74. While the liquidators' decision-making is not strictly relevant given the matters above, it certainly cannot be assumed that it was in "bad faith" for them to authorise the Claimant to pursue the Appeal on behalf of MLL or that no reasonable liquidator could have taken that decision. The Court has repeatedly stressed that it will not normally review the exercise by liquidators of their powers and discretions. In this case:

    (1) The liquidators are not even before the Court in these proceedings to explain their decision-making.

(2) Nor (though this is not the proper test) can it safely be assumed that there is no possible benefit to MLL as Mr Padden contends. The Liquidators' Progress Report of 8 September 2022 records (under "Leasehold Land") that MLL's accounts showed leasehold land with a book value of £77,163, which relates to improvements made by MLL on the land which is owned by the Taytime and subject to the Appeal **[32/267]**. It is in the context of the Appeal (i.e. that the land "*is subject to an ongoing legal case with the local Council who state that significant remedial works were required*") that no realisations were anticipated: the position might of course be different if the Appeal were successful.

(3) In any event, Taytime is a creditor of MLL, in whose best interests MLL's liquidators are under a duty to act, as confirmed by the Notice of Statement of Affairs. Mr Padden is not.

75. In short, MLL's liquidators would be entitled to pursue the appeal if it were remitted (and indeed could even seek to do so on the basis of a contract securing a financial advantage to MLL if the Appeal were to succeed).

Alternative Argument – Assignment/ Nullity

76. Further, and in any event, once it is recognised that the appeal was validly made and was capable of being determined, the question of whether or not Taytime was acting as agent for MLL was not and could not have been dispositive of the appeal.

77. Mr Padden argues in his Summary Grounds of Resistance ("**SGR**") at para. 36(1) that MLL in fact assigned the Appeal to Taytime.

78. In the alternative to the Claimant's position under Ground 2(ii), even if the Court accepts Mr Padden's submission on that issue and concludes that the Appellant was not MLL's agent, but that rather (contrary to the Taytime and MLL's understanding) MLL in fact assigned the cause of action in the appeal to Taytime, that would not have justified dismissing the appeal.

79. There is no authority to the effect that an appeal under section 78 or the 1990 Act may not be assigned, nor is there is anything in section 78 to prevent a validly brought appeal being assigned to another party. There is, however, authority to support the ability to assign the cause of action in an appeal under the 1990 Act (see *Muorah v*

Secretary of State [2023] EWHC 285 (Admin) at paras. 50- 55) **[26/188]**.

80. Even if Taytime's actions in pursuing the appeal were a nullity because they had not been appointed by MLL to act as its agent or assigned its cause of action (which is not accepted), that still would not have provided a lawful basis for dismissing the appeal. The liquidators had not suggested that they did not have any interest in the outcome of the appeal (as opposed to in the Land itself). On the contrary, their letter PINS on 22 September had made clear that they intended that it be pursued by Taytime who were "best placed to manage that process". The Inspector himself is clear that he did not understand this to involve MLL withdrawing the appeal (see DL7). In circumstances where PINS had stated expressly to MLL and its liquidators following that Letter that "the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the inspector will continue to determine the appeal", had PINS changed its mind and determined that Taytime's actions were not effective to pursue the appeal, the least that it was required to do was to notify the liquidators and seek their confirmation as to whether or not they wished to proceed with the appeal or withdraw it. Any other approach would have been procedurally unfair (see the principles in *Bounces Properties Limited v Secretary of State* [2023] EWHC 735 (Admin) at para. 32 **[33/285-286]**).

Ground 2(ii) – Error of Law: Agency

81. The Inspector erred in law in concluding that Taytime were not acting as MLL's agent and/or failed to give adequate reasons for his conclusion to that effect.

82. By paragraph 12, Part III of Schedule 4 to the Insolvency Act 1986, the liquidator has power to appoint an agent to act for a company in liquidation. The September 2021 Letter was legally effective to appoint TT as agent for MLL. This was the purpose of the letter and this is what it did. Mr Beat expressly states that "*I am writing to appoint Taytime Limited … to take over full responsibility for the above-listed planning appeal*". The only context in which he could have purported to "appoint" Taytime was as MLL's agent under Paragraph 12, Part III of Schedule 4 to IA 1986. There is no other obvious context falling within his powers as liquidator in which Taytime might otherwise have been appointed by him. If there is any ambiguity, the validation principle applies such that the letter must properly be understood to have been the

appointment of Taytime as agent.

83. This is reinforced by Mr Beat's statement that "*I am satisfied that [Taytime] is best placed to manage that process from this point forward …*" (emphasis added). Mr Beat was expressly concerned with the "management" of the appeal process. It would be nonsensical to refer to the ongoing management of the process if, instead, he were intending to discontinue the appeal on behalf of MLL.

84. There is no evidence that the Joint Liquidators took any decision to discontinue the planning appeal. It does not appear from the Appeal Decision that PINS or even the Inspector consider this to be the proper construction of the letter (by virtue of the November 2021 Decision and DL para. 7).

85. As a matter of general law, it is wrong to suggest (as the Inspector appears to at para. 5) that Taytime (as agent for MLL) would not have power to appoint further persons to act in connection with the appeal (including Pegasus Group, consultants and legal representatives). On the contrary:

    (1) Agents are entitled to delegate their authority in whole or in part or to appoint sub-agents with the express or implied authority of the principal (being the Joint Liquidators acting on behalf of MLL).[1] This is illustrated by the following rules set out in Bowstead & Reynolds on Agency (22nd Ed.) at 5-009 to 5-011.

    (2) Taytime can only act through its director. Mr Harrison (a Director of Taytime who was present at the appeal) must have impliedly been given the power to give instructions and carry out all necessary acts relating to the conduct of the appeal.

86. There has been no suggestion on behalf of the Joint Liquidators that the sub-agents or other persons to whom authority was delegated in connection with the conduct of the appeal were acting without authority (whether express or implied). On the contrary, the 2021 Letter expressly recognises that Taytime instructed Pegasus Planning and James Pereira KC of Francis Taylor Building for the submission of the appeal. In any event, if this point were raised, the Joint Liquidators could ratify any alleged absence

[1] See Bowstead & Reynolds on Agency (22nd Edition) at 5-001 to 5-011.

of authority.

87. It is irrelevant to questions of agency whether Taytime (or some other third party) is funding or has any interest in the planning appeal. The question of funding is completely separate to the question of whether Taytime was validly appointed as agent to conduct the appeal on behalf of MLL.

88. It is also irrelevant that Mr and Mrs Harrison or Taytime might have considered that Taytime should have been named as the applicant / appellant from the beginning. PINS have proceeded on the basis that MLL is entitled to bring the application / appeal. The only relevance of Taytime's separate interest in and knowledge of the appeal is, that it supports that Mr Beat was taking a proper commercial decision to appoint Taytime as agent to conduct and manage the appeal in accordance with his powers and duties as liquidator.

89. The Inspector's reasoning at DL paras. 5 and 6 provide no legally valid basis for concluding that Taytime was not acting as an agent for MLL or that "the party no pursuing the appeal is Taytime, not MLL". The material was all consistent with Taytime continuing to act as the project manager of the appeal and the liquidator's appointment of Taytime as agent for MLL on the appeal. The irrational and grossly unfair outcome of the Inspector's decision was to deem upon Taytime the formal status of appellant which neither Taytime, nor MLL, nor the liquidator had ever claimed for it, and to disregard the liquidator's formal appointment of Taytime as agent for MLL which had been made so that the appeal could continue.

90. For these reasons, the Inspector again erred in law.

F. Conclusion

91. For the reasons set out above, the Claimant/Appellant seeks an order:
    (i) Quashing the DL;
    (ii) For costs; and
    (iii) Such further and other relief as the court may think fit.

CHARLES STREETEN
Francis Taylor Building

CHANTELLE STAYNINGS
Erskine Chambers

19 December 2023

Claim No: CO/4860/2022

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

BETWEEN:

TAYTIME LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

Defendants

(3) DAVID PADDEN

Proposed Defendant

PROPOSED THIRD DEFENDANT'S

SUMMARY GROUNDS OF RESISTANCE

References

- *In the form SFG§ are to paragraph numbers in the Claimant's Statement of Facts and Grounds [CB/8-18]*
- *In the form DL§ are to paragraph numbers in the Inspector's Decision Letter [CB/19-22]*
- *In the form [CB/x] are to page numbers in the Claim Bundle*
- *In the form [DB/x] are to page numbers in the Proposed Third Defendant's Bundle submitted with these Summary Grounds*

Suggested reading:

- *Liquidators' letter [CB/23]*
- *PINS procedural decision (final paragraph) [CB/94]*
- *Third Defendant's Procedural Application [CB/95-101]*
- *Inspector's decision letter [CB/19-22]*

A. INTRODUCTION

1. Mr Padden seeks permission, pursuant to CPR 19.2, to be added as a defendant to the challenge brought to the decision of an Inspector appointed by the First Defendant ("**the Inspector**") to dismiss appeal reference APP/U2235/W/20/3259300 ("**the Appeal**") in relation to land at Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("**the Site**").

The grounds for Mr Padden's application are set out below, along with his grounds for resisting to the claim.

2. By way of a brief introduction, the Appeal included an application for retrospective planning permission for what can only be described as one of the largest breaches of planning control in the history of the planning system. Mr Padden's home is directly and significantly affected by this breach. The Inspector's decision which is the subject of this challenge was made in direct response to a procedural application which was made on behalf of Mr Padden [CB/95-101]. For these reasons, which are set out more fully below, Mr Padden respectfully requests permission to be joined as a defendant to this claim. His interest in the claim is clear and direct.

3. Mr Padden's summary response to the claim is that it is not arguable and should be refused permission for the following reasons:

    a. Taytime Limited ("**the Claimant Company**") does not have any **lawful authority** to bring these proceedings . This claim is expressly stated to have been brought by the Claimant Company *"on behalf of Monk Lakes Limited"* [CB/2]. Monk Lakes Limited ("**MLL**") is in voluntary liquidation. Its liquidators have expressly stated that MLL has no interest in the Site and hence no interest in the planning appeal to which these proceedings relate. MLL's liquidators do not therefore have the statutory authority to bring this claim, which is on their own admission of no benefit to MLL. It follows that the Claimant Company cannot have authority to bring it on MLL's behalf. Moreover, there is in fact no evidence whatsoever before the Court that MLL's liquidators have in fact given any authority for these proceedings to be brought in the name of that company.

    b. **Ground 1** is pleaded in the absence of any authority. This is not surprising because it is well-established that a procedural decision (such as the decision in issue in this claim) is not a decision falling within s.284(3)(b) of the Town and Country Planning Act 1990 ("**TCPA**"): ***Co-operative Retail Services Ltd v SSfE*** [1980] 1 WLR 271.

    c. **Ground 2** is, in essence, a challenge to the Inspector's judgment and is based on a selective reading of his decision letter and the evidence before him.

d. **Ground 3** is parasitic upon Grounds 1 & 2 and fails for the same reasons. There can have been no legitimate expectation that the Inspector would determine appeal in circumstances where it would have been improper or unlawful for him to do so. Further, the PINS decision referred to does not give rise to a promise that is clear, unambiguous and devoid of relevant qualification such as to give rise to a legitimate expectation in the form alleged by the Claimant Company or at all.

B. BACKGROUND

4. The background to this claim is only set out briefly in the SFG. It is important that the court is aware of the complex history of this matter, and in particular Mr Padden's involvement in it.

5. Mr Padden owns and occupies Hertsfield Barn, Herstfield Lane, Marden, Kent which is a Grade II listed building. As stated above, Mr Padden's property is directly adjacent to the Site. Between 2003 and 2008 unauthorised works were carried out at the Site with a view to creating recreational fishing lakes. The Environment Agency has estimated that approximately 650,000 cubic metres of waste material were deposited on the Site during this period. The material was formed into, among other things, massive eight metre high retaining bunds very close to Mr Padden's property. In 2008 the Site was acquired MLL and Emily and Guy Harrison who continued and intensified the unauthorised works.[1] The only current director of MLL is Guy Richard Harrison. Emily Harrison resigned as a director on the 03.11.09. As already noted this company is going through the liquidation process. The Claimant Company is one in which Guy Harrison is a person with significant control (75% or more) with 2 outstanding legal charges against the Claimant Company in his favour to the amount of £150,000. The Claimant Company is the owner of the Site.

[1] In previous judicial review proceedings relating to this matter (***R (Padden) v Maidstone BC*** [2014] Env LR 20) the Court recoded:
"4. … The unauthorised works took place between 2003 and 2008 and involved the importation of very large amounts of construction waste material including glass, plastic and asbestos. The Environment Agency has estimated that about 650,000 cubic metres of waste material were deposited on the land between March 2003 and January 2008 with even more since. The material was formed into, amongst other things, massive 8 metre high retaining bunds close to neighbouring residential properties including Hertsfield Barn.
Facts agreed or not much in dispute
5 In 2008 the site was acquired by three of the Interested Parties, Emily and Guy Harrison and Monk Lakes Limited ("MLL") who have apparently continued, and intensified, the unauthorised works …"

MLL has no remaining interest in the Site. Various other companies under the control of the Harrisons have in the past had connections with the Site including: Monk Lakes Fishery Limited and Merrymove Limited. The merry go round of companies employed has been, it is contended, a screen to seek to avoid liabilities attaching to Mr and Mrs Harrison themselves.

6. The scale of the unauthorised works is, frankly, staggering and can only be fully appreciated in pictural form. The court is invited to consider a fuller description of the unfortunate history of this Site (along with pictures), which is set out at [DB/2]. The impacts on Mr Padden of this vast waste development have been very great indeed and include severe groundwater flooding, visual impacts and adverse impacts on the setting and fabric of Hertsfield Barn, which is a listed building. The unauthorised development is also accepted to be EIA development for the purposes of the Town and Country (Environmental Impact Assessment) Regulations 2017, i.e. development which has been assessed as being likely to have significant effects on the environment.

7. The planning application which was the subject of this Appeal ("**the Application**") also has an unfortunate history. It is not necessary for the purposes of this claim to go into that history in detail, save to note the following. The Application was submitted by MLL on 09.12.12 and assigned reference MA/11/1948 [CB/30]. The Application sought, inter alia, retrospective consent for the aforementioned unauthorised development. Since that time, the Application has been the subject of three separate judicial review claims brought by Mr Padden.[2] One consequence of the unfortunate history of the Application is that the most recent determination of it by the Second Defendant ("**the Council**") did not take place until 05.03.20 in relation to a planning application made 8 years previously. The Council refused permission [CB/79-81].

8. Following this, the Appeal was lodged by MLL on 11.09.20 – and it is important to note that MLL (and only MLL) was specifically listed as "*the Appellant*" in the appeal form [CB/82]. The Appeal form also recorded that the Pegasus Group had been appointed as MLL's agent for the purpose of the Appeal [CB/82].

[2] Including one reported case: ***R (Padden) v Maidstone BC*** [2014] Env LR 20.

9. On 15.07.21, MLL filed for voluntary liquidation. MLL appointed Duncan Beat and Andrew Watling of Quantuma Advisory Ltd ("**the liquidators**") to act as liquidators of the company [CB/90].

10. On 22.09.21, the liquidators wrote to PINS regarding the Appeal [CB/23]. The contents of that letter ("**the liquidators' letter**") are set out in full at SFG§13 and so it is not necessary to repeat them here. However, it is important to stress that the liquidators told PINS that: the Claimant Company had been appointed to *"take over full responsibility for"* the Appeal; MLL had *"no interest whatsoever"* in the Site and hence the appeal; and the Claimant Company believed that the application *"should have been placed in their name in the first place"*. This letter was not sent or copied to Mr Padden, who did not receive it until 27.09.22 [CB/95].

11. Notwithstanding this, having been made aware of MLL's decision to file for voluntary liquidation via his own inquiries, Mr Padden wrote to PINS on 12.10.21 to state, *inter alia*, his view that, given that MLL was in the process of being dissolved, the Appeal should automatically be dismissed [CB/92]. PINS responded with a letter, dated 17.11.21 ("**the PINS letter**"), stating that "*unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette the Inspector will continue to determine the appeal"* [CB/94]. It is relevant to note that this was not the only matter to be addressed in the PINS letter, which was described in overall terms as *"the Inspector's determination as to the procedure for [the] appeal"* [CB/94].

12. As stated above, it was not until 27.09.22 that Mr Padden obtained a copy of the liquidators' letter. Following this, Mr Padden's solicitors wrote (on the same day) to the liquidators (copying PINS) to re-state Mr Padden's position that the Appeal was now being unlawfully pursued by the Claimant Company as opposed to MLL and that Mr Padden intended to raise this issue at the Appeal hearing scheduled for the following week [DB/47]. Mr Padden received no response to this letter. Following this, Mr Padden instructed leading counsel to draft written submissions in support of a procedural application. These submissions are included at [CB/95-101] and should be read in full. A number of documents were attached to the submissions, not all of which are included in the Claim Bundle. So that the court can view all of the relevant documents that were put before the Inspector, some further attachments are reproduced at [DB/26-48]. These include a liquidators' notice of progress dated 08.09.22, which confirmed that the

liquidators did not anticipate realisations from any residual interest that MLL held in the Site [DB/26]. The essence of these submissions was that the Appeal was being pursued by the Claimant Company which had no ability to appeal under s.78 TCPA and that, accordingly, the Appeal should be dismissed as invalid. The liquidators' letter was cited in support of Mr Padden's application, as was the fact that the Statement of Common Ground ("**SoCG**") prepared for the Appeal had been signed by both the Claimant Company and Second Defendant listed the Claimant Company as the appellant [CB/98-99]. These submissions were sent to the Claimant Company on 30.09.22.

13. The hearing of the Appeal took place on 05.10.22. The Claimant Company was invited to make oral submissions in response to Mr Padden's application. Among other things, leading counsel for the Claimant Company submitted that the Inspector should allow the Appeal to proceed and that, if Mr Padden considered this to be invalid (based on his submissions about the identity of the Appellant), he could challenge the matter in the High Court.

14. In a decision letter dated 21.11.22, of the Inspector dismissed the Appeal. His reasons (which are set out in more detail in response to the grounds below) demonstrate that he accepted Mr Padden's submissions that the Claimant Company had taken over the Appeal (as the appellant as opposed to some sort of "*agent*" of MLL) and that, consequently, there was no valid appeal capable of being determined and it should be dismissed.

C. MR PADDEN'S APPLICATION TO BE ADDED AS A PARTY

15. CPR 19.1 provides that any number of claimants or defendants may be joined as parties to a claim. CPR 19.4 provides that the court's permission is required to add a party. CPR 19.2(2) provides that the court may order a person to be added as a new party if it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings. In ***R Pablo Star Ltd*** [2018] 1 WLR 738 CA, Sir Terence Etherton MR held that in considering whether to add a new party pursuant to CPR 19.2(2) *"two lodestars are the policy objective of enabling parties to be heard if their rights may be affected by a decision in the case and the Overriding Objective."* In a similar vein, Holgate J has held with respect to challenges to local plans in the Planning Court that *"the court has a discretion to permit parties other than the local planning authority which prepared the plan under challenge to appear*

if they might otherwise suffer injustice": ***IM Properties v Lichfield DC*** [2015] EWHC 1982 (Admin), §62.

16. As set out above, Mr Padden has been significantly and directly affected by the unauthorised development of the Site and has been actively involved (to the extent of issuing three previous High Court challenges and appearing in the Appeal) in opposing MLL's application to regularise it. Moreover, the decision which forms the subject of this claim is the Inspector's decision to allow Mr Padden's own procedural application. If follows from this that Mr Padden's rights would plainly be affected (on a number of levels) by any decision in this claim and that, accordingly, he has a right to be heard. Furthermore, given his extensive involvement in this case, which has included previous successful High Court challenges, Mr Padden and his representatives are well-placed to assist the court by enabling it to understand the complex factual history of the development and the Appeal. Such assistance would contribute to the overriding objective.

17. Accordingly, the court is respectfully invited to allow Mr Padden's application and, thereafter, to consider his grounds of response as set out below.

D. LEGAL FRAMEWORK

18. The Claimant Company has failed to set out the legal principles which apply to the consideration of claims under s.288 TCPA, and in particular the approach to inspectors' decision letters. These were summarised by Lang J in ***Greenwood v SSCLG*** [2021] EWHC 2975 (Admin) at §39: an inspector's decision letter must be read: (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case. The court will only entertain claims that an inspector has erred in law: mere disagreement with an inspector's planning judgments will not be sufficient. In ***Newsmith v Secretary of State for the Environment, Transport and the Regions*** [2001] EWHC Admin 74, Sullivan J (as he was then) warned that *"an applicant alleging an Inspector has reached a Wednesbury unreasonable conclusion on matters of planning judgment, faces a particularly daunting task"*.

E. RESPONSE TO THE CLAIMANT'S GROUNDS

The Claimant Company does not have the lawful authority to bring this claim

19. As set out above, the Claimant Company has expressly stated that this claim is being brought "*on behalf of*" MLL [CB/1]. The Claimant Company further avers (SFG§4) that it has been appointed by MLL to act as its "*agent*" in connection with the planning appeal and that this accords it sufficient standing to bring this claim. This is not accepted by Mr Padden for reasons which are set out more fully in response to Ground 2 below. However, in any event, it does not follow that, if the Claimant Company has been authorised to pursue the appeal, it has also been authorised to issue this claim. Indeed, the Claimant Company does not state that it has any specific authority (whether express or implied) from MLL to do so and it is notable that the Claimant Company has not provided any evidence from MLL or its liquidators to this effect. On the contrary, there is clear evidence that MLL's liquidators are unlikely to have authorised the Claimant Company to issue these proceedings, specifically in the form of the liquidators' letter in which they expressly state that MLL has "*no interest whatsoever*" in the Site.

20. Even if (contrary to the above), the Claimant Company can establish that it had authority to issue these proceedings as some sort of agent on behalf of MLL, it cannot be said to have any *lawful* authority to do so. This is because MLL, as principal, is liquidation. Pursuant to s.87(1) of the Insolvency Act 1986 ("**IA**"), a company which has commenced a voluntary winding up is obliged to "*cease carrying on its business, except so far as may be required for its beneficial wind up*". Given the liquidators' admission that the Site (and thus the Appeal) is of no interest to MLL and further that no realisations are expected from the Site for MLL, it is clear that the Appeal and moreover this claim is not required for the beneficial wind up of MLL. MLL therefore does not have any lawful authority to pursue this claim.

21. The same applies to the liquidators. Liquidators are regulated insolvency practitioners and as such are expected to act in the best interests of creditors and not to undertake actions that are likely to have a negative financial impact on them.[3] The powers of liquidators in the case of a voluntary winding up are set out in s.165 IA and in Parts 1-3 of Schedule 4. These include the "*power to bring or defend any action of other legal proceeding*

[3] Explanatory Note, cited by Snowden J in ***In re Longmeade Ltd (in liquidation)*** [2016] Bus LR 506 at §59.

in the name and on behalf of the company": Schedule 4, Para. 4. The legal principles which will apply to the exercise of this power were set out ***In re Longmeade Ltd (in liquidation)*** [2016] Bus LR 506 at §66. The following are relevant to this claim:

> *"(i) a decision by liquidators appointed by the court as to whether to commence proceedings in the name of the company is essentially a commercial decision which the liquidators are entrusted to take without obtaining sanction from the court or the liquidation committee;*
>
> *(ii) in taking that decision, the liquidators should act in what they believe to be the best interests of the insolvent company and all those who have an interest in its estate;*
>
> *[…]*
>
> *(vi) the court should not generally become involved in giving directions to liquidators as to how to make commercial or administrative decisions; and*
>
> *(vii) the court should not generally interfere with a commercial or administrative decision of liquidators after the event, unless it is a decision that was taken in bad faith or was a decision that no reasonable liquidator could have taken."*

22. Given that (as set out above), MLL has no interest in the Site, hence no interest in the planning appeal and therefore in this claim, these proceedings cannot rationally be said to be in the best interests of MLL's creditors – given that they involve expense and costs risk for no apparent gain. It follows that, if the liquidators have authorised the Claimant Company to bring this claim (for which there is no evidence) they have done so unlawfully.

23. Thus, the Claimant Company does not have lawful authority to bring this claim on behalf of MLL and it should be dismissed accordingly. Finally, and for completeness, if the Claimant Company states (contrary to how it has presented the claim to date) that it is in fact bringing this claim in its own right and of its own accord, this would be fatal to its contention (set out under Ground 2) that it is in fact acting as MLL's agent. Thus, this claim would fall to be dismissed either way.

Ground 1: Jurisdiction

24. The Claimant Company does not cite any authority in support of its claim that the decision, as articulated in the PINS letter of 17.11.21 to continue to determine the Appeal, is a *"decision on an appeal under section 78"* for the purposes of s.284(3)(b) TCPA. This is both unsurprising and conspicuous because there is in fact clear authority which

contradicts the Claimant Company's position and renders this ground hopelessly unarguable.

25. A previous (identical) iteration of this provision (s.242 of the Town and Country Planning Act 1971) was considered by the Court of Appeal in ***Co-operative Retail Services Ltd v SSfE*** [1980] 1 WLR 271. In this case, the Court of Appeal (Stephenson and Brandon LJJ) was required to determine whether a decision by the Secretary of State to refuse to adjourn the hearing of a planning inquiry was "*a decision on an appeal under s.36 [now s.78]*". They found that it was not: s.242 only applied to a decision "*disposing of the appeal*" and not to a decision taken "*in the course of an appeal*". This decision has since been affirmed on a number of occasions including recently by Holgate J in ***London Historic Parks and Gardens Trust v SSHCLG*** [2021] JPL 580, who confirmed (§120) that s.284(3)(b) "*is confined to a decision made in disposing of the appeal, or dealing with its final outcome, as contrasted with a decision made during the course of an appeal, such as a procedural decision*".

26. Plainly the PINS decision *to continue the appeal* was not a decision made in disposing of the Appeal or dealing with its final outcome. It is also relevant that it was contained in a broader letter which (as set out above) was expressly described as setting out "*the Inspector's determination as to the* ***procedure*** *for [the] appeal*". It follows that, on any view, the decision was not one falling within s.284(3)(b) and that, accordingly, the Inspector was not barred by virtue of s.284(1)(f) or otherwise from revisiting it. There was therefore no issue of jurisdiction. Indeed, it was a decision that the Inspector was perfectly entitled to revisit, particularly given that circumstances had changed since the PINS letter: specifically that Mr Padden had finally received the liquidators' letter and been able to make submissions on it, which included further evidence such as the recent liquidators' notice of progress.

27. Furthermore it should be noted that the Claimant Company did not raise any jurisdiction issue at the time of the hearing. On the contrary, leading counsel for the Claimant Company submitted that Mr Padden would be able to challenge any decision which the Inspector made on this issue by way of judicial review – something which plainly would not be possible if, as the Claimant Company now submits, the earlier decision of PINS was binding and not capable of being challenged once 6 weeks had passed from the making of that decision.

Ground 2: Error of law

28. This ground is, in reality, nothing more than an attack on the *judgments* which the Inspector reached about the status of the Claimant Company based on the evidence before him. The Claimant Company does not come remotely close to fulfilling the *"particularly daunting task"* of establishing that these judgments were irrational.

29. In relation to the Claimant Company's **first** complaint (SFG§§32-33), it is not correct that the Inspector wrongly conflated the issue of whether the Appeal had been validly made with the issue of whether it could be validly pursued. The Inspector's decision letter must be read in accordance with the principles summarised in ***Greenwood*** (above). It is perfectly clear from DL§§6 & 4 respectively that the Inspector accepted: (i) that MLL was listed as the appellant on the appeal form; and (ii) that MLL could *"in principle"* pursue the Appeal as the appellant. This would have been entirely obvious to the Inspector, as even the Claimant Company accepts that this matter was not in dispute between the parties (SFG§23).

30. There was therefore no error in this regard, and even if there was it plainly had no bearing on (and so was not material to) what was obviously the main issue before the Inspector – i.e. whether the Appeal could be validly pursued. On this issue, the decision letter demonstrates that the Inspector found the following facts (DL§5):

    a. The liquidators had appointed the Claimant Company to *"take over **full responsibility** for the appeal"* (emphasis added).

    b. The Claimant Company (as opposed to MLL) had appointed Pegasus Group as agents in the appeal along with leading counsel and a number of the professional witnesses who were purporting to act for the appellant in the Appeal.

    c. The Claimant Company had signed the SoCG for the Appeal as the appellant.

31. In addition, as outlined above, the Inspector would also have been aware that the liquidators had stated (in the liquidators' letter) that MLL *"no interest whatsoever"* in the Site presumably because the liquidators did not anticipate any realisations from it as per their update report referred to above [DB/33]. The Inspector would also have been aware from the liquidators' letter that the Claimant Company believed that the Appeal *"should*

have been placed in their name in the first place". That is a telling point in relation to who was pursuing this appeal.

32. Moreover, the Claimant Company did not provide *any further evidence* from the liquidators or MLL which confirmed that it was in fact pursuing the appeal and/or that the Claimant Company was acting as its agent – as opposed to Pegasus Group which was listed as such on the appeal form [CB/82]. This evidence is conspicuous by its absence and it is noted that even now no new evidence is sought to be adduced, although that is perhaps unsurprising given that such evidence would be inadmissible having not been produced before the Inspector. The application by Mr Padden was made prior to the hearing, and in writing, to allow the Claimant Company to make a response and to consult the liquidators. Moreover, Mr Padden's representatives had written to the liquidators in the lead up to the hearing and they responded by sending only the earlier letter they had sent to PINS a year before. No further response was forthcoming to the application.

33. In light of the above, the Inspector was plainly entitled to conclude, as a matter of judgment and on the basis of the evidence before him, that (DL§6) the Appeal was no longer being pursued by MLL and that, instead, the Appeal was being pursued by the Claimant Company who was not the applicant and therefore unable to do so. In these circumstances it was perfectly proper for him to have dismissed it.

34. The Claimant Company appears to suggest (SFG§32) that, instead of dismissing the Appeal, the Inspector was *"required"* to write to MLL and the liquidators seeking confirmation as to whether they were proceeding with the appeal. It is also difficult to see what this could possibly have achieved. As explained above, the liquidators had already informed PINS that MLL had no interest in pursuing the Appeal and expected the Claimant Company to do so instead. Further, the liquidators was already aware from correspondence with Mr Padden's solicitors (referred to above) dated 27.09.22 that Mr Padden would be inviting the Inspector conclude that the Appeal was being unlawfully pursued by the Claimant Company as opposed to MLL [DB/47]. Yet the liquidators provided no response.

35. None of this is particularly surprising because as set out above under s.87(1) of Insolvency Act 1986, MLL (as a company in liquidation) is obliged to *"cease carrying on its business, except so far as may be required for its beneficial wind up"*. Given that the Appeal Site does

not have any realisable benefit to MLL, pursuing the Appeal could not be said to be required for MLL's beneficial wind up and would therefore not have been possible. Thus, even if (for some reason) the Inspector was required to consult MLL or the liquidators, it is clear that it would not and indeed could not have pursued the Appeal. It follows that any such error cannot be said to have been material and that the Claimant Company should be denied relief in any event: ***Simplex Holdings v SSfE*** [198] 3 PLR 25.

36. The Claimant Company's **second** complaint (SFG§33), that the Inspector erred in concluding that the Claimant Company was not acting as MLL's agent must fail for essentially the same reasons as its first. Again, this was a matter which the Inspector was required to determine using his judgment on the basis of the evidence before him. It is clear, particularly from DL§5, that the Inspector considered all of that evidence and concluded that on balance the Claimant Company was acting as the appellant and not as the agent. This was a judgment that he was plainly entitled to reach and the Claimant Company's overly-legalistic and selective analysis of his reasoning takes it nowhere:

    (1) The fact that the liquidators may have had the power to appoint an agent does not mean that this is what it actually did. The Inspector was entitled to read the liquidators' letter stating that the Claimant Company was appointed to take over *"full responsibility for the appeal"* as indicating that MLL was attempting to assign the appeal to it – particularly when this statement is read alongside the liquidators' other statements that MLL had no interest and that the Claimant Company believed the Appeal should have been in their name in the first place. Given the liquidators' duties as set out above there was no basis on which it could properly be appointing an agent to pursue this Appeal. The Appeal being of no benefit to the wind up.

    (2) In light of this, the liquidators' statement that the Claimant Company was best placed to *"manage"* the appeal process plainly did not require the Inspector (as a matter of rationality) to reach a different conclusion. This is particularly so when this phrase is read in its context – i.e. sandwiched between references to the Claimant Company being the owner of the land and MLL having *"no interest whatsoever"* in it [CB/23].

    (3) In all the circumstances, the Inspector was perfectly entitled to interpret the liquidators' letter as confirmation that they did not wish to pursue the appeal.

Further, as stated above, the liquidators had ample opportunity to provide evidence to the contrary but did not do so.

(4) The Inspector did not find or suggest that the Claimant Company *could not* have appointed further agents to act in connection with the appeal. Rather, he found as a matter of fact that the Claimant Company *was not* acting as MLL's agent. The Inspector was perfectly entitled draw *support* for this from the fact that Pegasus (as opposed to the Claimant Company) was listed as agent on the Appeal form and that the Claimant Company had appointed key persons acting in the Appeal – particularly when these facts are viewed alongside the other evidence, such as the liquidators' letter and the SoCG.

(5) As stated above, the point was squarely raised with the liquidators in advance of the Appeal and no response was provided. Nor was any evidence advanced by the Claimant Company and the professionals it instructed at the appeal hearing to support any alleged agency relationship.

(6) The Inspector had a wide discretion as to what he considered to be relevant considerations, which is only subject to challenge on grounds of irrationality: ***R (Samuel Smith Old Brewery) v North Yorkshire CC*** [2020] UKSC 3 per Lord Carnwath JSC at §32. The Inspector was rationally entitled to have regard to the Claimant Company's interest in the Site in the context of this question for two reasons: (i) because it provided an explanation for the Claimant Company's involvement in the Appeal other than that it had simply been appointed to act on behalf of MLL; and (ii) because compared with MLL's lack of interest it tended to suggest that the Claimant Company was acting as an appellant as opposed to an agent.

(7) As above, the Inspector was plainly entitled to regard the reference to the Claimant Company's view that it should have been listed as the appellant as relevant – particularly when it also referred to itself as such during the course of the Appeal, for example in the SoCG.

(8) For all the reasons given above, the Inspector's conclusion was clearly both rational and fair and the Claimant Company's overly-legalistic and selective approach to his decision does not even come close to suggesting otherwise.

Ground 3: Legitimate expectation

37. This ground was not pursued before the Inspector and is hopelessly unarguable. In general, it is relevant to note (which the Claimant Company has conspicuously failed to do) that the concept of legitimate expectation has limited application in the field of planning. In ***Henry Boot Homes v Bassetlaw DC*** [2002] EWHC 546 (Admin), Sullivan J (as he then was) held:

> *Established public law principles, such as legitimate expectation, are in principle applicable in the field of Town and Country Planning. However, given the comprehensive nature of the statutory code, and the manner in which it seeks to secure consultation and public participation in the planning process, it may be difficult in practice to establish any expectation, and even more so a legitimate one, that the code will not be applied*

38. There are two further particular reasons why this ground is unarguable.

39. **First**, it is well established that a claim for legitimate expectation will only proceed where the claimant can prove that he has received a promise which is "*clear, unambiguous and devoid of relevant qualification*": ***R (Suliman) v Bournemouth, Christchurch and Pool Council*** [2022] JPL 1281 per Lang J.

40. The letter from PINS upon which the Claimant Company relies states only that Inspector would "***continue*** *to determine the appeal*". Contrary to what the Claimant Company appears to suggest, this was not an unambiguous representation that the Inspector would determine the Appeal, but rather that he would continue to determine it: in other words, that the appeal would continue to proceed for the time being. It did not expressly preclude PINS or the Inspector from taking any future procedural decisions in respect of this issue. Had it done so, it would plainly have been prejudicial to other interested parties, including Mr Padden who at that time had not seen highly relevant correspondence from MLL's liquidators and so was unable to make any representations on the issue until much later.

41. **Second**, *and in any event*, even if (contrary to the above) this was sufficient to establish an expectation, it was not sufficient to establish a *legitimate* expectation. It is well established that a public authority cannot establish a legitimate expectation that it will do something which is unlawful: see, for example, ***Henry Boot*** (above). It follows that this ground is parasitic upon Grounds 1 and 2 because, unless the Claimant Company establish that the

Inspector was wrong to conclude that the Appeal could not lawfully be determined under s.78 TCPA, it cannot be said to have had a *legitimate* expectation that he would do so. The Claimant Company's propositions in this regard are not arguable for the reasons given above.

F. REQUEST FOR FURTHER INFORMATION

42. It will be apparent from the above that the Claimant Company has failed to provide evidence (in the form of documents or otherwise) regarding its relationship with MLL and the liquidators. The Claimant Company's duty in this regard is helpfully summarised in the Administrative Court Judicial Review Guide 2022 at §15.2.1: *"a claimant is under a duty to make full disclosure to the Court of material facts and known impediments to the claim…This duty is a continuing one: it applies throughout the judicial review procedure."*[4] The case-law is clear that there is a duty of full and frank disclosure on claimants in judicial review proceedings.

43. Pursuant to this principle, Mr Padden requests that the Claimant Company provide the following documents and information by no later than **7 February 2023**:

    a. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents related to the appeal between 11.09.20 and 05.10.22;

    b. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents in relation to MLL, the liquidators' and/or the Claimant Company's authority to issue these proceedings;

    c. Confirmation that the Claimant Company is in fact authorised to act as agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered.

[4] https://www.judiciary.uk/wp-content/uploads/2022/11/14.130_HMCTS_Administrative_Court_Guide_2022_FINAL_v06_WEB__2_.pdf

44. If this information is not provided within the time specified, Mr Padden reserves the right to make an application for specific disclosure of the same, pursuant to CPR Pt.31.

G. COSTS

45. At the date of filing, Mr Padden does not know whether the First Defendant intends to defend this claim. However, in any event, given the history of this matter and Mr Padden's involvement in it, it was nevertheless reasonable and proportionate for him to (a) apply to be joined as a defendant and (b) file these summary grounds of resistance. Accordingly, if permission is refused, Mr Padden seeks an order that the Claimant Company pay the costs of his application and of responding to the claim, consistently with the judgment of the Court of Appeal in ***R (CPRE) v SSCLG*** [2020] 1 WLR 352, §37.[5]

46. Further, as set out in the witness statement of David Warman, Mr Padden understands that neither the Claimant Company nor MLL has any significant realisable assets of value. In these circumstances, and subject to the position taken by the First Defendant, the Claimant Company reserves the right to apply for security for costs pursuant to CPR Pt.25.

H. CONCLUSION

47. For the reasons given above, the court is respectfully requested to: (i) allow Mr Padden's application to become a defendant to this claim; (ii) dismiss the Claimant Company's application for permission for to bring a statutory challenge; and (iii) order the Claimant Company to pay Mr Padden's costs as set out above

JAMES MAURICI KC

BEN FULLBROOK

LANDMARK CHAMBERS

24 January 2023

[5] Affirmed by the Supreme Court: [2021] 1 WLR 4168.

Claim No: CO/4860/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
BETWEEN:

TAYTIME LIMITED[1]

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

DETAILS GROUNDS OF RESISTANCE
On behalf of
THE THIRD DEFENDANT, DAVID PADDEN

References

- *In the form [#] are to page numbers in the bundle prepared for the Oral Permission Hearing on 13.06.21*[2]
- *In the form [**DB/x**] are to page numbers in the Defendant's Bundle filed with these Detailed Grounds*
- *In the form ASFG§ are to paragraph numbers in the Amended Claimant's Statement of Facts and Grounds.*
- *In the form DL§ are to paragraph numbers in the Inspector's Decision Letter [**19-22**]*

Essential reading:

- *Pleadings*
- *Inspector's Decision Letter [**19-22**]*
- *The Third Defendant's "Procedural Application" in the planning appeal **[95-101]***
- *Liquidators' Letter 22.00.21 **[23]***
- *Indemnity Agreement [**278-281**]*
- *Witness Statement of Mr David Padden [**345-349**]*
- *First Witness Statement of Mrs Emily Harrison and exhibits [**235-274**]*

[1] The claim form and the Claimant's Statement of Facts and Grounds as originally lodged described the Claimant as "*TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)*." By order of Sir Ross Cranston, the Taytime Limited was substituted as the Claimant in place of Monk Lakes Limited. This has been reflected in the Amended Claimant's Statement of Facts and grounds served on 22 December 2023. The claim form still erroneously refers to the Claimant as being "*TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)*." "*TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)*."

[2] If necessary, a replacement of these Detailed Grounds with updated references can be served once contents of the final hearing bundle have been confirmed.

- *Transcript of the Oral Permission Hearing [**DB/144**]*

A. INTRODUCTION

1. The Claimant ("**Taytime**") challenges the decision of an Inspector appointed by the First Defendant ("**the Inspector**") to dismiss appeal reference APP/U2235/W/20/3259300 ("**the Appeal**") in relation to land at Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("**the Site**").

2. By way of a brief introduction, the Appeal included an application for retrospective planning permission for what can only be described as one of the largest breaches of planning control in the history of the planning system. The Third Defendant ("**Mr Padden**")'s home is directly and significantly affected by this breach. The appellant in the Appeal was Monk Lakes Limited ("**MLL**") **[82]**.

3. During the course of the Appeal MLL went into voluntary liquidation. In consequence of this, and various correspondence that passed between MLL's liquidators, Taytime and the Inspector, Mr Padden raised a procedural objection to the Appeal. He asserted (in summary) that the Appeal was no longer being pursued by MLL, but by Taytime and that, since Taytime was not the appellant and was not acting as agent for MLL, this was not possible and the Appeal should be dismissed **[95-101]**. Mr Padden's objection was heard at a hearing of the full Appeal on 05.10.22.

4. The Inspector agreed with Mr Padden's submissions and dismissed the Appeal accordingly.

5. The claim was originally brought by "*TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)*" **[1, 8]**. The claim was originally brought on three grounds:

    a. Ground 1: The Inspector did not have the jurisdiction to overrule his previous procedural decision;

    b. Ground 2: The Inspector erred in law in (i) finding that the Appeal was not validly made; and (ii) concluding that Taytime was not the agent of the appellant, Monk Lakes Limited ("**MLL**");

c. Ground 3: The Inspector breached MLL and Taytime's legitimate expectation that the appeal would proceed to be determined on the merits as a result of his previous procedural decision.

6. Surprisingly (and inappropriately given his obvious interest), Mr Padden was not made a defendant to, and was not served with, the claim. The First and Second Defendants offered to consent to judgment in this claim [**110-111**]. However, it is important to stress the following in respect of this:

   a. That offer to consent was made on very limited grounds indeed. It was restricted to Ground 2 and even then only to an admission that the Inspector had failed to give sufficient reasons for his decision. There was no admission that there was any defect in the Inspector's underlying conclusions [**111**].

   b. It does not follow from this that the court should allow this claim. There are numerous examples of the Secretary of State consenting to judgment and other Defendants/Interested Parties nevertheless going on to successfully defend his decisions: e.g. ***Wychavon DC v SSCLG*** [2009] PTSR 19.

   c. Moreover, since the First and Second Defendants offered to consent to judgment, new evidence has emerged which fatally undermines Taytime's case on Ground 2, in particular the indemnity agreement and correspondence that are exhibited to Mrs Harrison's first witness statement and discussed further below [**242-281**]. This was material which could have been, and should have been, provided to the Inspector in response to Mr Padden's procedural objection but for reasons that have never been explained it was not.

   d. At the oral permission hearing of this claim, Taytime asserted that the question of whether it was acting as MLL's agent in the Appeal (Ground 2)) is entirely[3] or at least predominantly a question of law.[4] If this is so, it follows that whether

[3] OPH skeleton, §1

[4] OPH transcript, p.85A. In Taytime's skeleton for the OPH it was said of their claim at para. 1 "*At its heart is whether, following the liquidation of Monk Lakes Limited ("MLL") on 15 July 2021, Taytime Limited ("Taytime") acted as MLL's agent in pursuing the appeal that MLL had brought. That was a question of law turning on the construction of the letter of appointment dated 22 September 2021.1*". See also para. 36(6) "The interpretation of both written and oral authority is a matter of law" (see Bowstead & Reynolds 2-*028).*

or not the Inspector gave sufficient reasons for his conclusion that Taytime was not MLL's agent is irrelevant. He was either right, or he was wrong on what is entirely or at least predominately a question of law.[5]

7. Faced with this situation, Mr Padden sought permission to be added as a defendant to this claim, which was granted by order of Lang J, dated 24.03.23 [**193**]. Mr Padden submitted Summary Grounds of Defence accordingly [**176-192**]. As well as setting out his defence to each of the grounds of claim, Mr Padden argued that the claim was invalid because, despite purporting to have issued the claim "*on behalf of*" MLL, Taytime provided no direct evidence of it having been authorised to do so (it indeed has still not provided any such evidence). Moreover, Mr Padden argued that MLL could not have lawfully provided such authorisation in any event under relevant insolvency law.

8. Lang J directed that the issue of permission should be dealt with at an oral hearing, which was heard before Sir Ross Cranston (sitting as a High Court Judge) on 13.06.23 and attended by representatives of Taytime, the First Defendant and Mr Padden ("**the OPH**"). A transcript of the OPH has been produced ("**the OPH Transcript**"). The judgment can be found at ***Taytime Ltd v SSLUHC*** [2023] EWHC 1522 (Admin) ("**the OPH Judgment**").

9. Prior to the OPH, Taytime in its skeleton argument raised a number of arguments under Ground 2(i) which had not been pleaded in its Statement of Facts and Grounds. In addition, at the hearing Taytime confirmed (for the first time) that it was no longer pursuing Ground 1.[6] The Judge made the following material findings at the OPH:

    a. There was no evidence that confirmed that Taytime had authority to bring the claim as agent for or on behalf of MLL and, accordingly, the Judge directed that Taytime (which he found has sufficient standing to bring the claim in its own

is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties (see Freeman & ***Lockyer v Buckhurst Park Properties (Mangal) Ltd*** *[1964] 2 QB 480 at 502 per Diplock LJ (as he then was))."* And finally para. 67 "*Contrary to Mr Padden's submission at SGR para. 36, the construction of that authority is a matter of law and not a question of judgment (see Bowstead & Reynolds 2-028 and Freeman &* ***Lockyer v Buckhurst Park Properties*** *at 502)."*

[5] And he was right for the reasons set out further below.

[6] OPH transcript p.29A. This decision was wholly unsurprising because the Ground was pleaded without any reference to Court of Appeal authority which directly contradicted Taytime's argument: ***Co-operative Retail Services Ltd v SSfE*** [1980] 1 WLR 271.

right) be substituted as the Claimant in place of MLL (§§23-26 of the OPH Judgment);

b. Ground 3 was not arguable and permission should be refused (§33 of the OPH Judgment); and

c. Ground 2(ii) was arguable but not Ground 2(i) (§§27-32 of the OPH Judgment).

10. Taytime sought permission to appeal Sir Ross Cranston's finding at (c) above only. By an order dated 13.11.23, Stuart-Smith LJ allowed Taytime's appeal, stating that *"this permission to advance and rely upon Ground 2(i) is limited to reliance upon the facts and reasons advanced in support of that ground (i) in the SFG and/or (ii) at the hearing before Sir Ross Cranston."* No reasons were given by Stuart-Smith LJ for this decision, save that he considered Ground 2(i) to have *"reasonable prospects of success"*.

11. Mr Padden raised concerns that allowing the claim to proceed on what were still unpleaded grounds was prejudicial and contrary to the requirement for *"procedural rigour"* in public law proceedings.[7] By agreement Taytime has since amended its grounds (by consent) to include the points raised by it for the first time at the OPH. These Detailed Grounds respond to Taytime's Amended Statement of Facts and Grounds, dated 19 December 2023.

B. BACKGROUND

12. Taytime has consistently sought to present the factual background to this claim in a manner which is incomplete to the point of being misleading. In particular, Taytime has completely (and conveniently) ignored the nature of the development which was the subject of the Appeal and its dire effect on Mr Padden and his home. It is no exaggeration to describe this development as one of the largest breaches of planning control in the history of the planning system. The development was described by a Deputy High Court

[7] See The Administrative Court Judicial Review Guide (2023) at section 2 and ***R (Dalton) v CPS*** [2020] 1 WLR 5329, §§6-12 as applied in the s. 288 context in ***London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government*** [2020] 10 WLUK 7 | [2021] J.P.L. 580 per Holgate J. §142.

Judge (in previous successful judicial review proceedings brought by Mr Padden relating to this matter)[8] as follows [**39-40**]:

> *The unauthorised works took place between 2003 and 2008 and involved the importation of very large amounts of construction waste material including glass, plastic and asbestos. The Environment Agency has estimated that about 650,000 cubic metres of waste material were deposited on the land between March 2003 and January 2008 with even more since. The material was formed into, amongst other things, massive 8 metre high retaining bunds close to neighbouring residential properties including Hertsfield Barn.*

13. The Judge in the previous judicial review went on to find several additional facts to be "*agreed or not much in dispute*" including: (i) that the Site had been acquired in 2008 by Emily and Guy Harrison and MLL who "*continued, and intensified, the unauthorised works*" (§5); and (ii) that "*there is expert and circumstantial evidence that the unauthorised works and in the deposition of vast quantities of waste as part of them, have had damaging effects on Hertsfield Barn, including causing groundwater flooding*" (§6).

14. Mr and Mrs Harrison – two individuals whom there is evidence, never refuted by any actual evidence from the Harrisons, that they are very wealthy **[347-348]** - have a long connection with the Site via a continually changing web of companies under their control, including Taytime and MLL [**346-347**]. Words alone do not do justice to the scale of the unlawful works or their effect on Mr Padden, who is the owner and occupier of Hertsfield Barn[9], and pictures have been provided at [**122-125**]. The Second Defendant ("**the Council**") eventually, after the dumping of hundreds of thousands of tonnes of waste material, issued both a stop notice and an enforcement notice in respect of the unlawful development in 2008 [**355-364**]. By that time there was a continual stream of lorries delivering waste to the site all day long and paying gate fees to deposit the waste on the site. An appeal against the enforcement notice brought by Mr Harrison was then eventually dismissed by an Inspector appointed by the Secretary of State on 18 May 2015. The effect of this was that the enforcement notice should have been complied with and the unauthorised development removed from the site by no later than 18 May 2017. But the enforcement notice, as upheld by the Inspector, has never been complied with [**346**].

[8] ***R (Padden) v Maidstone BC*** [2014] Env LR 20, per HHJ Mackie KC (sitting as a High Court Judge) at §4.

[9] A number of Mr Padden's neighbours have been similarly affected. A number of them attended and spoke at the planning appeal **[21]**.

Mr Harrison was ordered to pay costs to both the Council and Mr Padden because of his unreasonable behaviour on that appeal **[376-381]**.

15. This is the background to what Taytime rather euphemistically calls an application for "*part retrospective and part prospective permission for recreational fishing related development*" (ASFG§14). This application ("**the Application**") itself has a very long history, which includes the successful previous judicial review claim, brought by Mr Padden. The Application was made by MLL **[24]**[10] and was eventually refused by the Council **[79-81]**. This is unsurprising because, as EIA development, retrospective permission can only be granted in exceptional circumstances: ***R (Padden) v Maidstone BC*** [2014] Env LR 20, §56. Thus, when Taytime accuses Mr Padden of pursuing a "*characteristically arid*" challenge[11] and of seeking "*to prevent an adjudication on the planning merits*" of the Application,[12] nothing could be further from the truth. Indeed, Mr Padden made full argument on the planning merits of the Application during the course of the Appeal. It just so happens that the Appeal was (rightly) dismissed on other grounds.

16. There are some further matters of background that need to be addressed.

17. First, it is often asserted by or on behalf of Mr and Mrs Harrison that: (i) the unauthorised works, or at the very least the vast majority of these works, were undertaken by the previous owner prior to their acquisition of the Site; and (ii) that there was a planning permission for these works. These points are without any merit:

    a. In the previous successful judicial review the Judge found that "*[i]n 2008 the site was acquired by three of the Interested Parties, Emily and Guy Harrison and Monk Lakes Limited ("MLL") who have apparently continued, and intensified, the unauthorised works*". Both MLL and Taytime were parties to that judicial review and the hearing was attended by Mrs Harrison. The Judge's finding is included in a section of the judgment entitled "*Facts agreed or not much in dispute*". It is thus quite improper for this finding to be disputed in these proceedings.

[10] Contrary to what is said at ASFG§13, Mr and Mrs Harrison are not listed on the application form as applicants, albeit they do appear to have been listed as such by the Council [**30, 79**]
[11] See §51 of Taytime's skeleton argument for the OPH
[12] See §§10, 7 & 88 of Taytime's skeleton argument for the OPH

b. There was a planning permission on the Site but it was *not* for the unauthorised works carried out. That this is so was established by the upholding on appeal in 2015 of the enforcement notice served by the Council. It is thus not open to Mr and Mrs Harrison and Taytime to seek to challenge in these proceedings the fact that it had no consent at all for the unauthorised works it carried out on acquiring the Site. The Inspector noted in the enforcement appeal decision (see §7) **[DB/3]** that the Council in serving the notice *"considers that the development that has taken place is so materially different to that permitted by the 2003 permission that it amounts to development without planning permission"*. The enforcement appeal which was pursued by Mr Harrison failed. The Inspector also awarded costs against Mr Harrison in favour of Mr Padden as a result of Mr Harrison's unreasonable behaviour in pursuing the appeal.

18. Second, in her second witness statement Mrs Harrison makes statements about the position of the Council (see para. 18). This is not a correct account of what happened. This matter was debated at the planning Appeal.[13] It is not a matter that this Court needs to or can resolve but it should be noted that what is said is not accepted by Mr Padden.

19. Third, the suggestions that the Harrisons have resolved the serious amenity and flooding issues caused to the property of Mr Padden and his neighbours (see her second witness statement at paras. 19 – 21) is refuted. Again, this matter was debated at the planning Appeal and is not a matter that this Court needs to or can resolve but it should be noted that what is said is not accepted by Mr Padden and was refuted by a number of expert witnesses that appeared on behalf of Mr Padden at the hearing including Christopher Griffiths IHBC Associate Director - HCUK Group, Andrew Smith CMLI Fabrik UK and Dr Paul Ellis CGeol Managing Director - Geosmart Information Ltd.

20. Fourth, the comments made in Mrs Harrison's second witness statement about the attitude of Mr Padden towards her and her husband (see para. 23) are not accepted. There is naturally a difficult relationship between the parties given that the Harrisons have been responsible for very large-scale unauthorised development that has had very serious impacts on Mr Padden and other neighbours.

[13] There are emails sent to PINS post the hearing dealing with this issue by all the parties.

The Appeal

21. MLL appealed against the Council's refusal on 11.09.20 [**82**]. The Appeal form also recorded that the Pegasus Group – a planning consultancy - had been appointed as MLL's agent for the purpose of the Appeal and made no reference to Taytime [**82**].

22. On 15.07.21, MLL filed for voluntary liquidation. MLL appointed Duncan Beat and Andrew Watling of Quantuma Advisory Ltd ("**the Liquidators**") to act as liquidators of the company [**90**]. Following the appointment of liquidators (and presumably in response to concerns raised by PINS)[14] the liquidators wrote to PINS on 22.09.21 ("**the Liquidators Letter**") to state [**21**]:

> *I am writing to appoint Taytime Limited…to take over full responsibility for the above-listed planning appeal. Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land*

23. It is now clear from Mrs Harrison's first witness statement that, shortly after this letter was sent (on 27.09.21), the Liquidators entered into an indemnity agreement with Taytime ("**the Indemnity Agreement**") [**278-279**].[15] The Indemnity Agreement was only disclosed by Taytime shortly before the OPH. It was evidence that should clearly have been produced at the planning appeal, when Mr Padden raised the issue of Taytime's ability to pursue the appeal. It should also have been included in the claim bundle for these s. 288 proceedings given the requirements of the duty of candour. The following paragraph in the *"BACKGROUND"* to the Indemnity Agreement is important and worth citing in full. It states [**278**]:

[14] Mr Padden was not privy to all of the correspondence between PINS and MLL in relation to this matter. However, Mrs Harrison's email of 03.09.21 [**257**] suggests that PINS sought further information in relation to the position of the liquidators at that time and that this request generated the letter from the liquidators on 22.09.21 [**23**].

[15] ASFG§§23-24 is therefore not correct in saying or implying that the Liquidators only wrote the Liquidators Letter *after* they had been indemnified.

(E) On the basis the planning application should have been in the name of Taytime and that Monk Lakes Limited had (and has never had) any interest therein, the Liquidators have agreed to permit Taytime to adopt the planning appeal against the decision 11/1948 provided that they are indemnified as to any costs expenses damages and adverse costs arising therefrom.

24. On 12.10.21 Mr Padden wrote to advise PINS of MLL's liquidation and to ask that the Appeal be dismissed [**92**]. At this time Mr Padden was wholly unaware of both the Liquidators Letter and the Indemnity Agreement. PINS responded with a letter, dated 17.11.21 ("**the PINS letter**"), stating that "*unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette the Inspector will continue to determine the appeal*" [**94**].

25. Mr Padden did not receive a copy of the Liquidators Letter until 27.09.22, so that is to say one whole year after it was sent to PINS. For reasons it is difficult to understand no one previously sent it to Mr Padden or his advisers. Upon receipt, Mr Padden directed his solicitors to write to the Liquidators (copying PINS) to restate his position that the Appeal was being unlawfully pursued by Taytime as opposed to MLL and that it should be dismissed. The Liquidators failed to provide any substantive response at any time prior to the determination of the Appeal or indeed since. It is now clear from Mrs Harrison's first witness statement that the Liquidators are likely to have been specifically told not to respond to Mr Padden by Mrs Harrison [**250**]. Indeed the Liquidators have never responded substantively to any of the communications sent to them from Mr Padden's representatives (see §39 [**349**]) pre or post the Appeal.

26. Following the failure to respond in September 2022, Mr Padden instructed leading counsel to draft written submissions in support of a procedural application to dismiss the Appeal [**95-101**]. The hearing of the Appeal took place on 05.10.22. Taytime was invited to make oral submissions in response to Mr Padden's application. At no point did Taytime seek to suggest that the Appeal had in fact been assigned to it.[16] Rather, it argued

[16] Mr Padden's submissions at the Appeal hearing were clear on this: so see §25 "*[i]t is clear from the terms of s. 78 of the TCPA 1990 that the only party that may appeal the refusal of planning permission is the applicant*" ***[99]*** and §29 "*there is no power under the Planning Acts for substitution of an appellant with another. In any event the Planning Acts are clear only an applicant can appeal*" **[100]**. Those acting for Taytime at the Appeal hearing never disputed these contentions in oral submissions or otherwise. See further Mr Padden's witness statement at para. 38 "*I attended the planning hearing that took place last year. In the oral submissions made it was agreed by all three Leading Counsel (for Taytime, myself and the Council) that*

that Taytime had been appointed as agent by MLL and could thus pursue the Appeal on its behalf [**348-349**]. The Inspector did not agree and dismissed the Appeal [**19-22**].

27. Before turning to the law of agency it should be noted that it is said at ASFG§19 that "*Because MLL had been an applicant for planning permission, it was the company which brought the appeal*". This is on its face wholly inconsistent with what is said by the Liquidators Letter (quoted above) namely that "*[t]he representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal*". Moreover, even this statement is a little odd given that the appeal was brought on 11.09.20 prior to MLL filing for voluntary liquidation. Why then, it may be asked, were Taytime instructing consultants and Counsel on the appeal? No answer to that question has ever been provided.

C. LEGAL FRAMEWORK

Relevant legal principles relating to challenges under s.288 TCPA

28. The principles which apply to challenges to a decision of a planning inspector are well-known. They were summarised by Lang J in ***Greenwood v SSCLG*** [2021] EWHC 2975 (Admin) at §39: an inspector's decision letter must be read: (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case.

29. In ***Trustees of Barker Mill Estates*** [2017] JPL 471, Holgate J summarised the approach that the court will adopt in circumstances where a claimant in a statutory review seeks to raise a point which was not raised before the inspector at appeal:

> *77. In an application for statutory review of a planning decision there is no absolute bar on the raising of a point which was not taken before the inspector or decision-maker. But it is necessary to examine the nature of the new point sought to be raised in the context of the process which was followed up to the decision challenged to see whether the claimant should be allowed to argue it. For example, one factor which weighs strongly*

assignment was not possible in respect of an appeal made under s. 78 of the Town and Country Planning Act 1990. That is why as I understood matters those acting for Taytime instead argued that it was an "agent"". Mrs Harrison served a witness statement, her second, in response to Mr Padden's witness statement but she did not seek to contradict that evidence as to what was argued at the Appeal hearing by Taytime.

against allowing a new point to be argued in the High Court is that if it had been raised in the earlier inquiry or appeal process, it would have been necessary for further evidence to be produced and/or additional factual findings or judgments to be made by the inspector, or alternatively participants would have had the opportunity to adduce evidence or make submissions (or the inspector might have called for more information)

30. Where a party seeks to impugn a planning inspector's decision on the ground that (s)he failed to give adequate reasons, that challenge will only succeed if the claimant can show that he has "*genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision*": ***Starbones Ltd v SSHCLG*** [2020] EWHC 526 (Admin), §74; ***South Bucks DC v Porter (No 2)*** [2004] UKHL 33, §36.

31. These principles while relevant to this case have a more limited application than normal as the issues raised turn entirely or at least predominately on a question of the law of agency.

Relevant principles relating to the law of agency

32. The following principles of the law of agency are of particular relevance to this claim:

    a. "*Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent*".[17]

    b. Although it is correct that the scope of an agent's authority will generally be construed liberally, that will not be so if the source of that authority is said to arise from a deed.[18] This is relevant because the Indemnity Agreement in this case is a deed.

    c. One key characteristic of agency is control: "*[I]f the principal gives up all control of the supposed agent the relationship is only doubtfully one of agency*".[19] Similarly, "*if an agreement in substance contemplates the alleged agent acting on their own*

[17] Bowstead & Reynolds 1-011.
[18] Bowstead & Reynolds 3-018.
[19] Bowstead & Reynolds 1-018.

behalf, and not on behalf of a principal, then, although they may be described in the agreement as an agent, the relation of agency will not have arisen."[20] In ***Alliance Craton Explorer Pty Ltd v Quasar Resources Pty Ltd*** [2013] FCAFC 29 at [74] (a case cited in Bowstead & Reynolds at 1-019) it was held that in that case the alleged agent "*were virtually given carte blanche to decide how the mine was to be managed*" something that "*militates against a conclusion"* of there being an agency relationship.

d. In general, the principal authorises the agent to act on the principal's behalf and in the principal's interests. The arrangement is for the principal's benefit. Therefore, the principal must reimburse the agent for expenses and must indemnify the agent against liabilities. The agent acting for principal and principal reimbursing and indemnifying agent is the characteristic quid pro quo of any agency relationship.[21]

e. Similarly, when considering what tasks may be delegated to an agent: *"[a]n agent may execute a deed, or do any other act on behalf of the principal, which the principal might personally execute, make or do; except for the purpose of executing a right, privilege or power conferred, or of performing a duty imposed, on the principal personally, the exercise or performance of which requires discretion or special personal skill, or for the purpose of doing an act which the principal is required, by or pursuant to any statute or other relevant rule, to do in person."*[22]

f. These principles show that an agent acts for his principal, not for himself. Accordingly *"[c]ourt proceedings cannot usually be commenced in the name of an agent, including under a power of attorney; the principal must be the party named."*[23]

[20] Halsbury's Laws – Agency, vol.1, section 1(1).
[21] Bowstead & Reynolds 7-057. See also 1-101 "*(1) Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent*" (emphasis added). See also Halsbury's Laws – Agency vol 1 section 1(1) *"[i]f an agreement in substance contemplates the alleged agent acting on their own behalf, and not on behalf of a principal, then, although they may be described in the agreement as an agent, the relation of agency will not have arisen*" – the footnote then refers to case-law that supports this proposition.
[22] Bowstead & Reynolds 2-018
[23] Bowstead & Reynolds 2-019; ***Davis v Anthony*** **(CA, unrep, 5 July 1995)**

Relevant principles relating to the law of insolvency

33. It should be stressed that this claim does not turn on matters of insolvency law, but nevertheless insolvency law forms an important part of the context within which the question of whether Taytime was or could have been MLL's *agent* for the purposes of the Appeal falls to be addressed. In particular:

    a. Pursuant to s.87(1) of the Insolvency Act 1986 ("**IA**"), a company which has commenced a voluntary winding up is obliged to "*cease carrying on its business, except so far as may be required for its beneficial wind up*". Taytime asserts that this is restricted to "*trading business*", but the authority which it relies upon (***SSBEIS v PAG Management Services Ltd*** [2015] BCC 720, §§47-48) simply does not support this assertion. Furthermore, and whilst benefit is not restricted to purely financial benefit, the exercise of the power to carry on the business of the insolvent company must have as its ultimate object the winding up of the company. Carrying on business for any other purpose is impermissible; ***Re Baglan Operations Limited (in compulsory liquidation)*** **[2022] EWHC 647 (Ch) §49**.[24]

    b. A liquidator is a creature of statute and may only exercise such powers as are conferred on him,[25] and may exercise them only for the purposes for which such powers have been conferred.[26]

    c. A liquidator must act in the best interests of creditors and must exercise his powers to get in and realise the company's assets and distribute the proceeds amongst creditors.[27]

    d. The powers of liquidators in the case of a voluntary winding up are set out in s.165 IA and in Parts 1-3 of Schedule 4.

[24] See also ***In Re Wreck Recovery and Salvage Company*** (1880) 15 Ch.D 353, in which a shareholder wished to make use of the company's machinery at his own expense to demonstrate its efficacy and thus permit a sale of the company as a going concern. Notwithstanding that the shareholder was also a creditor, this use of the company's plant and machinery was not permitted.
[25] ***Kirkpatrick v Snoozebox Ltd*** [2014] BCC 477 (Ch), §12.
[26] ***Re Mama Milla Ltd*** [2016] BCC 1 (Ch) at §§40-41; appeal on different grounds dismissed.
[27] ***In re Southern Pacific Personal Loans Ltd*** [2014] Ch 426 (Ch) at §33; and ***Manolete Partners Plc v Hayward and Barrett Holdings Ltd*** [2022] BCC 159 (ICC) at §§5-6.

i. The power to appoint an agent *'to do any business which the liquidator is unable to do himself"* is contained in §12 of Schedule 4, but *"is impliedly limited to acts and transactions of a purely ministerial kind and the discretion of the liquidator is not to be delegated in matters which require the exercise of professional judgment"*.[28] This is consistent with the general proposition of agency law cited above. In Australian authority[29] considering a materially indistinct section[30] the court concluded that the *"provision falls well short of authorising the type of wholesale delegation"*[31] undertaken on the facts of that case.

ii. The power to issue proceedings in the name of the company is contained in §4 of Schedule 4, but may only be exercised in what the liquidator believes to be the best interest of the insolvent company and all those who have an interest in the estate: ***In re Longmeade Ltd (in liquidation)*** [2016] Bus LR 506 at §66.

D. RESPONSE TO GROUND 2

The relevance of the concession made by the First and Second Defendants

34. It bears re-stating that, although the First and Second Defendants consented to judgment on this ground, they only did so on the limited basis that *"the Inspector failed to supply adequate reasons for his conclusion that Taytime Ltd were not acting as the appointed agent for Monk Lakes Ltd"* **[111]**. No concession was made as to the correctness of that conclusion or the Inspector's underlying findings. This position was maintained at the OPH, save that the First Defendant also conceded that reasons were not given for dismissing the Appeal on the planning merits or for not following the procedure in s.79(6A) TCPA.[32]

35. However, if Taytime is correct (see above) in suggesting that the question of whether or not Taytime was appointed as MLL's agent for the purposes of the Appeal is either

[28] McPherson & Keay's Law of Company Liquidation (5th Ed.) 8-059.
[29] ***Re Day and Dent Construction Pty Ltd*** (1984) 9 ACLR 319 *and on appeal in* ***Re Ah Toy*** (1986) 4 ACLR 480.
[30] Paragraph 12 of Schedule 4 of the Insolvency Act 1986 refers to the power *"to appoint an agent to do any business"* whereas the equivalent section 236(2)(j) of the Australian Companies Act 1961 refers to the power to *"appoint an agent to do business,"* omitting the word "any".
[31] ***Re Ah Toy*** **(1986) 4 ACLR 480** page 485
[32] See pp.27G & 28C of the OPH Transcript and further below.

entirely or at least principally a question of law, then (in the end) any defects in the Inspector's reasoning and conclusions are ultimately irrelevant to the determination of this claim. Accordingly, Taytime cannot be said to have been (and does not claim to have been) substantially prejudiced by any failure to give reasons and any claim founded upon such an allegation would be bound to fail: see ***Starbones*** etc above. Indeed, this was effectively the conclusion that was (rightly) reached by Sir Ross Cranston at §30 the OPH Judgment where he stated *"the real issue is not the Inspector's reasons but whether or not as a matter of agency law Taytime was no longer MLL's agent"*. There was no appeal against this part of the OPH Judgment.

36. Very little weight at all can therefore be given to the concessions made by the First and Second Defendants in this case.

The scope of Ground 2

37. There were two elements to this ground as originally pleaded: (i) that the Inspector was wrong to hold that the Appeal had not been validly made and (ii) that the Inspector was wrong to hold that Taytime was not acting as MLL's agent.

38. As explained above, during the course of the OPH, Taytime sought to supplement to Ground 2(i) with additional *unpleaded* argument relating to: (a) the Inspector's power to dismiss the appeal without determining it on its merits or following the procedure in s.79(6A) TCPA; and (b) whether the Appeal was in fact assigned to Taytime by MLL.

39. These arguments first appeared in Taytime's skeleton argument for the OPH,[33] despite there having been no application to amend Taytime's grounds and in the face of clear guidance from the court that such practice is inappropriate and contrary to the need for procedural rigour in public law proceedings: ***R (Dalton) v CPS*** [2020] 1 WLR 5329, §§6-12.

40. By agreement these changes have now been reflected in Taytime's Amended Statement of Facts and Grounds. They are responded to as follows.

Ground 2(i) as originally pursued: the Appeal was not validly brought

[33] See pp.17-18 of the Taytime's skeleton for the OPH.

41. The Inspector's decision letter must be read: (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: ***Greenwood v SSCLG*** [2021] EWHC 2975 (Admin) at §39.

42. In relation to (ASFG§§49-57), it is not correct that the Inspector wrongly conflated the issue of whether the Appeal had been validly made with the issue of whether it could be validly pursued. The Inspector's decision letter must be read in accordance with the principles summarised in ***Greenwood*** (above). It is perfectly clear from DL§§6 & 4 respectively that the Inspector accepted: (i) that MLL was listed as the appellant on the appeal form; and (ii) that MLL could *"in principle"* pursue the Appeal as the appellant. This would have been entirely obvious to the Inspector, as even Taytime accepts that this matter was not in dispute between the parties (ASFG§32).

43. There was therefore no error in this regard. In any event, any such error cannot possibly be said to have been material since the Inspector's finding at DL§6 that *"it is clear that the party now pursuing the appeal is Taytime and not MLL"* was fatal to MLL's (and Taytime's) position. It is this question (i.e. the question of whether Taytime was acting as MLL's agent) that was dispositive of the Appeal and rightly so. It is notable that Sir Ross Cranston had no hesitation in dismissing this argument.[34]

Ground 2(i) as amended

44. Intriguingly, at the OPH itself, Taytime sought to argue (for the first time) that the question of agency was not, in fact, dispositive of the Appeal. By its Amended Statement of Facts and Grounds it seeks to rely on further errors made by the Inspector, namely that:

    a. Even if Taytime was not MLL's agent, the Inspector failed to follow the procedure for dismissing the Appeal as set out at s.79(6A) TCPA (ASFG§§58-75); and

    b. MLL could have assigned the Appeal to Taytime (ASFG§§76-80).

[34] See §29 of the OPH transcript.

45. Neither of these arguments (which are addressed in substance below) was raised before the Inspector. Pursuant to the principles summarised out in ***Trustees of Barker Mill Estates***, this is *fatal* to this element of Taytime's claim:

    a. Any suggestion that the Appeal had been assigned to Taytime would have required the Inspector not only to make findings of law (see below) but also (if Taytime is correct and assignment is possible) further findings of fact about the relationship between Taytime and MLL, including in respect of evidence (such as the Indemnity Agreement) which was not put before him;

    b. Any suggestion that the procedure in s.79(6A) should be followed would have required the Inspector to form a judgment about whether that provision was satisfied . This would involve findings of fact.

46. Without prejudice to the foregoing, Mr Padden's substantive response to these arguments is as follows.

(a) Section 79(6A)

47. S. 79(6A) TCPA provides:

> *(6A) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may –*
>
> *(a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and*
>
> *(b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.*

48. The argument being made now on this provision is not easy to understand.

49. The point only arises in this context namely where it is accepted that the Inspector has correctly found that Taytime is not MLL's agent and so is unable to pursue the appeal under s. 78 TCPA. In the light of that finding the only party that could pursue the appeal would be MLL through its liquidators. But as is clear – see below - they have not, and will not, pursue the appeal. So, what would have happened thereafter? The answer is that

nothing would have happened and the Appeal would therefore have inevitably have to have been dismissed for non-prosecution then the result for Taytime, therefore, would inevitably be the same. Accordingly, even if there were any technical merit in Taytime's suggestion, it does not form any basis for granting relief: ***Simplex (GE) Holdings v SSfE*** [1998] 3 PLR 25.

50. All of the evidence suggests that this would have been the outcome. This argument is predicated on it being correct that Taytime was not MLL's agent. If that were the situation only one party could have prosecuted the s. 78 appeal any further and that was MLL. But it is obvious from the Liquidators' statements (in the Liquidators Letter) that MLL had *"no interest whatsoever"* in the Site [**21**] and that it had appointed Taytime *"to take over full responsibility"* for the Appeal that MLL had no interest in the Appeal. Taytime has failed to explain how it could possibly be otherwise. In any event, it is now clear from the Indemnity Agreement that the Liquidators had indeed formed the view that MLL had no interest in *the Application* and thus the Appeal. If this issue were to be remitted and redetermined by the Inspector, he would inevitably have to consider the Indemnity Agreement and this would (inevitably) only fortify him in the conclusion that he reached. Taytime's arguments at ASFG§§63-75 simply fails to deal with this fatal evidential point they therefore go nowhere.

51. Further, the suggestion at ASFG§62 of prejudice to MLL is entirely misplaced. The Liquidator was served with a copy of Mr Padden's procedural application and had every opportunity to make representations. This is clear from the correspondence exhibited to Ms Harrison's first witness statement [**248-254**]. The Liquidators declined to respond to this correspondence [**248**], and indeed it is clear that Mr Harrison and her advisors actively did not want the Liquidators to respond [**250**]. It can only be assumed that this was because it was felt that a response from the Liquidators would be unhelpful to Taytime: i.e. that it would confirm what the Liquidators had already said in the Indemnity Agreement that MLL had no interest in pursuing the Appeal. There can certainly be no question whatsoever of any procedural unfairness. Quite the contrary – it would appear to be Taytime that was engaged in procedural impropriety.

52. Moreover, as set out above, the Liquidators have been given a number of opportunities to confirm that they would continue to pursue the Appeal in the event that the Inspector's decision is quashed. For example, Mr Padden's representatives wrote to them on 07.03.23

to ask that very question **[431]** "*In the event that the High Court Claim is successful please confirm whether MLL would wish to continue to pursue the remitted planning appeal as the appellant?*". No response has been received at any stage.[35] This is despite the fact that Taytime has separately written to MLL to inform it of these proceedings.[36] The answer to the question posed, but not answered, is obvious: the liquidators of MLL will not pursue the appeal because, as they have stated in a deed, that they have no interest in it.

53. The matters set out above are plainly sufficient to dispose of this new element of Ground 2. However, Mr Padden has also argued (and maintains) that, even if the Liquidators were minded to pursue the Appeal (and there is no evidence of this and abundant evidence to the contrary), they could not lawfully do so for the following reasons:

    a. As set out above, pursuant to s.87(1) of the IA, a company which has commenced a voluntary winding up is obliged to "*cease carrying on its business, except so far as may be required for its beneficial wind up*".

    b. The Liquidators must act in the best interests of creditors (as a whole) and must exercise their powers accordingly;

    c. The Liquidators accepted in the Liquidators Letter that MLL has no interest in the Site. The Indemnity Agreement further confirms that MLL had no interest in "*the planning application*" **[278]** and thus the Appeal. Having reached this conclusion, the Liquidators could not rationally conclude that the pursuit of these proceedings was in the best interests of MLL or its creditors and therefore could not lawfully authorise them to be brought.

[35] Thus, the suggestion at ASFG§74(1) that the Liquidators are not before the Court to explain their decision making does not properly reflect the situation. The Liquidators have had every opportunity to do so and if they had an interest in the Appeal continuing then it would plainly be in their interests to do so.

[36] See an email from Taytime's solicitors to the Liquidators dated 08.06.23 [DB/142]. It is noted that this email refers to previous discussions which have taken place between the Liquidators and Taytime which have never been produced to the Court or to Mr Padden, despite the duty of candour and despite Mr Padden having specifically (and repeatedly) requested disclosure of such communications.

d. There was some suggestion at the OPH that Taytime is a creditor of MLL's in the amount of £2,771.10.[37] Even if that is correct, such sum plainly cannot rationally justify the initiation of, or the continued pursuit, of the Appeal.

i. First, on their own admission, MLL has "*no interest whatsoever*" in the land; [**21**]. Neither are any realisation anticipated in respect of the land. The only suggestion of a benefit is the speculative and unevidenced statement that "*the position might of course be different if the Appeal were successful*" (ASFG §74(2)). Despite there being indications that there is an asset purchase agreement for the rights of any planning permission ([**278**]) there is no attempt by Taytime or MLL to identify or evidence what actual benefit this may convey. One must therefore assume that the only potential consequence of this appeal for MLL's estate is to expose it to a negative costs order, should the proceedings be unsuccessful and the Indemnity in any way inadequate or insufficient. This must be a very real concern given Taytime pleaded impecuniosity in response to a security for costs application [**239**], and there is no evidence at all as to the adequacy of the assets available from the natural person indemnifier, Mr William Kinsey-Jones. As "success" has no upside for MLL and "failure" only potential detriment, no reasonable liquidator could have taken the decision to pursue this appeal.

ii. Second, whilst Taytime may be a modest creditor of MLL, that does not give the Liquidators carte blanche to carry on the business of MLL for Taytime's putative benefit. Any continuation of MLL's business must have as its ultimate object the winding up of the company (***Re Baglan Operations Limited*** and ***Re Wreck Recovery and Salvage Company***), an object absent from the present case; [**244**].

54. Further, it is argued at ASFG§§70-73 that Mr Padden does not have standing to ask this Court to override or set aside the decision of the Liquidators to continue the Appeal. However, this misunderstands the nature and purpose of the Claimant's argument on the

[37] See pp.12-13 of the OPH Transcript.

insolvency position as set out above. Mr Padden does not ask the Court to make any order in respect of the Liquidators' decisions. Indeed, Mr Padden's position is that the Liquidators are *not* pursuing the Appeal and so there is no decision to set aside. Rather, the matters set out above relate to whether the Liquidators *could* pursue the Appeal if they were minded to and are plainly relevant to Mr Padden's case on relief.

55. There is an irony in a standing point being taken against Mr Padden. Taytime does not address the fact that it, purportedly as MLL's agent, issued proceedings without MLL being a party to the proceedings and without any evidence that Taytime had authority to bring the claim as agent for or on behalf of MLL: as held by Sir Ross Cranston, see above. This is contrary to the principle that proceedings cannot usually be commenced in the name of the agent, and that the principal must be the party named. There are good reasons for this principle: it was noted in ***Davis v Anthony*** that a litigant cannot hide behind an attorney to avoid the potential consequences of being a party to litigation. To that might be added that the Court is being asked to make determinations as to the rights and duties of MLL without MLL being a party to the proceedings. This ought not be entertained.

56. Finally, the First Defendant in his skeleton for the OPH at §9 said "*[i]n any event, even if the Inspector were correct that Taytime Ltd was not the appointed agent for Monks Lakes Ltd (in-spite of its submissions to the contrary), there remained a valid appeal made by Monks Lakes Ltd, which had not been withdrawn, and which remained an active company at the point of the decision. The Inspector failed to supply any reasons for dismissing the appeal on its merits*". But as already explained in this scenario it has been found that Taytime is not MLL's agent. So the only party that could pursue the appeal would be the liquidators of MLL. But it is clear, on the evidence, that they will not do so. On that basis the inevitable result is that the appeal would have to be dismissed under s.79(6A) TCPA as there could be no further prosecution of it. The Secretary of State has not engaged with the ***Simplex*** argument.

57. In summary, there is no merit in this new point.

(b) Assignment of the Appeal

58. It was no part of the Taytime's case before the Inspector that the Appeal had been assigned to Taytime and that this was lawful. Even now, Taytime does not appear to be positively arguing that the Appeal was assigned to it (ASFG§78). Taytime's position has always been that it was acting as MLL's agent **[348-349]**. It is also, contrary to ASFG§77, no part

of Mr Padden's case that the Appeal has been assigned. SFG§36(1) merely argues that, in appointing Taytime to take over *"full responsibility for the appeal"* [**23**], the Liquidators were *"attempting"* to assign the appeal. In light of this, it is unclear how this new point assists Taytime.

59. In any event, contrary to what is said at ASFG§§79-80, it is not possible as a matter of law to assign the right to bring an appeal under s.78 TCPA. As Mr Padden pointed out in his procedural application [**99**], the right to appeal a refusal of planning permission is only available to the person who made the planning application: s.78(1) TCPA. For completeness, this is affirmed by §3.3.1 of the PINS Procedural Guide [**DB/208**] which states that *"only the person who made the planning application can appeal"*.

60. ***Muorah v SSLUHC*** [2023] EWHC 285 (Admin) – the case cited by Taytime (ASFG§79) has no bearing whatsoever on this issue. That case was about whether a cause of action *before the courts* could be assigned. It provides no support for any notion that an appeal under s.174 TCPA could be assigned. Furthermore, in any event the class of person with a right to bring an appeal under s.174 is much broader than that under s.78, and only serves to underline the strictness of the latter – as pointed out in Mr Padden's procedural application [**99**].

61. There is, therefore, no merit in this new point either. Ground 2(i) should be dismissed.

Ground 2(ii)

62. Under this ground Taytime argues that the Inspector erred in concluding that Taytime was not acting as MLL's agent in the Appeal.[38] This argument is flawed and should be dismissed for the following reasons.

63. First, the meaning of the Liquidators Letter is clear. Taytime's excessive focus on the use of the word *"appoint"* (raised at the OPH) does not assist it. In light of the correspondence disclosed with Mrs Harrison's first witness statement, it appears that this word was

[38] It is noted that at ASFG§81, Taytime has amended its grounds to add an allegation that the Inspector failed to give adequate reasons. This does not form part of Taytime's originally pleaded case and Taytime does not have permission to amend its grounds in respect of Ground 2(ii) – see the order of Stuart Smith LJ and the subsequent consent order dated 21.12.23 which restrict amendments to Ground 2(i) only. In any event there is no merit in this allegation for the reasons given below.

inserted into the letter at the request of Mrs Harrison **[245]**. But this letter does not constitute any agreement between Taytime and the Liquidator. It says nothing about the intention of the Liquidators themselves or the true relationship between MLL and Taytime. It merely shows how Mrs Harrison wanted the Liquidators to *present* their relationship to PINS. However, the legal nature of a relationship arising under an agreement is determined by ascertaining the parties' rights and obligations pursuant to that agreement and by characterising their effect in law; the label used by the parties to describe the relationship is of little or no weight: ***Secret Hotels2 Ltd v Revenue and Customs Commissioners*** [2014] 1 All ER 685 (SC), §§32. Applying this principle, it is clear that the relationship between Taytime and MLL was not (and could not have been) one of agency.

64. Second, this is supported by the terms of the Liquidators Letter read as a whole, and in particular what Taytime was appointed to do, and why. Taytime was appointed to "*take over full responsibility*" for the Appeal because MLL had "*no interest whatsoever*" in the Site **[23]**. This amounts to a complete renunciation by the Liquidators (on behalf of MLL) of any control over Taytime which (as stated above) strongly militates against any relationship of agency. Further, if MLL has no interest in the Site, Taytime could not possibly be said to be acting on MLL's behalf because there is no interest to act on behalf of. Taytime was not acting to affect MLL's interests with third parties (the key defining characteristic of an agency relationship) but rather to affect its own relationships with third parties. The Liquidators confirmed that no realisations were anticipated from the Site and their report did not identify the Appeal as an asset **[152]**. The Liquidators' report instead concluded that "*the Joint Liquidators confirm after considering the legal advice received [that] there are no further assets or actions which might lead to a recovery for Creditors*" **[153-154]**.

65. Third, this understanding of the Liquidators Letter is fortified (indeed confirmed) by the terms of the Indemnity Agreement. This conspicuously does not use the term "*appoint*" or (for that matter) "*manage*". Rather it records the Liquidators' agreement "*to permit Taytime to adopt the appeal*". The fact that this is the language which was used internally (between the parties) as opposed to externally (to PINS) is highly significant. It is much more likely to represent the true picture. If Taytime has *adopted* the Appeal entirely then it cannot be said to be acting as MLL's agent in respect of it. Further, the grant of an

indemnity by the supposed agent to the supposed principal is, as explained above, entirely inconsistent with a typical agency relationship.

66. Fourth, this conclusion (that Taytime had adopted the Appeal rather than been appointed as agent) is supported by the Inspector's findings of fact as to Taytime's conduct: in particular, his finding that Taytime signed the Statement of Common Ground for the Appeal *as the Appellant* and that Taytime had instructed planning consultants and leading counsel for the submission of the Appeal (DL§5 [**19**]). The Statement of Common Ground entered into by Taytime and the Council clearly stated that the appellant was Taytime (ibid., and see also §28 **[99-100]**). It is absolutely wrong for Taytime to suggest (as it did at §73 of its OPH skeleton) that the Inspector concluded that no agent *could* carry out such acts. Rather, it is clear (particularly when his decision is read fairly) that he concluded (entirely properly given all the circumstances) that these acts militated against a relationship of agency. For completeness, the fact that the consultant and counsel fees may have been paid by MLL up to 15.07.21 does not assist Taytime at all. First, it does not appear to be consistent with the statement in the Liquidators Letter (dated 22.09.21) that these individuals were "*instructed by Taytime*". Second, this says nothing about who paid and was liable to pay these fees after that date, which is the material period.

67. Fifth, as noted above, all of the above facts fall to be interpreted in the context of insolvency law. As set out above, a liquidator's power to appoint agents to do any action the liquidator is unable to do himself does not extend to the power to delegate matters which require the exercise of professional judgment. Quite clearly the pursuit of a planning appeal requires the exercise of professional judgment to be made (not least as to the extent of the risk that the insolvent estate is to be exposed to) at various stages. However, the Liquidators Letter indicates that "*full responsibility*" for such judgments rested with Taytime, which would be an impermissible wholesale delegation of authority. Given that the Liquidator could not lawfully authorise Taytime to act as its (or MLL's) agent on these terms it should be assumed that it did not do so. Accordingly, the validation principle, which is prayed in aid by Taytime (at §69(5) of its OPH skeleton), actually counts against it or is at worst neutral.

68. Sixth, the Liquidator has had numerous opportunities since 30.09.22 to provide confirmation that Taytime was instructed as its agent in the Appeal. This ought to have been a simple matter for Taytime to arrange if indeed it was appointed as it alleges.

However, no such confirmation has been forthcoming even in the course of proceedings – not even to support Taytime's interpretation of the Liquidators Letter. This is extremely surprising. It is also fair to say that it raises questions about the Liquidator's own independence and propriety given: (i) there is a suggestion that they have delayed the liquidation (and any reimbursement of MLL's creditors) to facilitate Taytime's appeal [**244**]; (ii) there is a suggestion that one of the liquidators (now resigned), Mr Beat, has a longstanding relationship with Mr Harrison [**431**]. This is an extremely important part of the context within which the Taytime's complaint falls to be determined. It weighs heavily against Taytime's claim to have been acting as MLL's agent.

69. Seventh, it is relevant to recall that, as noted above, in ordering that Taytime be substituted as the claimant, Sir Ross Cranston found that there was no evidence that Taytime in fact had authority to bring this claim on MLL's behalf. This is strongly suggestive that Taytime is not and has not been acting as MLL's agent.

70. Finally, even if the court finds that there were errors or deficiencies in the Inspector's reasoning, for the reasons given above, it is inevitable that the Inspector would reach the same conclusion if the matter were remitted to him. Having regard to the factual position, which has become even clearer with the disclosure of the Indemnity Agreement, it is clear that as a matter of law Taytime is not acting as MLL's agent. Thus, relief should be refused in any event.

E. CONCLUSION

71. For the reasons given above, the Court is respectfully requested to dismiss Taytime's claim and to order Taytime to pay Mr Padden's costs in these proceedings.

JAMES MAURICI KC

BEN FULLBROOK

LANDMARK CHAMBERS

SIMON JONES

ENTERPRISE CHAMBERS

18 January 2024

Fish farm owner in hot water

KentOnline reporter (/authors/kentonline-reporter) multimediadesk@thekmgroup.co.uk (mailto:multimediadesk@thekmgroup.co.uk)
16:59, 01 May 2008

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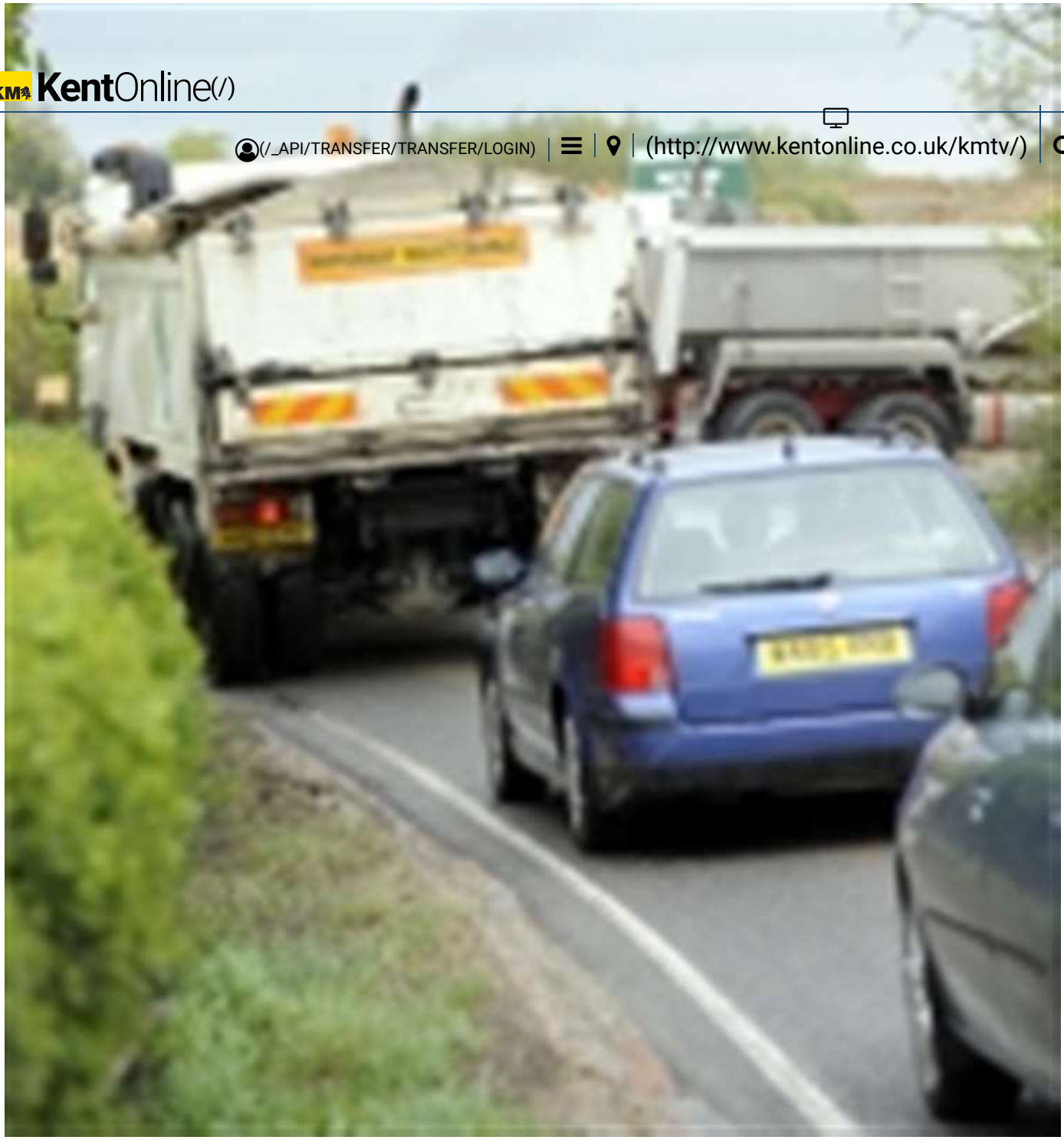
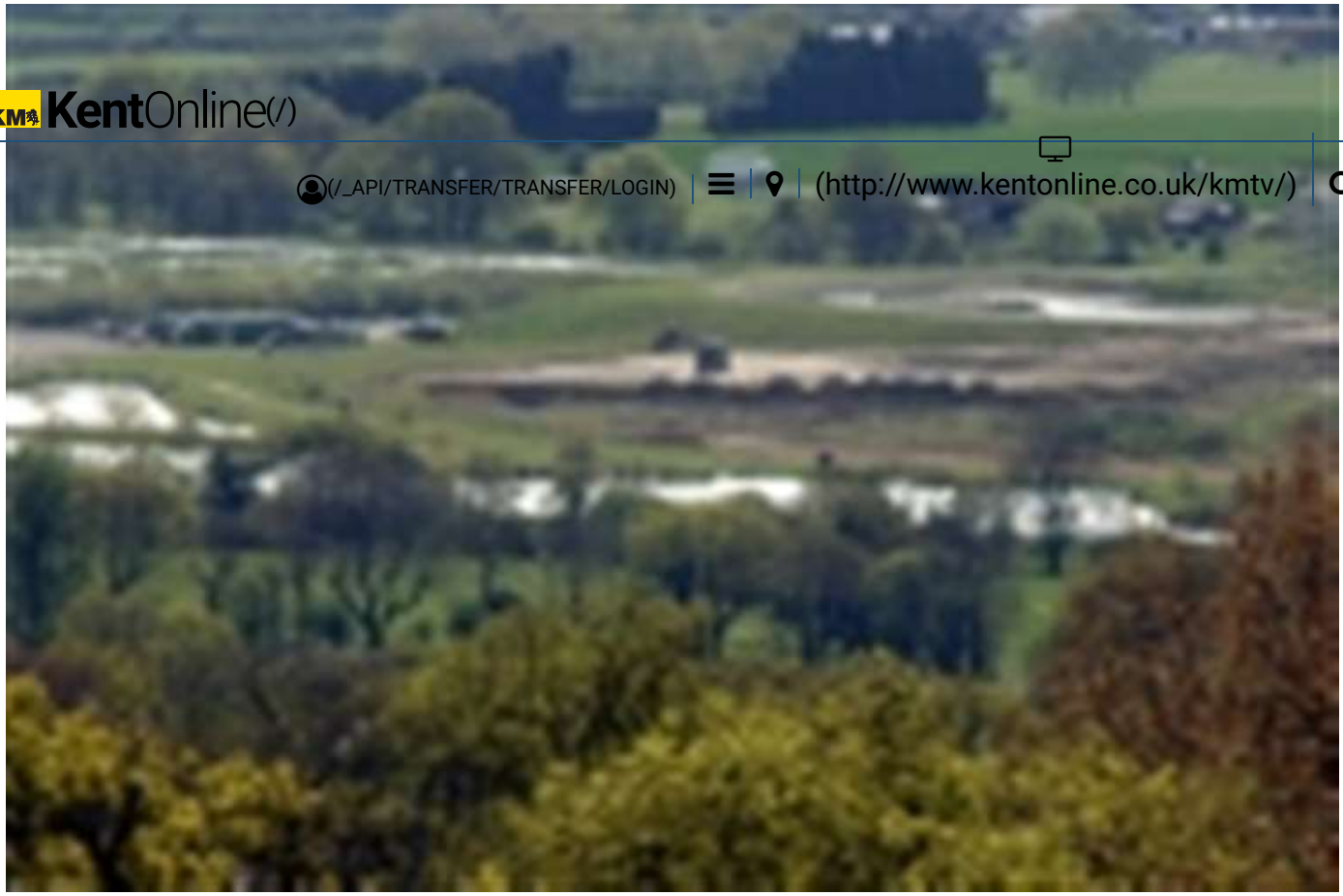


A lorry, trailed by a queue of cars, heads towards the fish farm



Work in progress at the fishery

Justice 4 Fathers protester Guy Harrison has been told to stop deliveries of soil at his fish farm.

For months, fleets of lorries have been dumping tonnes of soil at his Monk Lakes fish farm, Marden, bringing protests from neighbours.

Mr Harrison made national headlines after scaling the Houses of Parliament as part of a high-profile campaign over parental access.

He has denied the land is being used as a tip or landfill site and says the work is being carried out to improve the fishery.

Maidstone council representatives have posted a temporary stop notice and the site and handed a duplicate to Mr Harrison.

The latest move comes after two and a half years of complaints about soil mountains at the 120-acre farm and the large numbers of lorries driving nose to tail along the A229.

See this week's Kent Messenger Weald edition

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Maidstone Borough Council
Maidstone House
King Street
Maidstone, Kent ME15 6JQ

Application for Planning Permission.
Town and Country Planning Act 1990

Publication of applications on planning authority websites.
Please note that the information provided on this application form and in supporting documents may be published on the Authority's website.
If you require any further clarification, please contact the Authority's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr & Mrs | First name: | |

Company name: Monk Lakes Ltd

Street address: As agent

Town/City:

County:

Country:

Postcode:

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (•) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: Mrs | First Name: Tezel | Surname: Bahcheli

Company name: Parker Dann

Street address: Suite S10
The Waterside Centre
North Street

Town/City: Lewes

County: East Sussex

Country: United Kingdom

Postcode: BN7 2PE

	Country Code	National Number	Extension Number
Telephone number:		01273 478654	
Mobile number:			
Fax number:		01273 480830	

Email address: tezel@parkerdann.co.uk

3. Description of the Proposal

Please describe the proposed development including any change of use:

The retention of completed lakes Bridges and Puma, the retention and completion of part completed raised reservoirs lakes 1, 2 and 3 (all for angling purposes) along with clubhouse and detailed landscaping scheme

Has the building, work or change of use already started? (•) Yes ( ) No

If Yes, please state the date when the building, work, or use started: 01/01/2004

Has the building, work or change of use been completed? ( ) Yes (•) No

4. Site Address Details

Full postal address of the site (including full postcode where available)

House: Suffix:

House name: Monk Lakes

Street address: STAPLEHURST ROAD

MARDEN

Town/City:

County:

Postcode: TN12 9BS

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 576795

Northing: 147727

Description:

5. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? (•) Yes ( ) No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title: Mr First name: Peter Surname: Hockney

Reference: 420/125/Staplehurst Road/PH

Date (DD/MM/YYYY): 15/10/2010 (Must be pre-application submission)

Details of the pre-application advice received:

That proposal is EIA development and what the application should contain.

6. Pedestrian and Vehicle Access, Roads and Rights of Way

Is a new or altered vehicle access proposed to or from the public highway? ( ) Yes (•) No

Is a new or altered pedestrian access proposed to or from the public highway? ( ) Yes (•) No

Are there any new public roads to be provided within the site? ( ) Yes (•) No

Are there any new public rights of way to be provided within or adjacent to the site? ( ) Yes (•) No

Do the proposals require any diversions/extinguishments and/or creation of rights of way? ( ) Yes (•) No

7. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? (•) Yes ( ) No

If Yes, please provide details:

Existing commercial waste collection arrangements from cafe and refuse bins to be continued.

Have arrangements been made for the separate storage and collection of recyclable waste? ( ) Yes (•) No

8. Authority Employee/Member

With respect to the Authority, I am:

(a) a member of staff
(b) an elected member
(c) related to a member of staff
(d) related to an elected member

Do any of these statements apply to you? ( ) Yes (•) No

9. Materials

Please state what materials (including type, colour and name) are to be used externally (if applicable):

Walls - description:

Description of *existing* materials and finishes:

Temporary consent for mobile structures - variety of materials (timber/profiled metal sheeting)

Description of *proposed* materials and finishes:

Proposed clubhouse - Timber

9. (Materials continued)

Roof - description:

Description of *existing* materials and finishes:

Temporary consent for mobile structures - variety of materials (timber/profiled metal sheeting)

Description of *proposed* materials and finishes:

Proposed clubhouse - plain clay tile

Windows - description:

Description of *existing* materials and finishes:

Temporary consent for mobile structures - variety of window materials (timber/upvc/metal casement)

Description of *proposed* materials and finishes:

Proposed clubhouse - timber

Doors - description:

Description of *existing* materials and finishes:

Temporary consent for mobile structures - variety of door materials (timber/upvc/metal casement)

Description of *proposed* materials and finishes:

Proposed clubhouse - timber

Boundary treatments - description:

Description of *existing* materials and finishes:

Existing boundary treatments within and surrounding the site - timber and metal palisade fencing

Description of *proposed* materials and finishes:

Within the site - timber post and rail and hedging (please see landscaping plans)
Bounding the exterior of the site - stock fencing with hedging (please see landscaping plan)

Vehicle access and hard standing - description:

Description of *existing* materials and finishes:

Scalpings, as agreed in planning application MA/09/1380

Description of *proposed* materials and finishes:

Scalpings

Lighting - add description

Description of *existing* materials and finishes:

Not applicable

Description of *proposed* materials and finishes:

Not applicable

Others - description:

Type of other material: Not applicable

Description of *existing* materials and finishes:

Not applicable

Description of *proposed* materials and finishes:

Not applicable

Are you supplying additional information on submitted plan(s)/drawing(s)/design and access statement? (•) Yes ( ) No

If Yes, please state references for the plan(s)/drawing(s)/design and access statement:

Design and Access Statement
Method Statement
Environmental Statement (including flood Risk Assessment, Landscape and Visual Impact Assessment, Ecological Assessment and Residential Amenity Assessment)
Landscaping scheme and management plan
Schedule of proposed planning conditions

10. Vehicle Parking

Please provide information on the existing and proposed number of on-site parking spaces:

Type of vehicle	Existing number of spaces	Total proposed (including spaces retained)	Difference in spaces
Cars	104	104	0
Light goods vehicles/public carrier vehicles	0	0	0
Motorcycles	0	0	0
Disability spaces	0	0	0
Cycle spaces	0	0	0
Other (e.g. Bus)	0	0	0
Short description of Other			

11. Foul Sewage

Please state how foul sewage is to be disposed of:

Mains sewer	☐	Package treatment plant	☐	Unknown	☐
Septic tank	☐	Cess pit			

Other

Klargester

Are you proposing to connect to the existing drainage system? ○ Yes ○ No ◉ Unknown

12. Assessment of Flood Risk

Is the site within an area at risk of flooding? (Refer to the Environment Agency's Flood Map showing flood zones 2 and 3 and consult Environment Agency standing advice and your local planning authority requirements for information as necessary.) ◉ Yes ○ No

If Yes, you will need to submit an appropriate flood risk assessment to consider the risk to the proposed site.

Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck)? ◉ Yes ○ No

Will the proposal increase the flood risk elsewhere? ○ Yes ◉ No

How will surface water be disposed of?

☐ Sustainable drainage system	☐ Main sewer	☐ Pond/lake
☒ Soakaway	☐ Existing watercourse	

13. Biodiversity and Geological Conservation

To assist in answering the following questions refer to the guidance notes for further information on when there is a reasonable likelihood that any important biodiversity or geological conservation features may be present or nearby and whether they are likely to be affected by your proposals.

Having referred to the guidance notes, is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, OR on land adjacent to or near the application site:

a) Protected and priority species

◉ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ○ No

b) Designated sites, important habitats or other biodiversity features

◉ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ○ No

c) Features of geological conservation importance

◉ Yes, on the development site ○ Yes, on land adjacent to or near the proposed development ○ No

14. Existing Use

Please describe the current use of the site:

Lakes for recreational fishing

Is the site currently vacant? ○ Yes ◉ No

Does the proposal involve any of the following?
If yes, you will need to submit an appropriate contamination assessment with your application.

Land which is known to be contaminated? ○ Yes ◉ No

Land where contamination is suspected for all or part of the site? ○ Yes ◉ No

A proposed use that would be particularly vulnerable to the presence of contamination? ○ Yes ◉ No

15. Trees and Hedges

Are there trees or hedges on the proposed development site? ◉ Yes ○ No

And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character? ○ Yes ◉ No

If Yes to either or both of the above, you may need to provide a full Tree Survey, at the discretion of your local planning authority. If a Tree Survey is required, this and the accompanying plan should be submitted alongside your application. Your local planning authority should make clear on its website what the survey should contain, in accordance with the current 'BS5837: Trees in relation to construction - Recommendations'.

16. Trade Effluent

Does the proposal involve the need to dispose of trade effluents or waste? ○ Yes ◉ No

17. Residential Units

Does your proposal include the gain or loss of residential units? ○ Yes ◉ No

18. All Types of Development: Non-residential Floorspace

Does your proposal involve the loss, gain or change of use of non-residential floorspace? ◉ Yes ○ No

Use class/type of use		Existing gross internal floorspace (square metres)	Gross internal floorspace to be lost by change of use or demolition (square metres)	Total gross new internal floorspace proposed (including changes of use) (square metres)	Net additional gross internal floorspace following development (square metres)
A1	Shops Net Tradable Area	69.7	69.7	60.0	-9.7
A2	Financial and professional services	0.0	0.0	0.0	0.0
A3	Restaurants and cafes	59.9	59.9	140.0	80.1
A4	Drinking estabishments	0.0	0.0	0.0	0.0
A5	Hot food takeaways	0.0	0.0	0.0	0.0
B1 (a)	Office (other than A2)	0.0	0.0	0.0	0.0
B1 (b)	Research and development	0.0	0.0	0.0	0.0
B1 (c)	Light industrial	0.0	0.0	0.0	0.0
B2	General industrial	0.0	0.0	0.0	0.0
B8	Storage or distribution	0.0	0.0	0.0	0.0
C1	Hotels and halls of residence	0.0	0.0	0.0	0.0
C2	Residential institutions	0.0	0.0	0.0	0.0
D1	Non-residential institutions	0.0	0.0	0.0	0.0
D2	Assembly and leisure	0.0	0.0	0.0	0.0
Other	Please Specify	0.0	0.0	0.0	0.0
	Total	129.6	129.6	200.0	70.4

For hotels, residential institutions and hostels, please additionally indicate the loss or gain of rooms:

Use Class	Types of use	Existing rooms to be lost by change of use or demolition	Total rooms proposed (including changes of use)	Net additional rooms

19. Employment

If known, please complete the following information regarding employees:

	Full-time	Part-time	Equivalent number of full-time
Existing employees	1	2	0
Proposed employees	5	3	0

20. Hours of Opening

If known, please state the hours of opening for each non-residential use proposed:

Use	Monday to Friday Start Time	Monday to Friday End Time	Saturday Start Time	Saturday End Time	Sunday and Bank Holidays Start Time	Sunday and Bank Holidays End Time	Not Known
A1							☒
A3							☒

21. Site Area

What is the site area? 35.27 hectares

22. Industrial or Commercial Processes and Machinery

Please describe the activities and processes which would be carried out on the site and the end products including plant, ventilation or air conditioning. Please include the type of machinery which may be installed on site:

Not applicable

Is the proposal for a waste management development? ◉ Yes ○ No

Please complete the following table:

22. Industrial or Commercial Processes and Machinery (continued)

	The total capacity of the void in cubic metres, including engineering surcharge and making no allowance for cover or restoration material (or tonnes if solid waste or litres if liquid waste)	Maximum annual operational throughput in tonnes (or litres if liquid waste)
Inert landfill		5,377

Please give maximum annual operational throughput of the following waste streams:

Construction, demolition and excavation	5,377

If this is a landfill application you will need to provide further information before your application can be determined. Your waste planning authority should make clear what information it requires on its website.

23. Hazardous Substances

Is any hazardous waste involved in the proposal? ○ Yes ◉ No

24. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ○ Yes ◉ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

◉ The agent ○ The applicant ○ Other person

25. Certificates (Certificate A)

Certificate of Ownership - Certificate A

Town and Country Planning (Development Management Procedure) (England) Order 2010 Certificate under Article 12

I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/ the applicant was the owner (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of any part of the land or building to which the application relates.

Title: Mrs First name: Tezel Surname: Bahcheli

Person role: Agent Declaration date: 04/11/2011 ☒ Declaration made

25. Certificates (Agricultural Land Declaration)

Agricultural Land Declaration

Town and Country Planning (Development Management Procedure) (England) Order 2010 Certificate under Article 12

Agricultural Land Declaration - You Must Complete Either A or B

(A) None of the land to which the application relates is, or is part of an agricultural holding. ◉

(B) I have/The applicant has given the requisite notice to every person other than myself/the applicant who, on the day 21 days before the date of this application, was a tenant of an agricultural holding on all or part of the land to which this application relates, as listed below: ○

If any part of the land is an agricultural holding, of which the applicant is the sole tenant, the applicant should complete part (B) of the form by writing 'sole tenant - not applicable' in the first column of the table below

Title: Mrs First Name: Tezel Surname: Bahcheli

Person role: Agent Declaration date: 04/11/2011 ☒ Declaration Made

26. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. ☒

Date 04/11/2011

Directorate of Change, Planning and the Environment
Maidstone House, King Street, Maidstone, ME15 6JQ

DEVELOPMENT CONTROL

Mrs B Tezel,
Parker Dann
Suite S10, The Waterside Centre
North Street
Lewes
E Sussex
BN7 2PE

My Ref: MA/11/1948
Date: 6th September 2012

TOWN AND COUNTRY PLANNING ACTS
Town and Country Planning (General Permitted Development) Order 1995
Town and Country Planning (Development Management Procedure) (England) Order 2010

TAKE NOTICE that **THE MAIDSTONE BOROUGH COUNCIL**, The Local Planning Authority under the Town and Country Planning Acts, has **GRANTED PLANNING PERMISSION** in accordance with the details set out below:

APPLICATION: MA/11/1948

DATE RECEIVED: 9 December 2011 DATE VALID: 9 December 2011

APPLICANT: Mr & Mrs Harrison, Monk Lakes Ltd

PROPOSAL: Part retrospective planning application for the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.

LOCATION: MONKS LAKES, STAPLEHURST ROAD, MARDEN, MAIDSTONE, KENT, TN12 9BU

GRID REF: 576843, 147671

This permission is **SUBJECT** to the following conditions:

1. The development hereby permitted, including the re-grading of the embankments and the implementation of the submitted planting and management scheme, shall be implemented strictly in accordance with the approved plans.

Reason: The completion of the scheme in accordance with the consent is in the interests of the character and amenity of the countryside and the residential amenity of neighbours, in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

2. The development hereby permitted, including re-profiling of ground levels and re-grading of the embankments, shall be implemented in accordance with approved Method Statement received on 10/11/11.

   Reason: The completion of the scheme in accordance with the consent is in the interests of the character and amenity of the countryside and the residential amenity of neighbours, in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

3. The importation of material to achieve the ground profiles hereby approved shall be carried out in accordance with the approved Method Statement received on 10/11/11

   Reason: To ensure the protection of the residential amenity of neighbours in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

4. Prior to the importation of any material a fully detailed landscape plan, including planting consistent with the requirements of the Reservoirs Act the reduction in the prevalence of weeping willow, fencing and the protection of existing landscape features, shall be submitted to and approved in writing by the Local Planning Authority and the scheme shall be completed in accordance with the approved details.

   Reason: To ensure a satisfactory appearance to the development and to protect the nearby residents from loss of privacy associated with the permitted use of land, in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000).

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out prior to the use starting on any of lakes 1, 2 and 3 or in the first available planting season after the completion of lakes 1, 2 and 3, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season

with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;
Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000).

6. The landscaping shall be maintained according to the approved landscaping management plan, boundary treatment plan and River Beult enhancement plan received on 10/11/11.

   Reason: To ensure a satisfactory appearance to the development and to protect the nearby residents from loss of privacy associated with the permitted use of land, in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000).

7. All vehicular access for the importation of material, vehicles for the re-profiling of the lakes and the embankments and the implementation of the planting proposals, will use the spur off the existing, access directly off the A229 (Staplehurst Road), as annotated on drawing number PDA-MON-103.

   Reason: To protect the amenities of adjoining residents in accordance with policies ENV28 and T13 of the Maidstone Borough-Wide Local Plan (2000).

8. The development of the clubhouse shall not commence until, written details and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

   Reason: To ensure a satisfactory appearance to the development in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

9. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England)

Order 2008 (or any order revoking and re- enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety in accordance with policies ENV28 and T13 of the Maidstone Borough-Wide Local Plan (2000)..

10. The development hereby permitted shall be used for recreational angling and purposes ancillary only.

    Reason: An unrestricted use could cause harm to the residential amenity of neighbours and the character and amenity of the countryside, contrary to policies ENV28 of the Maidstone Borough-Wide Local Plan (2000).

11. There will be no angling between the hours of 22:00 and 07:00 (night time) in the areas marked on the layout plan PDA-MON-103.

    Reason: To protect the nearby residents from loss of privacy associated with the permitted use of land, in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000).

12. There will be no parking on the lakeside in the areas around lakes 1, 2 and 3 as marked on the layout plan PDA-MON-103.

    Reason: To protect the nearby residents from loss of privacy and potential disturbance associated with the permitted use of land, in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000).

13. All access will be via the existing consented access directly from the A229. There shall be no vehicular or pedestrian access to the site shall from Hertsfield Lane, and the boundary fencing shown on plan D118024-101-1004P2 shall be implemented prior to the commencement of the use of lakes 1, 2 and 3.

    Reason: To protect the amenities of adjoining residents in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

Continuation of decision: MA/11/1948

14. There will be no overnight accommodation within the clubhouse and no persons shall sleep in the clubhouse at any time.

    Reason: To prevent danger to human life in the event of a flood and to prevent inappropriate residential accommodation in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000) and guidance contained within the National Planning Policy Framework (2012).

15. The clubhouse hereby approved will be for purposes ancillary to the use of the site for recreational angling and for no other purpose.

    Reason: An unrestricted use could potentially cause harm to the residential amenity of neighbours and the character and amenity of the countryside, contrary to policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

16. No lighting shall be installed on the site without prior written consent from the Local Planning Authority.

    Reason: To protect the character and appearance of the countryside in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

17. Prior to the importation of soil from any individual source details shall be submitted to and approved in writing by the Local Planning Authority and the scheme shall be completed in accordance with the approved details.

    Reason: To prevent pollution of the environment in accordance with guidance contained within the National Planning Policy Framework (2012).

18. The proposed imported material shall be used in the construction of lake 1.

    Reason: To prevent unnecessary movement of material within the site and to safeguard the level of amenity enjoyed by nearby residents in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

19. Prior to the importation of any material full details of the proposed drainage facilities to ensure that the surface water for the site is fully contained within the site are submitted to and approved in writing by the Local Planning Authority and the scheme shall be completed in accordance with the approved

details.

Reason: In the interests of residential amenity in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan (2000).

20. Surface water run-off during the construction phase shall be directed to Puma Lake and/or the proposed temporary settling pond.

Reason: To ensure sediment does not flow into the River Beult SSSI in accordance with guidance contained in the National Planning Policy Framework (2012).

21. All surplus water from the new lakes shall be directed to Puma Lake.

Reason: To ensure sediment does not flow into the River Beult SSSI in accordance with guidance contained in the National Planning Policy Framework (2012).

22. Prior to the stocking of lakes 1, 2 and 3 full details of the fish to be stocked in the lakes including species and whether capable of breeding, and full details of a catch fence to prevent fish from entering the river system shall be submitted to and approved in writing by the Local Planning Authority and the approved measures shall be put in place prior to the use of the lakes and maintained thereafter;

Reason: To prevent damage to the River Beult SSSI as a consequence of a flood event in accordance with policy NRM5 of the South East Plan (2009) and guidance contained in the National Planning Policy Framework (2012).

23. Foul water shall be passed through a Klargester system, which is to discharge to Puma Lake unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent damage to the River Beult SSSI in accordance with policy NRM5 of the South East Plan (2009) and guidance contained in the National Planning Policy Framework (2012).

24. Prior to the importation of any material full details of proposed groundwater controls shall be submitted to and approved in writing by the Local Planning

Authority and the scheme shall be completed in accordance with the approved details.
Reason: In the interests of residential amenity in accordance with policy ENV28 of the Maidstone Borough- Wide Local Plan (2000)

Informatives set out below

Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard Code of Practice BS 5228:2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and burning of existing woodland or rubbish must be carried without nuisance from smoke etc to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Reasonable and practicable steps should be used during any demolition or removal of existing structure and fixtures, to dampen down, using suitable water or liquid spray system, the general site area, to prevent dust and dirt being blown about so as to cause a nuisance to occupiers of nearby premises.

Where practicable, cover all loose material on the site during the demolition process so as to prevent dust and dirt being blown about so as to cause a nuisance to occupiers of nearby premises.

The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside the normal working hours is advisable.

Where possible, the developer shall provide the Council and residents with a name of a person and maintain dedicated telephone number to deal with any noise complaints or queries about the work, for example scaffolding alarm misfiring late in the night/early hours of the morning, any over-run of any kind.

The developer will be required to produce a Site Waste Management Plan in accordance with Clean Neighbourhoods and Environment Act 2005 Section 54. This should be available for inspection by the Local Authority at any time prior to and during the development.

The applicant is advised to contact the Environment Agency with regard to proposals for groundwater controls.

This application has been considered in relation to the following policies:

Continuation of decision: MA/11/1948

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV49, T13

South East Plan 2009: CC1, CC6, NRM4, NRM5, C4, TSR2, T4

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

Signed

R. LL. Jarman

Rob Jarman
Head of Planning

Date 6th September 2012

THIS IS NOT A BUILDING REGULATION APPROVAL

It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations, where required, and any other necessary approvals, have been obtained, and that the details shown on the plans hereby approved agree in every aspect with those approved under such legislation.

TAKE NOTICE that this decision does not confirm compliance with Section 53 of The County of Kent Act, 1981 and, therefore, it will be incumbent upon the applicant to ensure they comply with the said requirement.

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

Case No: CO/12225/2012

Neutral Citation Number: [2014] EWHC 51 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/01/2014

Before :

HIS HONOUR JUDGE MACKIE QC

- -

Between :

R (on the application of David Padden)	**Claimant**
- and -	
MAIDSTONE BOROUGH COUNCIL	**Defendant**
- and -	
GUY HARRISON EMILY HARRISON MONK LAKES LIMITED and TAYTIME LIMITED	**Interested Parties**

- - - - - - - - - - - - - - - - - - - -

James Maurici QC (instructed by **Dechert LLP**) for the **Claimant**
Stephen Hockman QC and Megan Thomas (instructed by **Maidstone Borough Council**) for **the Defendant**

Hearing dates: 27 & 28 November 2014

Judgment

Judge Mackie QC :

1. This is a challenge to the lawfulness of a part retrospective planning permission. The Claimant, Mr David Padden, lives in Hertsfield Barn a 500 year old Grade II listed timber framed building situated 3km north of the village of Marden in Kent on the south side of the River Beult, a site of Special Scientific Interest. The Defendant ("The Council") is the local planning authority. The Interested Parties obtained the planning permission in issue ("the Permission") on land at Riverfield Fish Farm, Staplehurst Road, Marden, known as "Riverfield Fish Farm" or "Monk Lakes".

2. The Claimant applied for judicial review on 15 November 2012 and permission was granted by King J on 18 February 2013. For the hearing I had four bundles including the following witness statements. There are three witness statements from the Claimant, one from his legal representative Mr True, one from his planning consultant Ms Lord and two from his geologist Dr Fox. There are three witness statements from Mr Hockney, the Council's Principal Planning Officer. There is also a witness statement from Mrs Emily Harrison, an Interested Party and director of Taytime Limited. She refers to the extent of her company's investment in the planning process, to the consequences of any enforcement process and to the fact that while the Claimant may wish the site to be strawberry fields as it once was it has been run as a fishery for almost twenty years. The Interested Parties have not otherwise participated in this case.

The background

3. On 17 September 2003 planning permission was granted by the Council, on the application of the then owners Mr & Mrs Hughes, for development at what is now known as Monk Lakes for:

> "Change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing. The application involves the formation of ponds and lakes, the erection of a building and the formation of a car park, the existing access to Staplehurst Road is to be improved…"

4. The 2003 Permission was subject to various conditions including the submission for approval of various pre-commencement details. These details were not submitted for approval. Instead the then owners of the land commenced, what it is common ground between the Claimant and the Council, were unauthorised works at Monk Lakes to create additional recreational fishing lakes not in a form that was in compliance with the 2003 Permission. The unauthorised works took place between 2003 and 2008 and involved the importation of very large amounts of construction waste material including glass, plastic and asbestos. The Environment Agency has estimated that about

650,000 cubic metres of waste material were deposited on the land between March 2003 and January 2008 with even more since. The material was formed into, amongst other things, massive 8 metre high retaining bunds close to neighbouring residential properties including Hertsfield Barn.

Facts agreed or not much in dispute

5. In 2008 the site was acquired by three of the Interested Parties, Emily and Guy Harrison and Monk Lakes Limited ("MLL") who have apparently continued, and intensified, the unauthorised works.

6. There is expert and circumstantial evidence that the unauthorised works and in particular the deposition of vast quantities of waste as part of them, have had damaging effects on Hertsfield Barn, including causing groundwater flooding. The Claimant gives evidence of the serious interference which this flooding causes despite the work and cost of daily pumping. The challenged consent will, if it stands, regularise the deposition of the material.

7. After much delay and pressure from local residents, including the Claimant, the Council served an enforcement notice on 12 September 2008 ("the Enforcement Notice") following a temporary stop notice in April 2008. The large scale of the unauthorised work can be seen from the photographs produced by the Claimant and from the very serious breaches of planning control specified in the Enforcement Notice. The Interested Parties appealed against the Enforcement Notice and there has been litigation arising from that which, even now, is not finished. A public inquiry into an appeal against the Enforcement Notice was scheduled to commence on 6 November 2012 but, because of the grant of the Permission in these proceedings, it was vacated. So more than ten years after the unauthorised works began they are still going on.

8. On 26 September 2009 and 4 January 2010 retrospective permissions were granted by the Council for development at Monk Lakes. The further application which led to the Permission in issue in these proceedings was received by the Council on 9 December 2011. It sought part retrospective permission for "*the retention of completed lakes Bridges and Puma, the retention and completion of part completed raised reservoirs lakes 1, 2 and 3 …*". The "*Bridges*" and "*Puma*" lakes are those furthest from Hertsfield Lane. The three additional reservoirs (which according to the application are to be retained and completed) are situated immediately to the east of Hertsfield Lane. The application was accompanied by an Environmental Statement.

9. The Claimant's planning consultants, Bell Cornwell, responded in detail to the application claiming amongst other things that the Environmental Statement was flawed because:

> "it uses the date of 2010 with significant unlawful development in place as its base point rather than the position in 2003,

> preceding the commencement of the unauthorised development a position which is the actual lawful base point".

The letter made the point that other reports submitted with the application made the same error. The letter pointed out that at a meeting between members of the Hertsfield Residents Association and senior officers of the Defendant Council on 21 March 2011 it was confirmed by those officers that:

> "any application and accompanying Environmental Statement should compare the proposed development with the 2003 position"

That assertion is disputed by the Council. The letter also complained, correctly, that the Interested Parties had failed to undertake any scoping for the Environmental Statement. (Scoping is the process of determining the content and extent of the matters which should be covered in an Environmental Statement).

10. The Environment Agency ("the Agency") made representations on the application on 21 December 2011 saying:

> "Environmental Impact Assessment
>
> The application states that Maidstone Borough Council informed MLL in October 2010 that the proposal would need to be accompanied by an Environmental Statement, but we were not contacted with any scoping documentation
>
> Although there is no legal requirement for scoping consultations, we are disappointed that MLL chose not to engage in this process, as it can help to clarify issues concerning key environmental issues and proposed methods for survey, evaluation and assessment."

11. On 25 May 2012 the Claimant's planning consultants further objected:

> "We write to advise that following the site meeting on the 4th May 2012 with Barrie Neaves of the Environmental Agency ["EA"], a meeting you were invited to attend, we now have an explanation concerning the flooding at our client property. Mr Neaves had discussed the matter with a geologist from the EA who advised that the problems were most likely to be as a result of the unauthorised works on the neighbouring land due to the weight and compaction of unauthorised material. This has in effect reduced the capacity of the gravel aquifer layer, which is in the main contained by clay, so the water seeks the weakest path to escape and this appears to be the pond and immediate area at Hertsfield Barn. This is explained in the attached letter from an independent geologist.

> We also understand that the EA will confirm their geologist's advice in writing, although we understand the EAs duty as a statutory consultee is limited to providing advice regarding river flooding.
>
> On the facts it can reasonably be concluded that the unauthorised works have, and if the proposed were approved, will continue to have a direct impact on ground water levels at our client property such that unless the pond is continually pumped to remove the additional water that is being displaced from the aquifier layer it will cause damage to his house which is located immediately adjacent to the pond. This problem is not as a result of river flooding, surface water or ditch drainage...
>
> … we note that despite the problems of excessive ground water that has been experienced by our client since the unauthorised works, it is estimated that it will take nearly 7 years to fill the three lakes as proposed …
>
> If the 2003 permission had been lawfully implemented, following the discharge of pre-commencement conditions, the approved plans did not provide for the significant importation of materials to site or for the lake floors to be 3 metres or more above natural ground level. The existing and proposed developments bear no resemblance to that which was approved in 2003. We do not accept the assertion that the application proposals would result in lesser impacts on our client than the 2003 permission ..."

12. The letter also observed that the reports submitted by the Interested Parties with the application did not deal with "*the geological impacts of the unauthorised importation of significant quantities of material …"*. It attached a letter from Dr Richard J Fox Ph.D, a Geologist, who wrote on behalf of local residents, including the Claimant, in these terms:

> "RE: Recent excessive ingress of Ground Water into Hertsfield Barn Pond
>
> Dear Sir/Madam,
>
> The local geology, rocks and sediments of an area can have a significant impact on the local water-course and groundwater flow patterns. Human activity on the other hand can detrimentally and easily change the natural water-course balance or direction of groundwater flow.
>
> The geology of the southern area of Maidstone Borough, including Staplehurst, the River Beult and Hertsfield Barn is

> underlain by Weald Clay capped by 'Drift' deposits of sand and gravels (see Figure below).
>
> Weald Clay, like many other types of clay, is impermeable, which means that it acts as a vertical barrier to water flow. However, the sands and gravels of the overlying Drift are highly permeable and porous and can act as preferential flow paths for ground water into the local water-course. Commonly, the Drift deposits bordering the River Beult act a conduit for local drainage into the river. For many years this relationship has been in balance in the Hertsfield Barn area, until recently.
>
> It is hereby concluded that compaction of the porosity and permeability system of the Drift deposits around Hertsfield Barn, from activity at the local Waste Disposal site, has significantly damaged the drainage patterns of the Drift and its flow directionality. The net effect of this impact has resulted in the continual flooding of the Hertsfield Barn pond, which now requires electrical pump emptying into the River Beult to avoid flooding surrounding properties. Local groundwater flow now appears to be preferentially diverted into the pond, as the pond was originally filled manually for many years before the Waste Disposal site development.
>
> I believe that restoration work now needs to be carried out and drainage facilities put in place on the Waste Disposal site property to rectify this matter."

13. Dr Fox is a highly qualified geologist but not a formal expert. He has a senior position in an energy company and is a friend of the Claimant who has known the Barn and the surrounding area for years.

14. The case officer for the application, Mr Peter Hockney, produced an officer report. This referred to the fact that the Agency originally objected to the application based on flooding from rivers but that it later withdrew that objection.

16. The analysis in the officer report of flood risk is focused on river flooding and does not refer to groundwater flooding. It concluded that *"the Council has consulted with the Environment Agency who are the statutory consultee on flood matters and following receipt of a revised FRA the Environment Agency raised no objections to the proposal"*. The Flood Risk Assessment deals with river flooding but does not mention groundwater flooding or the view of the two experts referred to in the 25 May letter.

17. The officer report noted:

> "5.3 Principle of the Development
>
> 5.3.1 … the principle of the creation of lakes is accepted in the surrounding area. Whilst the site is covered by an Enforcement Notice the Council has to consider the current application on its own merits and in accordance with the Development Plan and any other material considerations.
>
> 5.3.2 The proposal is not dissimilar to that permitted under MA/03/0836. The principle of such a development on this site was considered acceptable in 2003 when the Council granted planning permission. It is the Council's view that the 2003 permission has not been implemented and is not a fallback position. However, the decision to approve the 2003 application was a decision of the Council and is a material consideration in the determination of this application to which I give some weight."

18. The officer report concluded:

> "6.1 The proposed scheme would result in a development for recreational fishing for the Monk Lake facility. It would sit alongside existing lawful recreational fishing at Mallard Lakes with an existing car park access and road.
>
> 6.2 The scheme would not result in any significant planning harm in particular in relation to flooding, biodiversity, landscape impact or residential amenity.
>
> 6.3 There are no objections from statutory consultees on the proposal and the Council will ensure full implementation within an agreed timescale through a Section 106 agreement"

19. Various conditions were recommended but none to deal with groundwater issues.

> " …[w]hilst the Environmental Statement does not compare the proposed scheme with the 2003 position the Council has assessed the development against the 2003 position as outlined in the main report".

21. By email on 6 June 2012 the Claimant's planning consultants again wrote to the Council expressing dismay at the recommendation in the officer report to

grant the application. The letter was sent to all members of the Council's Planning Committee. Among other things the letter said:

> "The Environmental Statement [ES] that accompanies the current planning application does not use the 2003 pre-development base point for assessing the impacts of the development. This is a serious flaw in the ES process in that the starting point for assessing the impacts of this part-retrospective development should be the pre-development position. We therefore maintain that an ES which is based on a comparison between the current proposal and the onsite conditions in 2010 – including the unauthorised works- is misconceived and potentially challengeable in law…
>
> … the Council is being offered a fait accompli that significantly does not address the detrimental impacts of the unauthorised development specified in the Council's reasons for issuing the Enforcement Notice. In summary these are:
>
> ….
>
> • Flooding of neighbouring properties.
>
> An additional letter – supported by a qualified geologist – has already been sent to the Planning Case Officer regarding the water levels at Hertsfield Barn, which have risen as a result of the compaction of the aquifer under the site and the consequent displacement of water to the weakest point of escape in the pond at Hertsfield Barn. The situation is deteriorating as the winter drought relents. [A photograph showing the flooding was attached]
>
> The Flood Risk Assessment and other material submitted by the applicant do not deal with this off-site impact or provide any mitigation for it. The water levels in the pond at Hertsfield Barn are only kept to a safe level by the constant operation of pumps, even through the summer months and the dry winters of 2010 -2012 …"

22. The Planning Committee met on the evening of 7 June 2012 to consider the officer report. At 10.22 am that day a further letter was sent by the Agency to the Council. This said, among other things:

> "…
>
> We believe you have received information from the Hertsfield residents expressing concern that groundwater flooding may be being exacerbated by the existence of the deposited material on the site.

> Our own hydrologist has looked into this and concurs with the resident's opinion. She is currently drawing up a sketch and brief examination of how this may happen. Unfortunately it is unlikely to be available in time to inform your Planning Committee tonight.
>
> Although we have a general supervisory duty over all forms of flooding we tend to concentrate on flooding from designated 'main' rivers, such as the River Beult. We will comment on surface water and ground water flooding where there are known pre-existing problems. In this instance it would appear that the ground water flooding problem was not pre-existing and may have been caused by deposition of material. This was not identified as an issue in the submitted Flood Risk Assessment.…"

The Agency was referring to, and had seen, Dr Fox's letter.

23. Having e-mailed his letter of 7 June 2012 raising concerns about groundwater. Mr Neaves at the Agency had a telephone conversation with Mr Hockney about potential methods of mitigating against groundwater flooding and the possibility of addressing this issue by condition, in the course of which he expressed his doubt that a condition could be suitably worded.

24. At 12.28 am on that day Mr Hockney sent to the Agency an e-mail setting out the proposed wording of a condition he had devised, and that subsequently was included in the Permission along with an informative that the applicant was advised to contact the Environment Agency with regard to proposals for groundwater controls.

25. The Agency replied at 16.00 as follows:

> "Good afternoon Peter
>
> We have the following concerns.
>
> There is an existing groundwater flooding problem possibly resulting from the material that has already been deposited on site. This matter needs to be investigated and remediated prior to any further material potentially being imported on site, especially as this is a part retrospective application.
>
> Regarding the wording of the condition itself, I understand that when referring to "groundwater controls" you have discussed with Barrie the option of abstracting groundwater to reduce the water level as one possible control, a further borehole being used to monitor water levels. It should be noted that this may

> be a short term solution, however it is unsustainable and there are risks, particularly if the abstraction ceases for whatever reason. It should also be noted that we believe that this activity could require an abstraction licence in the near future, and we cannot guarantee that a licence would be issued. If compliance with this proposed condition hinges on the applicant being able to put in place groundwater controls is there not the risk this condition may never be complied with, therefore is it a valid condition?Without further investigations into the groundwater flooding situation we cannot at this time identify if there are any other possible options for groundwater controls. This is something the applicant will have to look into. It is likely however that the potential deposition of additional material will only exacerbate the existing flooding of the nearby property."

26. Mr Hockney's reply invited the Environment Agency to offer a proposed solution. He then left for the Planning Committee meeting. He did not contact the Environment Agency before the Permission was issued some three months later on 6 September 2012. Neither did the Agency contact him.

27. At the meeting of the Planning Committee Mr Hockney, gave an oral urgent update in the light of correspondence received from the Environment Agency and suggested his condition as a way of dealing with groundwater issues. He acknowledged that the details of the Environment Agency's concerns were not available but advised that his proposed condition would deal with the matters even if it were proved to be correct that the unauthorised depositing of material was indeed causing groundwater flooding. In presenting his update he did not inform the Planning Committee of any of the concerns being expressed by the Environment Agency about his proposed condition.

28. In the course of the debate before the Planning Committee two of the local ward Councillors (not members of the Planning Committee) who spoke against the application referred to the groundwater flooding of Herstfield Barn and the views of the Agency reported that day. They suggested that the matter be deferred to allow receipt of and consideration of further information from the Agency on this issue.

29. The Planning Committee debated the application. One councillor indicated that on groundwater issues Kent County Council not the Environment Agency was the lead authority and it was important that they had not objected-but the County Council had not been consulted. Another councillor felt that the Agency's objection on groundwater was less important because that was a matter for the County Council.

30. In response Mr Hockney did not say anything material about groundwater but did say *"… following discussions with the Environment Agency, an additional condition and informative are proposed in relation to groundwater controls for the site to alleviate the concerns raised."*

31. I agree that that implied that the Agency supported the proposed condition. Mr Hockney disagrees and says in evidence that all the Agency's concerns were placed before the Planning Committee. He adds that it was in any event a matter solely for his planning judgment. The Claimant says that this was a highly technical matter on which Mr Hockney had no expertise and that he misled the Planning Committee about the proposed condition.

32. Mr Hockney also advised the Planning Committee at the meeting that:

> "[i]n terms of the Environment Agency … and the works undertaken by the hydrologist, the full details of that aren't available but … I have discussed this with the Environment Agency and the worst case scenario is that the hydrologist confirms that the groundwater is flooding on to the neighbours' property and that is a result of the imported material. To that end we have recommended the condition which requires the submissions of these ground water controls so the condition is there to alleviate those matters. So again, I don't think that there's any further information that's needed."

33. The Claimant criticises what he says is an implication that the Agency supported the use of a condition when they did not favour that solution and the Planning Committee was not advised of this. There was certainly no indication that the Agency had reservations about the condition proposed.

34. The Planning Committee resolved to grant conditional planning permission, 11 voting for with one against and one abstention, subject to the completion of a section 106 agreement with a requirement that the development be completed to a timetable.

35. On about 8 June the Agency released a document called *"Assessment of geology around Monk Lakes to determine potential reasons for sudden increase in flow of water from the pond at TQ 76569 47734*". This was the hydrologist report referred to in their letter of 7 June 2012 to the Council. The author, Jan Hookey a hydrogeologist is the Senior Technical Specialist on Groundwater, Hydrology and Contaminated Land for Kent and the South London Area at the Agency. She said:

> "Discussion regarding scenario
>
> Given that the need to pump an increased amount of groundwater flow from the pond has coincided with:
>
> - One of the driest periods of weather on record
>
> - Very low groundwater levels in aquifers in the South-East

> It is unlikely that this issue is due to increased rainfall or a general increase in groundwater. It is more likely that the increased volume of flow is coming from a local change in the immediate vicinity of the pond.
>
> It is quite likely that the pressure of over-burden, caused by the deposit of earth on the adjacent land, has lead to a localised compression of the river terrace gravels above the Weald Clay. This, in turn, may have resulted in the local change of flow regime and an impact on the pond.
>
> …
>
> Way Forward:
>
> A full investigation of this site is required to ascertain what is happening to the flow regime and what is impacting it. This really requires a thorough local investigation of the water levels, flows and drainage. It is a very unusual thing to have happened, especially with the level of impact that it is having. It is for this reason that it will be very important to investigate it thoroughly before deciding on a way forward or a solution. A specialist drainage engineer, with good knowledge of interpreting groundwater level data, is likely to be required".

36. The Agency e-mailed a copy of this report to the Claimant and others on 8 June 2012 but there is no evidence that it reached the Council and I accept that it did not.

37. In an e-mail on 28 June 2012 Mr Neaves at the Agency wrote to the Claimant:

> "I can confirm that I have spoken to Max Tant, the Flood Risk Management Officer at KCC. He was completely unaware of the Riverfield development – indeed, I had to describe the location of the site to him.
>
> I understand that you are still pumping water from the pond to prevent water ingress to your property; this despite river levels generally returning to normal summer water levels. This would reinforce our belief that the high water levels in the pond area a result of groundwater ingress, possibly as a result of changes to landform on Riverfield as detailed in the report of our hydrologist. As yet we have not seen the details of any conditions that [the Council] have applied to the planning permission.
>
> Furthermore, I can confirm that, to my knowledge, we have received no approach for an Environment Agency Permit …"

38. The development requires an environmental permit from the Agency if, as appears from the application, it is intended to deposit additional material. There are also requirements to be satisfied under the Reservoirs Act.

39. On 6 September 2012, following the execution of a Section 106 Agreement, the Permission was issued by the Defendant Council. It included a condition ("Condition 24") dealing with groundwater flooding issues. This said:

> "24. Prior to the importation of any material full details of proposed groundwater controls shall be submitted to and approved in writing by the Local Planning Authority and the scheme shall be completed in accordance with the approved details
>
> Reason: In the interests of residential amenity in accordance with policy ENV28 of the Maidstone Borough- Wide Local Plan (2000)."

40. This was the condition wording which had concerned the Agency both about the feasibility of groundwater controls and the general wisdom of proceeding without further investigations. Further such controls would only be imposed on the Interested Parties once further materials were to be imported. There is disagreement between the parties about whether, and if so how far, the Permission could be implemented without bringing in more material.

41. The Section 106 Agreement requires that the Permission be implemented according to a timetable. An application for an Environmental Permit had to be made to the Environment Agency by early December 2012. The Interested Parties have still made no application- perhaps not surprisingly since this action was brought in November 2012.

42. Mr Seed, an environmental consultant recently instructed by the Interested Parties, submitted an Environmental Permit scoping document on 17 November 2012. In response the Agency noted:

> "The groundwater at Hertsfield Barn does not appear to have been considered.
>
> It is our opinion that groundwater flooding at Hertsfield Barn is more than likely caused by the excavations and waste deposited at Monks Lakes"

43. It is also noted by the Environment Agency that to deal with this issue one of the options would be removing the waste deposited at Monk Lakes but there might be a drainage solution, a matter to be investigated. It remains unclear whether that solution is available. Condition 24 assumes there is a drainage solution.

44. Mr Hockney's third witness statement dated 21 November discloses that on 30 October the Interested Parties applied to discharge two conditions, one of which is Condition 24 dealing with groundwater. This is the condition that the Council says will protect the Claimant's groundwater problem.

Disputed facts and legitimate expectation

45. I have referred to a meeting on 21 March 2011. The Claimant and others recall that senior officers of the Council affirmed at that meeting that the approach to be taken by the Environmental Statement would use 2003 as its base. Mr Maurici QC for the Claimant argues that no justification for going back on this assurance has ever been offered. He says that the Claimant thus had a legitimate expectation that the Council would require the Environmental Statement to assess matters as against the situation as at 2003 and prior to unlawful works commencing. He says that the Council acted unlawfully in frustrating that expectation.

46. The Claimant's recollection, supported to a degree by contemporaneous documents is disputed by Mr Hockney, supported to a degree by his own note of the meeting. It is unfortunate that Mr Hockney's witness statement of 21 November 2013 dealing amongst other things with this meeting was only served on the Friday before the hearing. Despite Mr Maurici's submission that I should make findings of fact on the material available it would be unjust to decide whose recollection of a meeting in March 2011 is most likely to be correct without hearing live evidence. The position would also have to be clear to found a legitimate expectation claim. I will therefore consider this aspect of the claim no further.

Claimant's Grounds

47. I will deal with these in more detail below but summarise them briefly here so that it is clear why the law referred to next is relevant. Ground 1 alleges a failure by the Council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for EIA development. Ground 2 alleges a failure by the Council to consider whether the retrospective application for EIA gave MLL any unfair or improper advantage. Ground 3 alleges that the Council unlawfully failed to have regard to groundwater flooding within the EIA process. Ground 4 alleges that the Council unlawfully purported to deal with groundwater flooding by an ill considered condition. The Council denies all these allegations.

The law- general and Grounds 1 and 2

48. I deal in detail only with those points of law referred to by the parties which seem to me to be directly relevant.

49. A public authority has a duty to make reasonable enquiries to try to obtain the factual information necessary to provide a rational basis for a decision on the application before it, especially where it depends on a factual issue: Secretary of State for Education and Science v Tameside MBC [1977] A.C. 1014. In the case of a planning application, the local authority has power to issue a direction under Regulation 4 of the Town and Country Planning Applications Regulations 1988 requiring an applicant to supply any further information necessary to enable the authority to reach a decision, and to provide evidence to verify particulars: see R (Usk Valley Conservation Group) v Brecon Beacons National Park Authority [2010] 2 P. & C.R. 14 per Ouseley J.

50. An Environmental Impact Assessment or "EIA" is a requirement derived from EU law which it is common ground applies to the disputed planning consent. The aim of the EIA regime is to ensure that the authority giving the primary consent for a particular project makes its decision in the knowledge of any likely significant effects on the environment. EIA is a process of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This allows the decision-maker to properly consider whether or not to grant consent, and if so to provide any necessary mitigation.

51. Public participation in environmental decision-making is of central importance to EIA- see the well known statement of Lord Hoffmann in Berkeley v Secretary of State for the Environment, Transport and the Regions [2001] 2 A.C. 603 at 615 – 616.

52. The EIA Directive is law in England by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the Regulations"). The EIA Regulations require that a planning decision-maker *"shall not grant planning permission … pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so"* (Regulation 3(4)). The Regulations apply to "*EIA development*". "*environmental information"* means (see reg. 2(1)) "*the environmental statement, including any further information and any other information, any representations made by anybody required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development*".

53. An "*environmental statement"* includes, in effect,"*[a] description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors";…"[a] description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent*

and temporary, positive and negative effects of the development, resulting from: (a) the existence of the development; (b) the use of natural resources; (c) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant of the forecasting methods used to assess the effects on the environment".

54. Regulation 22 provides that, in effect, a planning authority, if of the opinion that the statement should contain additional information in order to be an environmental statement, shall require and the applicant will supply that information.

55. Environmental information may comprise material beyond the Environmental Statement produced by the applicant. Mr Hockman QC for the Council places emphasis on R. v Derbyshire CC exp Blewett [2003] EWHC 2775 (Admin) where the then Sullivan J said:

> "38. The Regulations envisage that the applicant for planning permission will produce the environmental statement. It follows that the document will contain the applicant's own assessment of the environmental impact of his proposal and the necessary mitigation measures. The Regulations recognise that the applicant's assessment of these issues may well be inaccurate, inadequate or incomplete. Hence the requirements in *Regulation 13* to submit copies of the environmental statement to the Secretary of State and to any body which the local planning authority is required to consult. Members of the public will be informed by site notice and by local advertisement of the existence of the environmental statement and able to obtain or inspect a copy: see *Regulation 17* of the Regulations and *Article 8 of the Town and Country Planning (General Development Procedure) Order 1995* .
>
> 39. This process of publicity and public consultation gives those persons who consider that the environmental statement is inaccurate or inadequate or incomplete an opportunity to point out its deficiencies. Under *Regulation 3(2)* the local planning authority must, before granting planning permission, consider not merely the environmental statement, but "the environmental information", which is defined by *Regulation 2* as "the environmental statement, including any further information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development".
>
> 40. In the light of the environmental information the local planning authority may conclude that the environmental statement has failed to identify a particular environmental impact, or has wrongly dismissed it as unlikely, or not

> significant. Or the local planning authority may be persuaded that the mitigation measures proposed by the applicant are inadequate or insufficiently detailed. That does not mean that the document described as an environmental statement falls outwith the definition of an environmental statement within the Regulations so as to deprive the authority of jurisdiction to grant planning permission…"and
>
> "In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the "full information" about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible."

56. The decisions of the European Court of Justice ("ECJ") in Case C-215/06 Commission v Ireland [2008] ECR I-4911 and the Court of Appeal in R (Ardagh Glass Ltd) v Chester City Council & Others [2011] P.T.S.R. 1498 emphasise that it is only exceptionally that retrospective planning permission can lawfully be granted for EIA development. In Commission the ECJ said that:

> "56. In addition, the grant of such a retention permission, use of which Ireland recognises to be common in planning matters lacking any exceptional circumstances, has the result, under Irish law, that the obligations imposed by Directive 85/337 as amended are considered to have in fact been satisfied.
>
> 57. While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.
>
> …
>
> "61. By giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4(1) and (2) of the Directive 85/337 as amended, projects for which an environmental impact assessment is required must be identified and then –before the grant of development consent, and, therefore necessarily before

> they are carried out- must be subject to an application for development consent and to such an assessment, Ireland has failed to comply with the requirement of that directive".

57. Mr Hockman submits that the reach of Commission is more restricted than this would suggest. He says that planning law in Ireland is different from that of England. In Commission it was held that community law could not preclude applicable national rules from allowing in certain cases the regularisation of operations or measures which were unlawful in the light of community law, though such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent community rules or to dispense with applying them, and that it should remain the exception. These conditions can be fulfilled in the domestic planning system, since operations carried out in breach of planning control are susceptible to enforcement proceedings, and once such proceedings have been instituted then the operations can be regularised only by a successful appeal. This submission does not seem to me to detract from the central point emphasised by the ECJ as one sees from the later cases in England.

58. In Ardagh Glass case the Court of Appeal endorsed the following from the judgment of the trial judge:

> "The [decision-taker] can and in my view should also consider, in order to uphold the Directive, whether granting permission would give the developer an advantage he ought to be denied, whether the public can be given an equal opportunity to form and advance their views and whether the circumstances can be said to be exceptional. There will be no encouragement to the pre-emptive developer where the [decision-taker] ensures that he gains no improper advantage and he knows he will be required to remove his development unless [he] can demonstrate that exceptional circumstances justify its retention."

59. Parker J summarised this in R (Baker) v Bath and North East Somerset Council [2013] EWHC 946 (Admin) at para. 15:

> "EU law permitted the grant of retrospective planning permission in respect of EIA development (with the environmental assessment carried out after the development had started), but only in exceptional circumstances …"

60. The Claimant thus submits that retrospective permission for EIA development should only be granted first in exceptional circumstances and secondly if the developer does not obtain any improper advantage from the pre-emptive development. That seems to me to be a fair summary.

61. Counsel for the Council point out that in Ardagh the first instance judge, greatly experienced in planning, said that an Environmental Impact Assessment carried out post development can be done on exactly the same basis, in terms of assessing the pre development position, as a pre development EIA, and can be equivalent to it in that sense. The Court added that given that the purpose of the EIA is to assess the impact on the environment, a post development assessment is likely to be more comprehensive and more accurate, since it will rely more on observation and measurement and less on hypothesis and judgment.

Grounds 1 and 2- is the application for retrospective permission of pre-existing development?

62. Mr Maurici submits that this is clearly an application for retrospective permission. The application says it is for "*retention of completed lakes Bridges and Puma, the retention and completion of part completed raised reservoirs lakes 1, 2 and 3*". The Permission describes what is being granted as "*part retrospective*". The part said to be retrospective is said by the Council to be the "*retention of two lakes known as Bridges and Puma*". The lakes furthest from Hertsfield Barn and are not the subject of complaint by the Claimant, which is correct. However the whole of the proposal the subject of the Permission (including that for the lakes and which the Council acknowledges is retrospective) is EIA development. The proposal seeks the retention of the significant quantities of imported material, which would otherwise be unauthorised. The Permission does not provide for, or require, the vast quantities of unauthorised materials deposited at Monk Lakes to be removed but rather their remodeling on site. Their retention is thus authorised by the Permission if it is allowed to stand. The officer report proceeds on that express basis.

63. Mr Hockman accepts that the planning application made in December 2011 was partly retrospective but only as regards lakes Bridges and Puma. W entailing the re-use of materials already on site the application involved a different completed landform and could therefore be viewed in a different light in terms of its impact on local amenity. The remainder of the site is to be redeveloped into 3 new lakes as opposed to the 7 lakes which were permitted by the 2003 permission. Material is to be redistributed on site and some new material is to be imported and be used to fill in the substantial void left from mining clay used to line Puma and Bridges lakes.

64. As I see it this in substance and at least to a considerable degree retrospective development. If not how does the 650,000 cubic metres of material come to stay on the site? The purpose of the application, which has to be looked at as a whole and with common sense, is to regularise the deplorable situation in which unauthorised work has been carried out for so long and to redeploy the waste material in a different configuration- for example to make the bank facing the Claimant's land less intrusive. In my view the application is for the

retrospective grant of planning permission for what is accepted to be EIA development and is the sort of "retention application" that the ECJ had in mind in Commission.

Grounds 1 and 2- exceptional circumstances

65. Mr Maurici submits that the officer report fails to give consideration to whether there were "exceptional circumstances" justifying the retrospective grant of planning permission. In 24 pages the word "exceptional" does not appear in the report and there is no discussion at all of the issue of retrospective permission in relation to EIA development. The relevant cases are not referred to. He submits that the Council wholly failed to assess whether there were exceptional circumstances justifying the application and in so doing adopted the unlawful approach identified by the ECJ in Commission.

66. Mr Hockman points out that there is no requirement for the words "exceptional circumstances" to be parroted throughout the report or at the meeting. To the extent that exceptional circumstances were to be considered they were. Thus it was recommended (and decided) that permission should be obtained only on the basis of a section 106 agreement, which obligated the developer to implement the permission, and thereby necessarily to remove all -existing operations, save in so far as in exact conformity with the form of development authorised by the permission. Mr Hockman also cites as exceptional circumstances the scale of the unauthorised development and the fact that it would have involved lengthy and complex enforcement action but for the grant of the Permission. Quite apart from the fact that the Committee were not asked to consider this in the context of exceptional circumstance the factor is an unpromising one for exceptionality when the greater the degree and scale of retrospectivity the more likely that such factor is going to be present. I remind myself that the issue is not so much whether there were exceptional circumstances but whether the point was considered.

67. The Claimant responds that the s. 106 agreement fails to ensure that the most severe environmental effect, so far as the Claimant is concerned, namely groundwater flooding is dealt with (an issue which I will address when dealing with Grounds 3 and 4).

68. The Claimant argues that this retrospective application for EIA development also provided the Interested Parties with unfair advantages. The Environmental Statement stated that it was taking the baseline for the assessment to be October 2010, with the substantial unauthorised development in place. The Non-Technical Summary says:

> "This report has, from necessity, taken as its baseline, October 2010, when Maidstone Borough Council informed MLL of the need for an Environmental Statement to support a fresh planning application. It has not been possible to assess the

> situation 'on the ground' at a point before this date. The consultants preparing the Environmental Statement were instructed from that date forward. The Environmental Statement therefore looks forward, at the benefits overall of completing the project, taking into account the work that has already been undertaken on site, assessing the manner in which it can be made acceptable and providing an overall environmental benefit."

69. The Claimant says that in order to prevent the Interested Parties gaining an unfair advantage the Council should have insisted that the Environmental Statement assess the environmental effects as against a baseline of 2003 before the unauthorised development commenced, as the Claimant's advisers had urged it to in December 2011. The Environmental Statement concludes that with *"mitigation"* in terms of landscape and visual impact there would be a *"moderate positive change on the landscape"*. That conclusion is only reached by ignoring the huge scale of unlawful development since 2003 in the analysis and thus not subjecting it to public participation in accordance with the relevant EU requirements.

70. The Council accepts that the Environmental Statement took as its baseline the state of affairs as at October 2010. The Council says that it could still determine the application provided that it considered that it had sufficient environmental information to enable it to do so. The representations made by the Claimant and his professional advisors about alleged groundwater ingress to the pond and his land were part of the environmental information gathered and considered by the Defendant prior to its decision to grant planning permission. So too was the information contained in emails and letters from the Environment Agency over the course of the public consultation exercise including the day of the committee meeting. The Council had to ensure that it

its content together with all other relevant environmental information, including further information and any representations made by a consultee, other body or local resident. That is what it did. The Council considered the planning application against the appearance and condition of the land in 2003. The committee report and its annexes dealing directly with local residents' representations state that repeatedly. I accept that they do but the papers do, in places identified by Mr Maurici in his skeleton, fall into the trap of comparing the application with the situation on the ground post 2003.

71. The Council says that members knew that the drawings approved in the 2003 permission could not be lawfully implemented on the site and that the existing contours and configuration of the site were not an authorised 'fallback' position. Mr Hockman adds that even if a baseline of 2003 had been taken in the environmental statement it is unlikely that groundwater flooding of nearby land would have been identified by the authors as a potential effect of the proposed development. Mr Maurici disagrees pointing to the e-mail from Kent

County Council dated 27 June 2012 which he says shows that an Environmental Statement should have looked at groundwater flooding.

72. The Council argues that Environmental statements cannot identify every environmental effect as Sullivan J said in Blewett. If there is a cause and effect here the groundwater issue has come to light because material has already been deposited on the land. So the fact that some partial development of the land has already taken place is a disadvantage rather than an advantage to the Interested Parties.

73. The parties make further and very detailed submissions about these issues. I have regard to these but do not set them out because otherwise this judgment would become too long.

74. I repeat that Ground 1 alleges a failure by the Council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for EIA development. Ground 2 alleges a failure by the Council to consider whether the retrospective application for EIA gave MLL any unfair or improper advantage.

75. The Environmental Statement was inadequate. There had been no scoping (not of itself a legal requirement). The Environmental Statement failed to deal with the environmental effects of the unauthorised development that had taken place before October 2010, by adopting that point as a baseline. The Statement took the wrong baseline and thus gave the readers, crucially the members of the Committee, a false picture and it failed to address groundwater controls which might well have come to light if a thorough document had been prepared. That false picture was redressed by the Claimant's representations and to a degree by the report and the officer's briefing at the meeting. The inadequacies in the report do not for the reasons given in Blewett invalidate the exercise or render it unlawful. Obviously there must come a point where an inadequate Statement is not in truth a Statement at all. Otherwise, as Mr Maurici points out, a developer could simply decline to include certain matters in an Environmental Statement submitted with an application and make the point that these issues can be raised instead by third parties. But as I see it that is not this case. The Council had power to compel additional information but chose not to do so for reasons wrapped up in the fact that in practice the officers were aware that 2010 was not the date and drew attention to this in their briefing. The references in the briefings to 2003 being the date seem to me to outweigh the indications to the contrary identified by Mr Maurici. Nonetheless the picture presented to the Committee is a more confusing one than would have been the case if the Environmental Statement had contained, or been required to contain, the right date. While not unlawful in itself this feature contributed to what overall was an unsatisfactory state of affairs. As I

see it these inadequacies alone are not such as to convert, by reason of the obligation on the Council not to permit the applicant for retrospective permission to obtain an improper advantage, an unsatisfactory situation into an unlawful one.

76. Neither the report to the Committee nor the briefing by the officers at the meeting gave the Members any idea that this was an EIA development, and that consequently approval should be the exception and that the question of unfair advantage arose. Slavish repetition of a mantra is not required but the issue was simply not before the Committee. Imposition of a timetable in a Section 106 Agreement may well be an exceptional measure (there was a difference at the Bar about that which I cannot resolve) and it was clearly an appropriate one given the years of unauthorised works and the wider history. But there is no sign that the Agreement had anything to do with the fact that this was EIA development and that approval should be exceptional. If the matter had been explained properly to the Committee the discussion would have taken a different course and the outcome might well have been different.

77. Overall I judge this to mean that the case on Ground 1 succeeds. The Council unlawfully failed to consider the question of exceptional circumstances. Although the Council apparently had no regard to the question of unfair or improper advantage the Claimant 's case on Ground 2 turns on the baseline point where he does not succeed.

Grounds 3 and 4- additional points of law

78. In R v Cornwall County Council ex parte Hardy [2001] Env L.R 25 planning permission was sought for the extension of a landfill site. The application was accompanied by an Environmental Statement submitted under a materially identical regime. The ecological part of the Statement identified the possibility of bats and other important creatures indicating that further surveys were required. The planning committee decided that further surveys should be carried out. The planning permission granted prohibited the commencement of development until additional surveys were carried out. Harrison J held, in an extract which I have shortened, as follows:

> "41 Mr Straker laid emphasis upon the fact that the local planning authority felt that, in imposing conditions, it had ensured that adequate powers would be available to it at the reserved matters stage. That, in my view, is no answer. At the reserved matters stage there are not the same statutory requirements for publicity and consultation. The environmental statement does not stand alone. Representations made by consultees are an important part of the environmental information which must be considered by the local planning authority before granting planning permission. …

(a) Legality of decision

56 …

62 Having decided that those surveys should be carried out, the Planning Committee simply were not in a position to conclude that there were no significant nature conservation issues until they had the results of the surveys. The surveys may have revealed significant adverse effects on the bats or their resting places in which case measures to deal with those effects would have had to be included in the environmental statement ... Having decided that the surveys should be carried out, it was, in my view, incumbent on the respondent to await the results of the surveys before deciding whether to grant planning permission so as to ensure that they had the full environmental information before them before deciding whether or not planning permission should be granted.

64 In my judgment, the grant of planning permission in this case was not lawful because the respondent could not rationally conclude that there were no significant nature conservation effects until they had the data from the surveys. They were not in a position to know whether they had the full environmental information required by regulation 3 before granting planning permission. I would therefore quash the planning permission …"

79. In Smith v Secretary of State for the Environment, Transport and the Regions [2003] Env. L.R. 32 Waller LJ (with whom Sedley and Black LLJ agreed) said at para. 27 that:

> "… the planning authority or the Inspector will have failed to comply with [their duties under the then Environmental Impact Assessment Regulations] if they attempt to leave over questions which relate to the significance of the impact on the environment, and the effectiveness of any mitigation. This is so because the scheme of the regulations giving effect to the Directive is to allow the public to have an opportunity to debate the environmental issues, and because it is for those considering whether consent to the development should be given to consider the impact and mitigation after that opportunity has been given …"

80. The Court of Appeal in Gillespie v First Secretary of State [2003] Env. L.R. 30 held that the Secretary of State erred in granting permission in assuming that a planning condition which required comprehensive investigation of the condition of the land (which was severely contaminated) provides "a complete answer to the question whether significant effects on the environment [are] likely." The planning condition "itself demonstrates the contingencies and uncertainties involved in the development proposal" (para. 40) and "when

making the screening decision, these contingencies must be considered and it cannot be assumed that at each stage a favourable and satisfactory result will be achieved" (para. 41).

Grounds 3 and 4

81. I repeat that Ground 3 alleges that the Council unlawfully failed to have regard to groundwater flooding within the EIA process. Ground 4 alleges that the Council unlawfully purported to deal with groundwater flooding by an ill considered condition.

83. The Environmental Statement did not deal with the issue of groundwater flooding.

84. The Council accepts that there is *"a potential groundwater effect arising from the pre-existing operations"* which was required to be considered before the Permission was granted but Mr Hockney questions *"whether any groundwater effect on the pond at Hertsfield Barn could be attributed to the pre-existing operations"*. He criticizes the expert judgment of Ms Hookey and Dr Fox, as I see it unconvincingly, given that neither he nor the Council have, or sought any expertise in the area and that a suggestion that Ms Hookey has changed her mind does not seem correct. Mr Hockney's suggestion that, having now seen various documents not available to him at the time the Permission was granted, he would still have given these expert views *"negligible weight"* does not assist the Council. If he would have discounted these views perhaps he should not have done. Mr Maurici's skeleton contains detailed reasons why Mr Hockney's criticisms are over confident if not misplaced. From the material I have read I consider that his submissions are fair and correct.

85. The Council had the Agency's 7 June 2012 letter which indicated that Ms Hookey's report was imminent but would not be available for the Planning Committee that night. The Council could have deferred consideration of the application but did not. The letter said that *"the ground water flooding problem was not pre-existing and may have been caused by the deposition of material"*. The Council, but not the Members, knew (through telephone conversations and e-mails) that the Agency was dissatisfied with the condition proposed to be attached to the Permission to deal with groundwater flooding. The Agency had said*" If compliance with this proposed condition hinges on the applicant being able to put in place groundwater controls is there not the risk this condition may never be complied with, therefore is it a valid condition?"*. The Council did not follow these matters up.

86. In the light of these facts Mr Maurici submits that in granting the Permission the Council made two legal errors.

87. First, the Council failed to make reasonable enquiries to try to obtain the information necessary to provide a proper basis for a decision on the application before it.

88. Secondly, Mr Hockney failed properly or at all to inform Members of the Environment Agency's position on groundwater flooding or that they had raised concerns as to the condition he was proposing be imposed to deal with the issue. That was a material matter and one that Members should have been informed of. Members were misled into thinking that the Agency was content with the condition he proposed.

89. Mr Hockman responds on these first two points as follows. He says that the alleged groundwater effects were a matter for the planning judgement of the Council, and in particular, of the planning officer advising the committee, whose advice was plainly accepted. At the time of the committee's decision, the Council through its planning officer had been aware of a
into account the suggestion that there was a potential groundwater effect and that in the context of the planning proposal an assessment of the potential implications of this issue was necessary. The Council, through its planning officer, undertook such assessment and concluded that a condition in the form of Condition 24 was required.

90. The planning officer questioned whether any groundwater effect on the pond at Hertsfield Barn could be attributed to the pre-existing operations, given the lapse of time between the carrying out of those operations and the occurrence of the alleged groundwater ingress. The planning officer's judgment was that in any event, since on the ground any groundwater ingress to the pond was currently being alleviated by pumping to the river, a technical measure for such alleviation was available and could be achieved within the land controlled by the applicants. Furthermore, it is argued that the planning officer also bore in mind that the geologist's letter (submitted by the Claimant) stated that *"I believe that restoration work now needs to be carried out and drainage facilities put in place on the Waste Disposal site property to rectify this matter."* (Given the view adopted by Mr Hockney in evidence about the value of Dr Fox's views- for example that it does not contain an *" informed opinion of the merits of the proposal"*, it seems unlikely that he placed much weight upon it).

91. Mr Maurici responds that the Council was under an obligation to make further enquires for the reasons given by the Agency. A further delay for the Interested Party, in the context of all that had gone on at the site and for so long, would have been a minor inconvenience. Issues of potential groundwater flooding are not matters of 'planning judgment' but complex technical issues, particularly in this case where diagnosis took so long. The Committee should

have been told the up to date position and that the condition which the officer considered would cure the potential problem was seen by the Agency as doubly inadequate.

92. I am concerned with the position at the time the Permission was granted. There is however evidence about subsequent events put forward by Mr Hockney to suggest that deferral of the matter would have made no difference. This appears to go to questions of remedy. He criticizes the *"fundamentally flawed"* report of Ms Hookey of the Agency to which he would now give *"negligible weight"*. He does this by reference to material obtained by a Freedom of Information request but presents an incomplete picture- see for example paragraph 33 of Ms Lord's witness statement. Mr Hockney's use of such critical language to dismiss the views of Ms Hookey, in an area where she is expert and he is not, is unhelpful. The Council also relies on subsequent statements from the Agency and others made as recently as the summer of 2013 to suggest that the form of words used in the condition is satisfactory. Those statements are said by the Claimant to be out of context and offset by others, an issue I need not explore.

93. Disclosure by the Council of the Interested Party's application to discharge Condition 24 was made to address the Claimant's point that the Council had no expert advice comparable to that of Dr Fox and Ms Hookey. Mr Hockney exhibits and, despite the fact that the application is out for consultation, apparently adopts the report of Peter Brett Associates obtained by the Interested Parties, which he submits is more comprehensive and based on a much wider range of materials. The validity of that submission and of the report itself is challenged in the second witness statement of Dr Fox. This material, like some of that produced on behalf of the Claimant, does not assist an assessment of the consideration given in June 2012. The Claimant may feel that use of the report by Mr Hockney to defend the position of the Council in this case may prejudice the authority's ability to give it fair and objective evaluation in the coming application.

94. The Council also relies upon this application to suggest that Condition 24 does indeed have teeth, for why else would the Interested Party apply to have it set aside?

Grounds 3 and 4- Decision.

95. When granting permission the Council had unlawfully failed to make reasonable enquiries to try to obtain the factual information necessary for its decision on the application. The views of the Agency and its concerns about the proposed condition were not communicated to the Members. The Council had no expert or other adequate information to evaluate the issue for itself or to enable it to disregard the views of the Agency. The Council could have deferred consideration of the matter to await the report from the Agency but

did not do so. As I read the transcript of the meeting the attitude of the Members might well have been very different if disclosure of the Agency's position and its concern about the condition had been made clear- leaving aside what the Members should have been informed about Grounds 1 and 2 above. Mr Hockney, in the to and fro of live discussion, may well have inadvertently given the Members the impression that the Agency approved Condition 24 when in fact it had real doubts about it. The evidence about subsequent events seems to me of little assistance to evaluation of the lawfulness of the Decision. The first two submissions of Mr Maurici are, as I see it, made good and on these grounds alone the Decision was unlawful. It follows that the Claimant succeeds on Ground 3 , as to Ground 4 success depends on how one classifies these points , perhaps an unnecessary task. I shall therefore deal only briefly with the third and fourth limbs of these Grounds.

Hardy

96. Thirdly the Claimant argues that the imposition of a condition to deal with this matter was itself unlawful on the basis of Hardy. Mr Maurici says that Condition 24 requires groundwater controls to be put in place but it was clear that further investigations were required not just as to what such controls should be but whether they could be effective. The Council, like the defendant in Hardy, was not in a position to know that it had the necessary environmental information to make a decision.

97. Mr Hockman responds that in Hardy no bat surveys at all had been done and whether there would be significant effects on bats was not known. In this case, the condition presupposes a significant effect on the Claimant's land from increased ground water and requires a scheme to be submitted and approved before any more material is brought onto the site. Further the question for the Council was whether the development sought was likely to have significant effects on the Claimants land by causing flooding and in making that judgement it could (and did) consider the potential for any mitigation measures to reduce detrimental flooding impacts. The condition assumes the worst case scenario. Mr Maurici rejects what he sees as an attempt to distinguish the facts from Hardy.

98. In this case the Council had formed the view that there might well be a problem and that if it materialized the condition would address it. It was not consciously recognizing that something was not known and leaving it to be worked out, unscrutinised, in the condition. I am inclined to accept that Mr Hockman's submission is to be preferred but since this point is unnecessary for my overall decision and it is unhelpful for me to express views about Hardy which may complicate matters for expert planning judges in other cases, I express no considered view about it.

Condition 24 and the importation of material.

99. Fourthly the Claimant points out that the requirement to submit groundwater control details is not engaged unless the further importation of any material is to take place, the wording being *"prior to the importation of any material"*. He says that if the permitted development can proceed without importation of material the condition will not bite. The Claimant says that this removes the force of the Council's point that "*the developer cannot create a development which accords with the approved plans unless further material is imported"*. There is evidence from the Claimant and Ms Lord, who refers to documents from the Environmental Agency produced by Mr Hockney, that work has started without importation of material – but it is unclear how much work is feasible without importation and triggering the condition. The Council also submits that the "*trigger"* for the condition had to be the importation of further material because it could not say "*prior to the commencement of the development"* as *"part of the development sought in the application had already taken place"*. There is a debate between the planners about the correctness of that but if there were a difficulty it would be one capable of being overcome by drafting skills. This issue too is one I do not have to decide and I would be reluctant to try to resolve it without more evidence.

Remedy

100. The Council submits that if the Claimant succeeds on liability the Court should withhold relief in its discretion, and/or under section 31 (6) of the Senior Courts Act 1981. Mr Hockman submits that if, following the quashing of the permission the matter is reconsidered, there will be no basis for departing from the earlier view as to the planning merits. Even with the suggested need for members to be advised that the case is exceptional, and with re-wording of condition 24, the committee would in practice almost certain to take the same view as before of the essential planning merits. The Council submits that there is no realistic prospect that the committee would resolve to refuse the application.

101. I do not accept that submission. Quashing is the usual remedy and there have to be good reasons to take a different approach. As I see it there are no such reasons here. Further it does not seem to me from the evidence that reconsideration would necessarily lead to the same or a similar decision.

Conclusion

102. The application succeeds and the Permission will be quashed.

103. I shall be grateful if Counsel will let me have not less than 72 hours before the hand down of this judgment a list of corrections of the usual kind and a draft

order, both preferably agreed, and a note of any matters to be raised at the hearing.

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

ENFORCEMENT NOTICE

ISSUED BY: THE MAIDSTONE BOROUGH COUNCIL (herein referred to as "the Council")

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to it that there have been breaches of planning control under Section 171A(1)(a) of the above Act, at the land described below. It considers that it is expedient to issue this notice, having regard to the provisions of the Development Plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THIS NOTICE RELATES

Land known as land lying to the east of Old Hertsfield Farm, Staplehurst Road, Marden, Tonbridge, Kent (formerly part of Riverfield Fish Farm) and land known as land lying to the north of Staplehurst Road, Marden, Tonbridge, Kent (formerly part of land known as Mallard Lakes), all now collectively known as 'Monk Lakes' ("the Land")(as shown edged in red on the attached Plan A).

3. THE BREACH OF PLANNING CONTROL ALLEGED

Unauthorised development consisting of engineering, mining and building operations and unauthorised change of use of land to recreational fishing lakes and for waste disposal not in accordance with planning permission reference MA/03/0836, and unauthorised development by the change of use of the lakes on land formerly known as Mallard Lake and other parts of the former Riverfield Fish Farm for recreational fishing without the grant of planning permission, all resulting in the following breaches of planning control:

(i) engineering operations involving the creation of lakes;
(ii) the importation of materials, including construction and demolition waste, and the deposit and the stockpiling of these materials on the land;
(iii) engineering operations involving the raising of the levels of the land using both imported materials and materials derived from the creation of lakes on the site;
(iv) the construction of flood relief and drainage channels;
(v) the construction of engineered bunds;
(vi) mining of clay;
(vii) the construction of a car park;
(viii) the construction of access roads;

(ix) the erection of three buildings;
(x) the installation of a foul drainage collection system;
(xi) the use of lakes constructed on the site of planning permission MA/03/0860, for recreational fishing;
(xii) the change of use of Mallard Lake and part of the former Riverfield Fish Farm from fish farming to recreational fishing;
(xiii) use of part of a building for a Class A1 use;
(xiv) the stationing of mobile buildings;
(xv) the stationing of plant and equipment unconnected with any lawful operational development or use of the land;
(xvi) the erection of fences, signs and a car park barrier ancillary to the unlawful operational development and change of use of the Land; and
(xvii) the stationing on the Land of litter bins, refuse bins, picnic tables and other paraphernalia ancillary to the unlawful operational development and change of use of the Land.

Part of the Land has the benefit of planning permission dated 17 September 2003 (Ref: MA/03/0836) (shown edged in blue on the attached Plan B). However, the unauthorised development does not accord with the details on the approved drawings forming part of that permission or is not specifically provided for in the description of development in that permission. Consequently, the development that has and is being carried out is so far removed from the description of development or the details of the permission that it does not constitute lawful implementation of that planning permission.

With respect to breach 3(ii) referred to above, the Council considers that in depositing construction and demolition waste on the Land without any properly designed scheme of development the justification for the use of these materials is waste disposal rather than any engineering or other requirement of the development scheme.

While with respect to breach 3(vi) referred to above, there is no planning permission for the mining of clay on the Land.

That part of the Land referred to in breach 3(xii) above formerly known as Mallard Lake and which was part of the former Riverfield Fish Farm has the benefit of planning permission MA/00/1162 (shown edged in green on the attached Plan B) which was, inter alia, for use of land as an extension to an existing fish farm (i.e. Riverfield Fish Farm). There has been a change of use without the benefit of planning permission of this part of the Land from fish farm to recreational fishing.

It appears to the Council that the above breaches of planning control relating to unlawful operational development and mining operations have occurred within the last four years, or that if these breaches occurred more than four years ago they are not immune from enforcement action because the development of which they form part is still not substantially completed or, in the case of the unlawful erection of permanent buildings on the Land, are incidental operational development to the unlawful change of use of the Land to recreational fishing.

The above breaches of planning control relating to the unlawful changes of use have occurred within the last ten years.

4. REASONS FOR ISSUING THIS NOTICE

The unlawful waste disposal by land raising on the Land causes planning harm because there are no planning controls on the height and physical extent of the land raising, or on the types of materials that can acceptably be used in carrying out the land raising. The unlawful waste disposal and land raising also has a detrimental impact on the visual amenity of the countryside and rural area of which the Land forms part. The unlawful waste disposal and land raising adjacent to the neighbouring residential properties has an overbearing visual impact and is harmful to the amenity of the residents. The unlawful waste disposal and land raising adds to the general environmental disturbance of earthworks, vehicle movements on the Land, plant and machinery operating, and the noise and dust that these generate.

There has been no technical justification advanced why lakes have to be built on a six metre high plateau compared with the below ground lakes already constructed on the Land. This land raising has involved the deposit on the Land of construction and demolition arisings and therefore waste materials. In the absence of any technical justification for the need for these waste materials to be deposited on the Land, the primary purpose of this aspect of the development appears to be a change of use for waste disposal rather than the use of waste materials as part of an essential engineering operation.

These waste disposal operations have generated and, if allowed to continue uncontrolled, have the potential to continue to generate significant quantities of lorry traffic both on local roads and on the Land, and the operation on the Land of heavy plant and machinery. The delivery of waste materials to the Land by lorry on the scale that is occurring was not taken into consideration when the adequacy of the proposed access arrangements to the Land under the details forming part of planning application MA/03/0836 were considered by the Council. The levels of lorry traffic being generated have the potential to cause harm to other users of the public highways in the vicinity of the Land.

None of these environmental, highway safety and planning implications of the unlawful land raising involving waste disposal were considered at the time that planning permission MA/03/0836 was granted so that the overall acceptability in principle of these aspects of the development have not been considered.

The Council considers that the development consisting of land raising and stockpiling of material in that part of the Land which is situated within the floodplain of the River Beult will reduce flood storage capacity and will, in times of flood, exacerbate flooding downstream of the Land with potentially danger to life and property.

The Council considers that the unplanned and uncontrolled construction of flood drainage or relief channels on the Land, and associated engineered

bunds has and may continue to cause flooding of curtilages of adjoining residential property and is harmful to the visual amenities of those properties.

The unauthorised development has an adverse impact on the River Beult which is a designated Site of Special Scientific Interest.

The excavation of clay was not part of the development granted planning permission under application reference MA/03/0836. These mineral working operations are therefore unlawful development. Extraction of clay creates a void below the original ground surface of the site that then requires backfilling in order for the land raising operations and construction of lakes above. The Council considers that the backfilling of the excavated void creates an increased demand for imported fill materials to be transported to the site by lorry. The planning implications of this aspect of the development need to be fully considered and, if acceptable in principle, controlled by the imposition of planning conditions on any permission for such operations.

The land raising and mining operations on the Land and engineering operations for the creation of fishing lakes have involved the bringing onto the Land of a mobile building to act as a site control office, wheel washing equipment for lorries delivering material to be used in land raising, and various mobile construction plant and equipment. The stationing on the Land of this mobile building, plant and equipment for use in engineering and mining operations on the site would only be lawful if those operations themselves were lawful. Mining operations on the Land are not part of the development permitted under planning permission MA/03/0836 and are therefore not lawful. The absence of compliance with pre-commencement planning conditions attached to planning permission MA/03/0836 means that the land raising and engineering operations are not lawful.

The three permanent buildings constructed on the Land are of utilitarian nature. These buildings have no architectural merit and are not of the quality in terms of design and appearance that the Council requires for new permanent buildings ancillary to any recreational fishing use on this site in the open countryside. The buildings thereby cause harm to the character and appearance of the Land and the open countryside of which it forms part.

Furthermore, the buildings are connected to a foul drainage system the details of which are unknown to the Council.

The car park has been constructed in a different place and to a different physical form to that granted planning permission under application MA/03/0836. The Council has no information to show that this car park is adequate in terms of the space for parking to serve the proposed fishing lakes development under permission MA/03/0836 when it is completed and that random parking around the Land will not occur that will be harmful to the visual amenities of the locality. The unlawful use for recreational fishing of the former Mallard Lakes and part of the former Riverfield Fish Farm creates additional demand for car parking space and the adequacy of car parking arrangements on the Land serving these additional areas has not

been assessed. Furthermore, the car park requires proper landscaping and screening in order to minimise harm due to its visual impact on the Land itself and the surrounding open countryside of which the Land forms part but no adequate landscaping and screening has been provided.

The access road to the Land has been constructed without any submission of details to the Council relating to its width and surfacing, or any details relating to vision splays and kerb radii at its junction with Staplehurst Road. Furthermore, the easterly vision splay at this junction appears to run across land not in the control of the Land owner and continued unobstructed vision for traffic leaving the Land cannot be assured. The Council considers that development of the scale proposed on the Land has the potential to generate significant volumes of traffic that require a properly constructed and maintained access road and junction with the public highway to avoid harm by way of danger or inconvenience to other users of that access road and the public highway. Furthermore, the unlawful use for recreational fishing of that part of the Land formerly known as Mallard Lake and part of the former Riverfield Fish Farm creates additional traffic entering and leaving the Land and the adequacy of the existing site access to serve this additional traffic in terms of highway capacity and highway safety has not been assessed.

Other internal access roads have been constructed on the Land without the benefit of planning permission all of which add to the developed nature of this site which forms part of the open countryside.

The recreational use of the Land for fishing could operate twenty four hours a day throughout the year. Such a use, if allowed to continue uncontrolled, has the potential to cause harm by causing intrusion of people, activity and noise at any time of the day or night in close proximity to residential properties bordering the Land.

The unlawful change of use has also involved the bringing onto the Land of ancillary mobile buildings consisting of a refreshment kiosk and mobile toilets. No planning permission has been granted for these mobile buildings. The mobile buildings add to an unsightly clutter of both permanent and mobile buildings on the Land thereby causing harm to the visual amenities of the site and the surrounding countryside of which it forms part.

A fishing tackle shop (classified under Class A1 of Part 2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987), is being operated in an unlawful permanent building on the Land. This unlawful use requires the benefit of planning permission. An unrestricted A1 use such as this within a building in the open countryside is contrary to development plan policy which only allows for farm shops in rural areas, and therefore causes policy harm. The use is also unsustainable and has the potential to cause harm by attracting customers to travel considerable distances to the site specifically to purchase goods.

Other development ancillary to the unlawful operational development and the unlawful changes of use of the Land have occurred including the erection of fences, signs and a car park barrier and of litter bins, refuse bins, picnic

tables and other paraphernalia all of which add to the developed nature and clutter on this site which forms part of the open countryside.

Furthermore, the unauthorised development on the site of planning permission MA/03/0836 has taken place before details have been submitted to, and approved in writing by the Council, as required by pre-commencement planning conditions 5, 7, 10, 12, 13, and 15 contained in that planning permission. Without the prior written approval of the details required by the pre-commencement planning conditions, there cannot have been lawful implementation of the development granted planning permission (Ref: MA/03/0836).

Consequently, the Council considers that the unlawful development of the Land is contrary to national planning policy guidance in PPS1, PPS6, PPS7, PPS9, PPS10, PPS12 and PPS25. The unlawful development is also contrary to development plan policies. Specifically, it is contrary to Policies SS1, SP1, EN3, EN6, QL1 and NR10 of the Kent and Medway Structure Plan 2006; and Policies ENV28 and R12 of the Maidstone Borough-wide Local Plan 2000, and Policy and W5 and W12 of the Kent Waste Local Plan 1998.

The Council does not consider that planning permission should be given to this unlawful development on the Land because:

(i) planning conditions alone could not overcome the objections to that development based on the harm it causes to the open countryside of which the Land forms part;
(ii) it causes harm to the amenities of local residents;
(iii) it creates hazards to users of the public highway, Staplehurst Road; and
(iv) it causes policy harm as a result of conflict with national and development plan policy relating to the protection and conservation of the countryside and retail development.

5. WHAT YOU ARE REQUIRED TO DO

(i) Cease permanently the use of the Land (as shown edged in red on the attached Plan A) and all lakes and ponds on the Land for recreational fishing.

Time for compliance: **One day** after this Notice takes effect.

(ii) Cease permanently the A1 use of any of the unlawful buildings (as shown coloured solid green in the approximate positions on the attached Plans A, B and C).

Time for compliance: **One day** after this Notice takes effect.

(iii) Cease permanently the use of the Land (as shown edged in red on the attached Plan A) for the stationing of mobile buildings or mobile catering units.

Time for compliance: **One week** after this Notice takes effect.

(iv) Remove permanently from the Land (as shown edged in red on the attached Plan A) the mobile buildings and mobile catering units stationed on the Land.

Time for compliance: **One week** after this Notice takes effect.

(v) Demolish or dismantle and then remove permanently from the Land (as shown edged in red on the attached Plan A) all fences and signs; the car park barrier; all litter bins, refuse bins, picnic tables and other paraphernalia brought onto the Land in association with its unlawful development.

Time for compliance: **One month** after this Notice takes effect.

(vi) Remove permanently from the Land (as shown edged in red on the attached Plan A) to a licensed waste disposal site all materials, waste and debris resulting from compliance with steps 5(i)- 5(v)(above).

Time for compliance: **One month** after this Notice takes effect.

(vii) Cease permanently:

a) the importation from outside the Land (as shown edged in red on the attached Plan A) and deposit on the said Land of construction and demolition waste and other spoil materials;
b) all engineering operations associated with the unlawful creation of recreational fishing lakes;
c) all engineering operations associated with land raising;
d) the stockpiling of material on the Land (as shown edged in red on the attached Plan A); and
e) the excavation of clay; but

excluding the specific engineering operations detailed below that are necessary to remedy the breaches of planning control that have occurred on the Land.

Time for compliance: **One day** after this Notice takes effect.

(viii) Demolish and remove permanently from the Land (as shown edged in red on the attached Plan A) the unlawful buildings (as shown coloured solid green in the approximate positions on the attached Plans A, B and C).

Time for compliance: **One month** after this Notice takes effect.

(ix) Excavate and remove permanently from the Land (as shown edged in red on the attached Plan A) the foundations of the unlawful buildings (as shown coloured solid green in the approximate positions on the attached Plans A, B and C).

Time for compliance: **Two months** after this Notice takes effect.

(x) Excavate and remove permanently from the Land (as shown edged in red on the attached Plan A) the hard surfacing placed over the car park area (as shown annotated "car park" and marked stippled black in the approximate position on the attached Plans A, B and C).

Time for compliance: **Two months** after this Notice takes effect.

(xi) Excavate down to original ground level the earth bund to the rear of Hertsfield Cottages (as shown marked "x-x" and coloured orange in the approximate position on the attached Plans A and B), and remove permanently from the Land (as shown edged in red on the attached Plan A) to a licensed landfill site all of the excavated material which forms the said bund.

Time for compliance: **Two months** after this Notice takes effect.

(xii) Excavate and remove permanently from the Land (as shown edged in red on the attached Plan A) to a licensed landfill site all imported fill material which has been brought onto the Land and used for the creation of fishing lakes, land raising and stockpiling of material on the Land.

Time for compliance: **Six months** after this Notice takes effect

(xiii) Excavate and remove permanently from the Land (as shown edged in red on the attached Plan A) to a licensed landfill site all below ground foul drainage tanks and pipework connected to the unlawful buildings (as shown coloured solid green in the approximate positions on the attached Plans A, B and C).

Time for compliance: **Six months** after this Notice takes effect.

(xiv) Fill to original ground level the depressions and holes created by construction of the lakes (as shown annotated "lake" and marked diagonally hatched black in the approximate positions on the attached Plans A and B); created by the excavation of flood drainage and relief channels; created by the excavation of clay (from the area shown annotated "clay working" and marked stippled black in the approximate position on the attached Plans A and B); and created by the removal of the foul drainage tanks and pipework referred to in Step 5(xiii) above, using inert material currently stored or placed on the Land. For the purposes of compliance with this Step, the original ground level shall be ascertained by the levels of those parts of the Land immediately adjoining or within the Land where no voids, land raising or stockpiling of material has occurred.

Time for compliance: **Six months** after this Notice takes effect.

(xv) Excavate and remove permanently from the Land (as shown edged in red on the attached Plan A) the hard surfacing placed along the access

roads constructed on the Land (as shown marked horizontally hatched black in the approximate positions on the attached Plans A and B).

Time for compliance: **Seven months** after this Notice takes effect.

(xvi) Following compliance with steps 5(vii) to 5(xv) (above), and in order to treat any soil compaction, plough in two directions to a depth of at least 300mm the surface of the Land in the areas from where the imported fill material has been removed; from the areas where the depressions and holes have been filled; from the areas where the building and its foundations have been removed; from the areas where the hard surfaced car park has been removed; and from the areas where the hard surfaced access roads have been removed. Following the ploughing of these areas, roll them using an agricultural roller to create a level finished surface.

Time for compliance: **Eight months** after this Notice takes effect.

(xvii) Following compliance with step 5(xvi) (above), spread over the ploughed and rolled areas inert soil forming material to a depth of at least 300mm to leave a level surface.

Time for compliance: **Eight months** after this Notice takes effect.

(xviii) Following compliance with step 5(xvii) (above), seed the areas referred to therein using a proprietary agricultural grass seed mixture.

Time for compliance: **Nine months** after this Notice takes effect.

(xix) Remove permanently from the Land (as shown edged in red on the attached Plan A) to a licensed waste disposal site all materials, waste and debris resulting from compliance with steps 5(vii)- 5(xviii)(above).

Time for compliance: **Nine months** after this Notice takes effect.

(xx) Remove permanently from the Land (as shown edged in red on the attached Plan A) all plant, machinery, equipment and vehicles used either in carrying out unlawful building or engineering operations on the Land or in complying with the Steps specified in this Notice.

Time for compliance: **Nine months** after this Notice takes effect.

(xxi) In complying with any of the above Steps, any activities or operations on the Land (as shown edged in red on the attached Plan A) shall only take place between the hours of 0800 and 1700 Mondays to Fridays and 0800 and 1300 on Saturdays, and not at all on Sundays or public holidays, in order to avoid noise nuisance or inconvenience arising for occupiers of residential properties in close proximity to the Land or recreational users of adjoining land.

Time for compliance: **One day** after this Notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 17 October 2008, unless an appeal is made against it beforehand.

Dated: 12 September 2008

Signed..... S. P. Fisher .....

Head of Legal Services
on behalf of
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent ME15 6JQ

Ref: LDMB/LEG06/00504

ANNEX

YOUR RIGHT TO APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the notice takes effect. The enclosed booklet "Enforcement Appeals - A Guide to Procedure" sets out your rights. Read it carefully. You may use the enclosed appeal forms. One is for you to send to the Secretary of State if you decide to appeal. Another is for you to keep as a duplicate for your own records. You should also send the Secretary of State a copy of this enforcement notice, which is enclosed. The third copy of the appeal form and enforcement notice should be returned to the Council at the time of your appeal.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the specified date and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council. It can also result in the Council doing the work itself and then recovering the cost of so doing from you.

FEES

Under Regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 two fees are payable on the deemed application for planning permission under s. 174(2)(a) of the 1990 Act. Should you appeal and cite s. 174(2)(a) then the fees payable are as follows:

£25,000	Made payable to '*Maidstone Borough Council*' and sent with a copy of your appeal to Maidstone Borough Council, Legal Services Section, Maidstone House, King Street, Maidstone, Kent ME15 6JQ.
£25,000	Made payable to '*DCLG*' and sent with your appeal to The Planning Inspectorate, P. O. Box 326, Bristol BS99 7XF.

INTERNET

An internet-based appeal service is now available that you can use to submit your appeal/view evidence and submit your comments and to check the progress of this case

You can either submit your appeal on line to:

http://www.planningportal.gov.uk/england/genpub/en/1102936775943.html

Or, you can search for and comment on cases at:

http://www.planningportal.gov.uk/england/genpub/en/1102936775950.html

RECIPIENTS OF THIS ENFORCEMENT NOTICE

The recipient(s) of this Enforcement Notice are:

The Secretary
Portstand Limited
Camburgh House
27 New Dover Road
Canterbury
Kent CT1 3DN

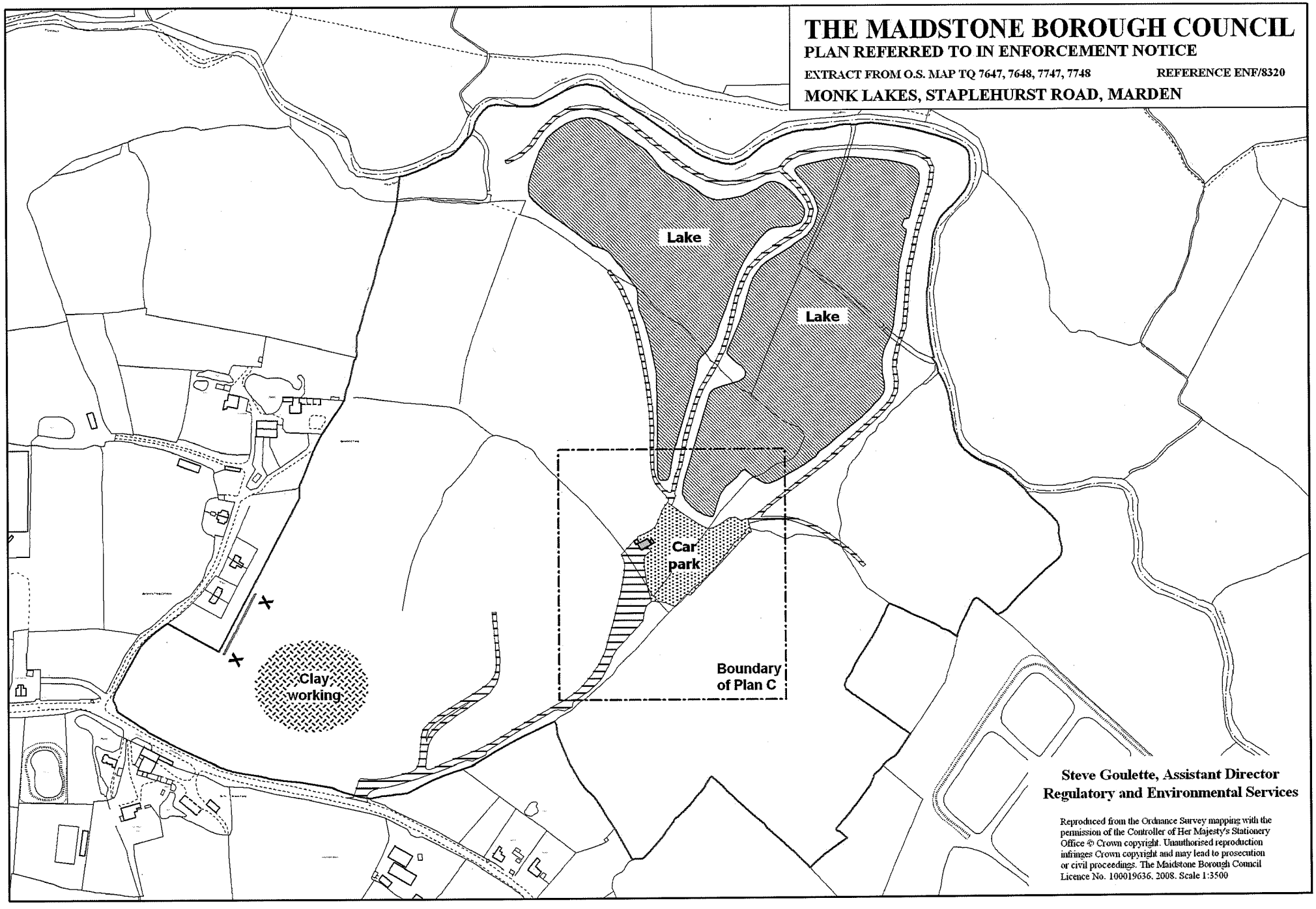
Mr. Guy Richard Harrison
Sopers Farm
Peppers Lane
Ashurst
Steyning
West Sussex BN44 3AX

Ms. Emily Harrison
Sopers Farm
Peppers Lane
Ashurst
Steyning
West Sussex BN44 3AX

Mr. Guy Richard Harrison
Monk Lakes
Staplehurst Road
Marden
Tonbridge
Kent TN12 9BS

Ms. Emily Harrison
Monk Lakes
Staplehurst Road
Marden
Tonbridge
Kent TN12 9BS

The Secretary
Monk Lakes Limited
Monk Lakes
Staplehurst Road
Marden
Tonbridge
Kent TN12 9BS


THE MAIDSTONE BOROUGH COUNCIL
PLAN REFERRED TO IN ENFORCEMENT NOTICE
EXTRACT FROM O.S. MAP TQ 7647, 7648, 7747, 7748
REFERENCE ENF/8320
MONK LAKES, STAPLEHURST ROAD, MARDEN
Lake
Lake
Car park
Boundary of Plan C
Clay working
Steve Goulette, Assistant Director
Regulatory and Environmental Services
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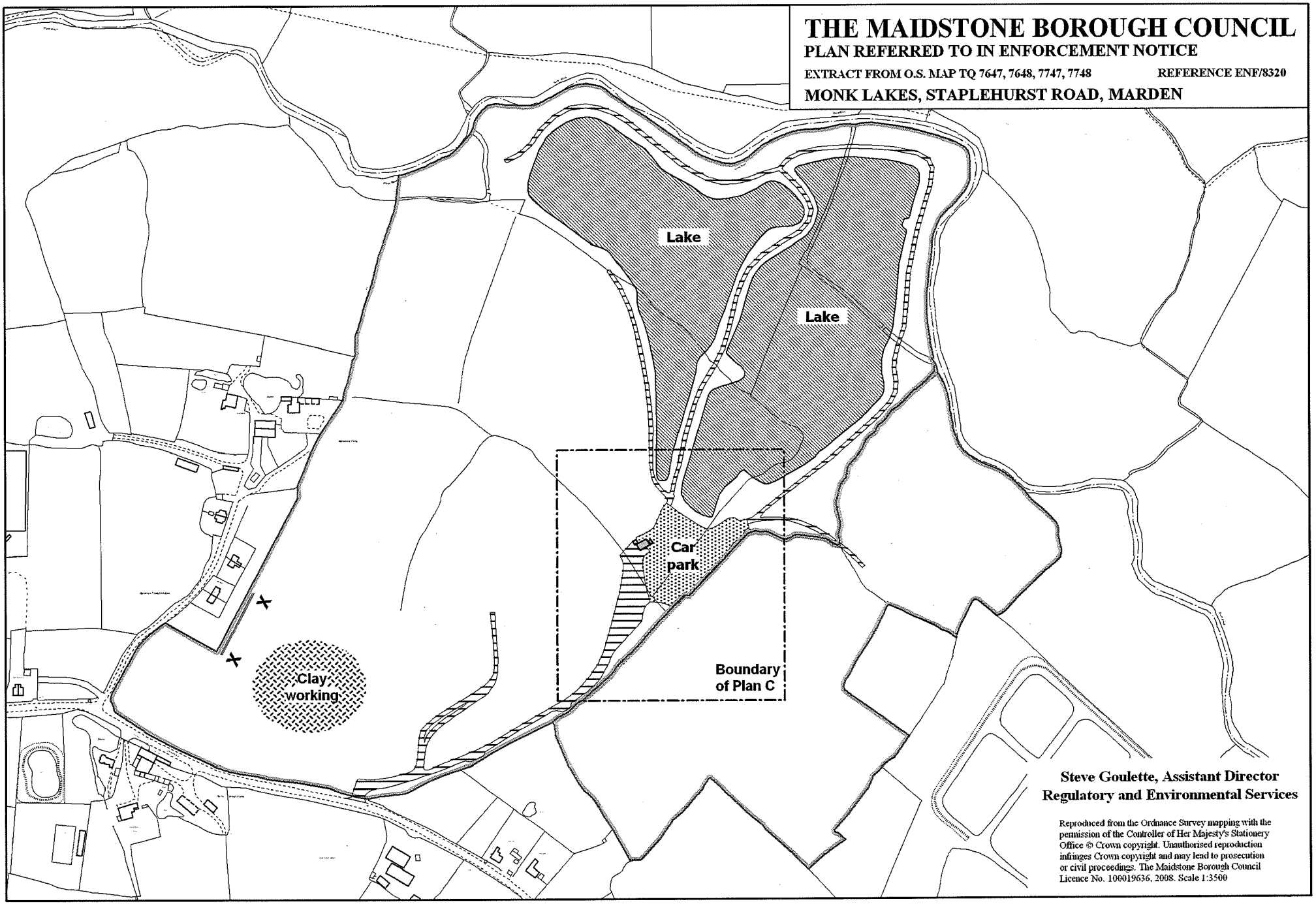
Plan B

THE MAIDSTONE BOROUGH COUNCIL

PLAN REFERRED TO IN ENFORCEMENT NOTICE

EXTRACT FROM O.S. MAP TQ 7647, 7648, 7747, 7748 REFERENCE ENF/8320

MONK LAKES, STAPLEHURST ROAD, MARDEN



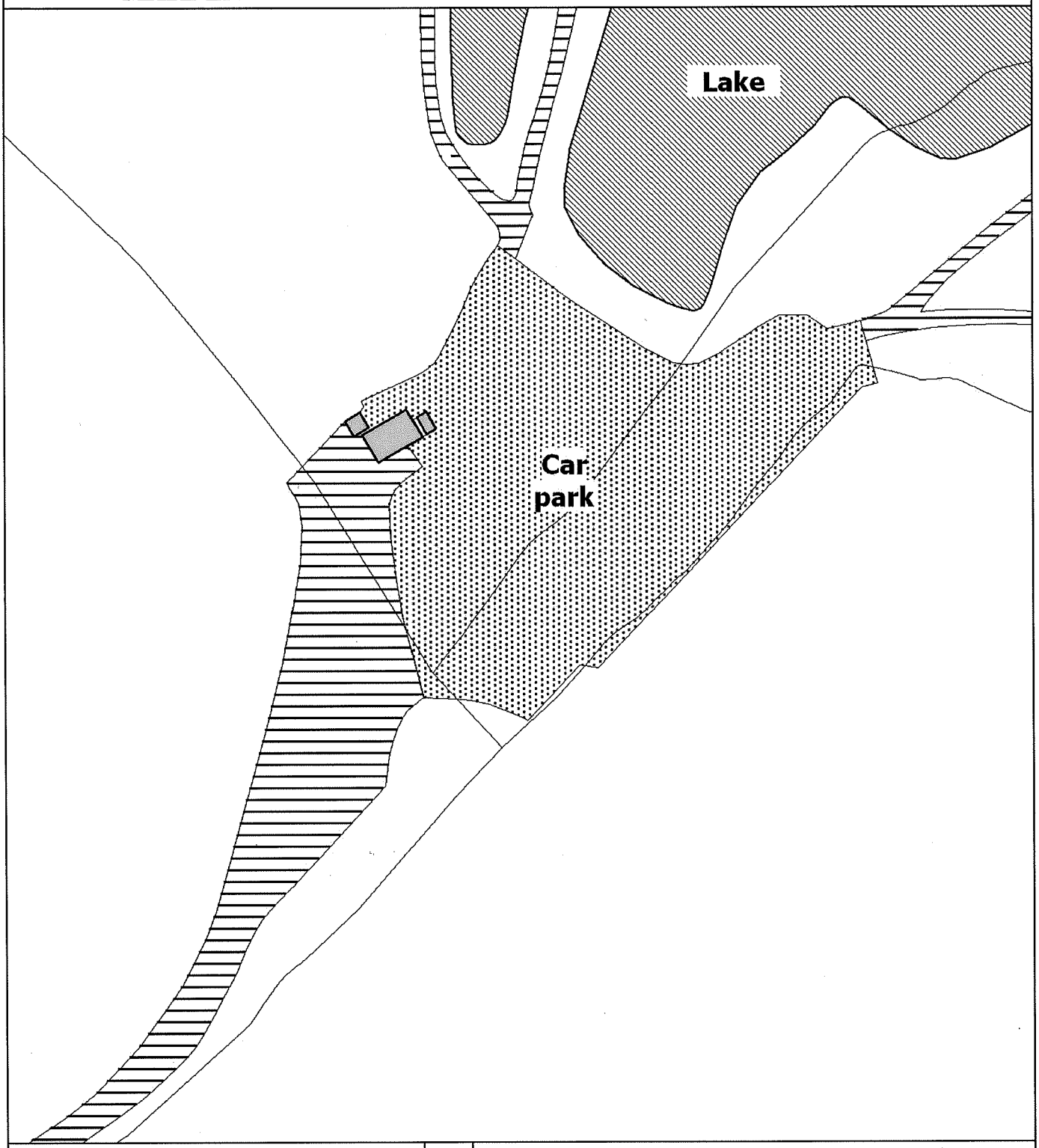
Steve Goulette, Assistant Director Regulatory and Environmental Services

THE MAIDSTONE BOROUGH COUNCIL

PLAN REFERRED TO IN ENFORCEMENT NOTICE

EXTRACT FROM O.S. MAP TQ 7647, 7648, 7747, 7748 REFERENCE ENF/8320

MONK LAKES, STAPLEHURST ROAD, MARDEN



Steve Goulette, Assistant Director
Regulatory and Environmental Services

Appeal Decisions

Hearing held on 28 April 2015
Site visit made on 28 April 2015

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2015

Appeal A: Appeal Ref: APP/U2235/C/08/2087987
Land known as land lying to the east of Old Hertsfield Farm, Staplehurst Road, Marden, Tonbridge, Kent (formerly part of Riverfield Fish Farm) and land known as land lying to the north of Staplehurst Road, Marden, Tonbridge, Kent (formerly part of land known as Mallard Lakes), all now collectively known as 'Monk Lakes' ("the Land")

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Guy Harrison against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 12 September 2008.
- The breach of planning control as alleged in the notice is unauthorised development consisting of engineering, mining and building operations and unauthorised change of use of land to recreational fishing lakes and for waste disposal not in accordance with planning permission reference MA/03/0836, and unauthorised development by the change of use of the lakes on land formerly known as Mallard Lake and other parts of the former Riverfield Fish Farm for recreational fishing without the grant of planning permission, all resulting in the following breaches of planning control:
    - i) Engineering operations involving the creation of lakes;
    - ii) The importation of materials, including construction and demolition waste, and the deposit and the stockpiling of these materials on the land;
    - iii) Engineering operations involving the raising of the levels of the land using both imported materials and materials derived from the creation of lakes on the site;
    - iv) The construction of flood relief and drainage channels;
    - v) The construction of engineered bunds;
    - vi) Mining of clay;
    - vii) The construction of a car park;
    - viii) The construction of access roads;
    - ix) The erection of three buildings;
    - x) The installation of a foul drainage collection system;
    - xi) The use of lakes constructed on the site of planning permission MA/03/0860 for recreational fishing;
    - xii) The change of use of Mallard Lake and part of the former Riverfield Fish Farm from fish farming to recreational fishing;
    - xiii) Use of part of a building for a Class A1 use;
    - xiv) The stationing of mobile buildings;
    - xv) The stationing of plant and equipment unconnected with any lawful operational development or use of the land;

xvi) The erection of fences, signs and a car park barrier ancillary to the unlawful operational development and change of use of the Land; and

xvii) The stationing on the Land of litter bins, refuse bins, picnic tables and other paraphernalia ancillary to the unlawful operational development and change of use of the Land.

- The requirements of the notice and the period for compliance with each requirement are:

i) Cease permanently the use of the Land (as shown edged in red on Plan A attached to the notice) and all lakes and ponds on the Land for recreational fishing: One day;

ii) Cease permanently the A1 use of any of the unlawful buildings (as shown coloured solid green in the approximate positions on Plans A, B and C attached to the notice): One day;

iii) Cease permanently the use of the Land (as shown edged in red on Plan A attached to the notice) for the stationing of mobile buildings or mobile catering units: One week;

iv) Remove permanently from the Land (as shown edged in red on Plan A attached to the notice) the mobile buildings and mobile catering units stationed on the Land: One week;

v) Demolish or dismantle and then remove permanently from the Land (as shown edged in red on Plan A attached to the notice) all fences and signs; the car park barrier; all litter bins, refuse bins, picnic tables and other paraphernalia brought onto the Land in association with its unlawful development: One month;

vi) Remove permanently from the Land (as shown edged in red on Plan A attached to the notice) to a licensed waste disposal site all materials, waste and debris resulting from compliance with steps (i) to (v) above: One month;

vii) Cease permanently:

(a) The importation from outside the Land (as shown edged in red on Plan A attached to the notice) and deposit on the said Land of construction and demolition waste and other spoil materials;

(b) All engineering operations associated with the unlawful creation of recreational fishing lakes;

(c) All engineering operations associated with land raising;

(d) The stockpiling of material on the Land (as shown edged in red on Plan A attached to the notice); and

(e) The excavation of clay; but

excluding the specific engineering operations detailed below that are necessary to remedy the breaches of planning control that have occurred on the Land: One day;

viii) Demolish and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) the unlawful buildings (as shown coloured solid green in the approximate positions on Plans A, B and C attached to the notice): One month;

ix) Excavate and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) the foundations of the unlawful buildings (as shown coloured solid green in the approximate positions on Plans A, B and C attached to the notice): Two months;

x) Excavate and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) the hard surfacing placed over the car park area (as shown annotated "car park" and marked stippled black in the as approximate position on Plans A, B and C attached to the notice): Two

months;

xi) Excavate down to original ground level the earth bund to the rear of Hertsfield Cottages (as shown marked "x-x" and coloured orange in the approximate position on Plans A and B attached to the notice), and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) to a licensed landfill site all of the excavated material which forms the said bund: Two months;

xii) Excavate and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) to a licensed landfill site all imported fill material which has been brought onto the Land and used for the creation of fishing lakes, land raising and stockpiling of material on the Land: Six months;

xiii) Excavate and remove permanently from the Land (as shown edged in red on Plan A attached to the notice) to a licensed landfill site all below ground foul drainage tanks and pipework connected to the unlawful buildings (as shown coloured solid green in the approximate positions on Plans A, B and C attached to the notice): Six months.

xiv) Fill to original ground level the depressions and holes created by construction of the lakes (as shown annotated "lake" and marked diagonally hatched black in the approximate positions on Plans A and B attached to the notice); created by the excavation of flood drainage and relief channels; created by the excavation of clay (from the area shown annotated "clay working" and marked stippled black in the approximate position on Plans A and B attached to the notice); and created by the removal of the foul drainage tanks and pipework referred to in step (xiii) above, using inert material currently stored or placed on the Land. For the purposes of compliance with this step, the original ground level shall be ascertained by the levels of those parts of the Land immediately adjoining or within the Land where no voids, land raising or stockpiling of material has occurred: Six months;

xv) Excavate and permanently remove from the Land (as shown edged in red on Plan A attached to the notice) the hard surfacing placed along the access roads constructed on the Land (as shown marked horizontally hatched black in the approximate positions on Plans A and B attached to the notice); Seven moths;

xvi) Following compliance with steps (vii) to (xv) above, and in order to treat any soil compaction, plough in two directions to a depth of at least 300mm the surface of the Land in the areas from where the imported fill material has been removed; from the areas where the depressions and holes have been filled; from the areas where the building and its foundations have been removed; from the areas where the hard surfaced car park has been removed; and from the areas where the hard surfaced access roads have been removed. Following the ploughing of these areas, roll them using an agricultural roller to create a level finished surface: Eight months;

xvii) Following compliance with step (xvi) above, spread over the ploughed and rolled areas inert soil forming material to a depth of at least 300mm to leave a level surface: Eight months;

xviii) Following compliance with step (xvii) above, seed the areas referred to therein using a proprietary agricultural grass seed mixture: Nine months;

xix) Remove permanently from the Land (as shown edged in red on Plan A attached to the notice) to a licensed waste disposal site all materials, waste and debris resulting from compliance with steps (vii) to (xviii) above: Nine months;

xx) Remove permanently from the Land (as shown edged in red on Plan A attached to the notice) all plant, machinery, equipment and vehicles used either in carrying out unlawful building or engineering operations on the

Land or in complying with the steps specified in the notice: Nine months;

xxi) In complying with any of the above steps, any activities or operations on the Land (as shown edged in red on Plan A attached to the notice) shall only take place between the hours of 0800 and 1700 Mondays to Fridays and 0800 and 1300 on Saturdays, and not at all on Sundays or public holidays, in order to avoid noise nuisance or inconvenience arising for occupiers of residential properties in close proximity to the Land or recreational users of adjoining land: One day.

- The appeal is made on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal B: Appeal Ref: APP/U2235/A/09/2093611
Riverfield Fish Farm, Staplehurst Road, Marden, Kent TN12 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Guy Harrison against Maidstone Borough Council.
- The application Ref MA/08/1846 is dated 9 September 2008.
- The application sought planning permission for change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing. The application involves the formation of ponds and lakes, the erection of a building and the formation of a car park. The existing access to Staplehurst Road is to be improved as shown on drawing numbers 674/VIII-1 and OS plan received on 08/04/03 and as amended by additional documents being drawing number 674/VIII-2 received on 25/04/03, and as amended by additional documents being drawing number 674/VIII-1A received on 07/07/03, and as amended by additional documents being No. 1 Rider drawing to drawing number 674VIII-1 and No. 2 Rider drawing to drawing number 674/VIII-1A and received on 07/07/03, and as amended by additional documents being drawing number 674/VIII-1B and OS plan received on 10/07/03 without complying with a condition attached to planning permission Ref MA/03/0836, dated 17 September 2003.
- The condition in dispute is No 14 which states that: *there shall be no land raising within the floodplain, including the temporary stockpiling of soil*.
- The reason given for the condition is: *to ensure that there is no loss of flood storage capacity or obstruction of flood flows and in accordance with policy ENV50 of the Maidstone Borough-Wide Local Plan 2000*

Appeal C: Appeal Ref: APP/U2235/A/09/2093624
Riverfield Fish Farm, Staplehurst Road, Marden, Kent TN12 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Guy Harrison against Maidstone Borough Council.
- The application Ref MA/08/1878, is dated 12 September 2008.
- The development proposed is schemes to fulfil the pre-commencement conditions for planning permission reference MA/03/0386 (conditions 5, 7, 10, 12, 13 and 15).

Decision

Appeal A: Appeal Ref: APP/U2235/C/08/2087987

1. The appeal is allowed on ground (g), and the enforcement notice is varied: by the deletion of two months and the substitution of 19 months as the period for compliance for requirement (xi); by the deletion of six months and the substitution of 19 months as the period for compliance for requirements (xii), (xiii) and (xiv); by the deletion of eight months and the substitution of 22 months as the period for compliance for requirements (xvi) and (xvii); by the deletion of nine months and the substitution of 22 months as the period for compliance for requirements (xviii), (xix) and (xx). Subject to these variations the enforcement notice is upheld.

Application for costs

2. At the Hearing applications for costs were made by the Council and Mr Padden against the appellant. These applications are the subject of separate Decisions.

Procedural matters

3. The reference in the final sentence of the final bullet of the summary details of Appeal A is correct since it reflects the law at the date when the appeal was made.

4. As explained below, Appeal A is proceeding on ground (g) only; both Appeals B and C were withdrawn on 3 March 2015.

Background to the appeals

5. Participants in this matter are very familiar with the extensive and lengthy planning and litigation history. I shall deal with it only briefly and insofar as it is relevant to my determination of the two applications for costs that have been made against the appellant.

6. Planning permission was granted on 17 September 2003 under reference MA/03/0836 (the 2003 permission) for the development set out in the summary details above for Appeal B. This was subject to a number of conditions and both the Council and Mr Padden argue that a number were pre-commencement conditions that go to the heart of the permission. For reasons that I shall come to, this matter was never discussed and I do not need to resolve it. However, given the nature of the approved plans and their lack of clarity, condition 12 at least amounts to such a condition in my judgement.

7. The Council's evidence is that none of what it regarded as the pre-commencement conditions were ever the subject of the proper submissions, let alone formally discharged. Furthermore, it considers that the development that has taken place is so materially different to that permitted by the 2003 permission that it amounts to development without planning permission. Eventually, the notice that is the subject of Appeal A was issued. In the meantime, much of the development that is now on the land had taken place. The appellant acquired the site well after the development had commenced.

8. The Appeal B application was submitted just before the notice was issued. The Appeal C application was, as I understand it, made on the day the notice was issued. This was made on a 'without prejudice' basis since it is the appellant's position that the relevant conditions had been discharged.

9. For reasons that do not need to be elaborated upon, the Council considered both planning applications to be invalid. The Planning Inspectorate initially took that view. However, following a legal challenge by the appellant, the Planning Inspectorate conceded and a Consent Order was handed down on 24 November 2011 formally quashing that decision.

10. Shortly after, what amounts to a part retrospective planning application (ref MA/11/1948) was submitted for the retention of two lakes (Bridges and Puma) and the creation of three additional recreational fishing lakes plus a clubhouse building and associated works and landscaping (the 2011 application). This was approved by the Council in September 2012 (subject to a legal agreement) but quashed by the court in January 2014 on the application for a judicial review by Mr Padden. This application is currently being re-determined by the Council.

11. It is also relevant that the notice that is subject of Appeal A was accompanied by a Notice under Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the 1999 Regs) requiring an environmental impact assessment (EIA). Similarly, the Secretary of State formally notified the appellant under the relevant Regulations of the 1999 Regs that EIA was required in respect of both the Appeal B and C applications. None of the required EIAs have ever been submitted by the appellant.

12. The determination of these Appeals was to be by way of a local Inquiry and I held a Pre Inquiry Meeting (PIM) on 17 February 2015. In the circumstances I issued a detailed note before the PIM setting out matters that needed to be clarified at the PIM to assist preparation of final statements and matters that would need to be answered at the Inquiry itself. At my request, most parties made helpful written submissions before the PIM.

13. Dealing first with Appeal A, the appeal on ground (d) had already been withdrawn in July 2009. At the PIM the appellant explained that he would not be legally represented at the Inquiry. His attention was drawn to the fact that most of the points taken against him would be matters of law and the implications of those points, most of which were set out in the pre-PIM submissions, were discussed.

14. It was pointed out that the appeal on ground (b) was unlikely to lead to anything other than a correction of the notice. It was confirmed that the nub of the appellant's case on ground (c) would be that the Council's actions had created a legitimate expectation for the appellant that the pre-commencement conditions had, in fact, been discharged. Both the Council and Mr Padden referred to the extensive case law that this public law principle could not apply in this case and that it cannot be applicable to planning matters where the statutory code provides for the matter (in this case the formal discharge of conditions) to be dealt with.

15. In respect of the ground (f) appeal the appellant implied that an alternative scheme would be promoted to address the Council's reason for issuing the notice but the detail of that scheme was never made clear. For its part, the Council confirmed that its purpose in issuing the notice was to remedy the breach of planning control, not the injury to amenity. Both the Council and Mr Padden argued that in those circumstances and where the deemed planning application was not being considered, the settled case law established that an

alternative scheme simply cannot fall within the scope of s173(11) of the Act and so could not be put in place through an appeal on ground (f).

16. Having reflected on the matters discussed at the PIM and set out in the issued note of it the appellant withdrew all grounds of appeal save for that on ground (g) on 3 March 2015.

17. Turning now to Appeals B and C, it was the unanimous view of all at the PIM that the effect of the Consent Order was that my remit was only to consider the validity of the two appeals, not the substantive appeals themselves. Various points were put to the appellant including the only outcome possible for the substantive appeals in the absence of the required EIA and the benefit of successful appeals in any event given that the 'parent' planning permission had lapsed some considerable number of years previously. Again on reflection, both Appeals were withdrawn on 3 March.

18. Given the limited nature of the matter outstanding the procedure was changed to a Hearing.

Appeal A: the s174 appeal on ground (g)

Preliminary matters

19. In the lengthy period that has passed since the notice was issued certain steps have been overtaken by events. In the main, these events are further regularising planning permissions. At the Hearing the Council confirmed that steps (i) and (v) were inconsistent with a subsequent planning permission covering the eastern part of the land that is the subject of the notice and that the effect of s180 of the Act therefore applied to that part of the notice land. Similarly, steps (x) and (xv) were now wholly inconsistent with that planning permission.

20. At various times since the appeal was made the appellant has offered differing periods for the reasonable compliance with the notice. However, this has always been expressed in global terms with very little evidence or explanation as to why the period allowed for each step is unreasonable or insufficient. It was not until the statement produced for the Hearing that the appellant went through the steps individually and offered a view about the period specified.

21. The steps of the notice are broadly grouped to achieve three objectives; the cessation of the unauthorised uses and operations; the removal of the physical works arising from those uses and operations; and the restoration of the land to something akin to its former levels and condition. A total of nine months is specified to complete all the steps. Some are clearly dependent upon others having taken place and the total period is therefore cumulative.

22. It is apparent from the evidence that work continued after the notice was issued and the appeal lodged. The position now is that two of the three above ground lakes have been finished to all intents and purposes and filled with water and, possibly, fish. The third is now a below ground excavation with a, possibly significant, body of water at its base.

23. The Council agrees that step (vii) has, now, been complied with. To the extent that the bund referred to in step (xi) has now been incorporated into the above ground lake walls that step too has been complied with in part although the material remains on site and the feature which is in clear view from the

dwellings occupied by members of the Hertsfield Residents Association (HRA) and Mr Padden remains well above original ground level.

24. It was common ground that the determination of the appeal must therefore address the current position. Given that the aims of the third group of steps set out above is, in part, to restore original ground levels, the continuation of the work after the issue of the notice simply means that the work now required to do so is more extensive. It was common ground that, even if the original periods were reasonable, a total period of nine months cannot now be achieved. It was accepted by all therefore that the appeal would succeed to that extent. The focus of the discussion at the Hearing was therefore on what period would be reasonable in the light of the evidence presented.

25. In determining that period, I shall consider each of the three groups of steps in turn, but not in sequential order.

The cessation of the unauthorised uses and operations

26. This group comprises steps (i), (ii), (iii) and (vii).

27. At the Hearing the appellant accepted that one day was reasonable to comply with step (i). The appellant's principal case in respect of this step was related to the need, first, to retain the use of lakes Bridges and Puma to generate finance to carry out the remedial work and, second, to allow time for the re-determination of the 2011 application. I shall deal with both of these arguments under the middle grouping of steps above.

28. The appellant's position in respect of steps (ii) and (iii) was based on a misunderstanding that the uses and buildings referred to were now subject of extant planning permissions. The Council's evidence, which the appellant accepted, was that these matters were permitted by a different planning permission to the one assumed by the appellant; moreover, it was time limited only until January 2013. On that understanding, the appellant accepted that the periods were reasonable.

29. As set out above, step (vii) has now been complied with.

30. On the evidence before me, there is no reason to vary the periods allowed in the notice for any of these four steps.

The restoration of the land to something akin to its former levels and condition

31. I shall deal here only with those steps requiring the restoration of the land to its former condition since achieving the former levels is bound up with the middle group of steps. This group therefore comprises steps (xvi) to (xxi).

32. It is implicit from the way the notice is structured that the period allowed for steps (xvi) to (xx) is two months. The appellant in fact presented no evidence to explain why this was insufficient. However, the consensus view among Hearing participants was that **three months** would be more reasonable and that is the time that I shall build into the cumulative total. I shall deal with the potential implications of the season during which the work may need to be carried out later.

33. Step (xxi) is a requirement akin to a condition that would be attached to a planning permission. No point was put to me that this step was in any way

flawed in law. Since it would apply only for the period during which the other steps of the notice were being carried out, I see no difficulty with the wording of the step. The period for compliance (one day) would ensure that adherence to it would be continuing during the works.

The removal of the physical works arising from those uses and operations

34. The steps covered by this group are those not already mentioned as being either subject to the effect of s180 of the Act or within the preceding two groups.

Minor steps

35. The appellant offered no specific evidence to explain why the periods specified for steps (iv), (v) (to the extent that it is not subject to the effect of s180 of the Act) and (vi) were too short. As I understand it, the case made does not address the steps at that level of detail and I see no reason why these three steps could not be complied with in the periods set out.

36. The appellant's case in respect of steps (viii), (ix) and (xiii) is based on exactly the same misunderstanding regarding the correct extant planning permission as already set out at paragraph 28 above. My conclusion on the periods for compliance with these three steps is therefore the same as set out there and is for the same reasons.

The key steps – the appellant's approach and appraisal of it

37. That leaves steps (xi), (xii) and (xiv). In short, these deal collectively with the removal of all the material that has been imported to the land and the restoration of the original ground levels by infilling the holes and depressions that have been created.

38. The gist of the appellant's case in respect of these steps is twofold. First, it is argued that the Council approves of the 2011 application as evidenced by the fact that it granted planning permission in 2012. The appellant therefore argues that the periods specified should allow for the re-determination of that application to be completed since it would mean the requirements of the notice would not then have to be unnecessarily implemented.

39. Second, the appellant's investigations suggest that the cost of removing the material alone would be between £7.6 and £9.5 million. Unless lakes Bridges and Puma are allowed to continue in operation and generate finance and the period for compliance is extended to something between 39 and 48 years, the appellant would have insufficient funds to carry out the works and Taytime Ltd would face bankruptcy. The land would therefore be abandoned and/or open to abuse.

40. A local planning authority may only issue a notice if it appears to it that there has been a breach of planning control and that it is expedient to do so having regard to the provisions of the development plan and any other material planning considerations. The appellant has withdrawn all of the grounds of appeal that could have challenged the Council's view that there has been a breach of planning control. It is only possible to directly challenge the expediency of issuing the notice through a judicial review of the decision to issue it. It cannot be challenged by way of an appeal under s174 of the Act. I have no evidence that any such application was made.

41. The Council has set out in the notice why it considers that the unauthorised development conflicts with the development plan policies cited and both Mr Padden and the HRA have given written evidence of the harm caused to amenity and to property. There is no appeal on ground (a) and no deemed application under s177(5) of the Act. I have not therefore been asked to consider those matters.

42. It follows therefore that it is accepted that the breaches alleged by the Council have taken place and that it is expedient to bring them to an end through the steps set out. Underpinning the enforcement code is the principle that, if it is expedient to issue the notice, the harm caused by the breaches of planning control should be remedied as quickly as is reasonably practicable. The steps specified and the period allowed for compliance with each should be determined, by the Council in the first instance, with that principle in mind.

43. A period of the length suggested by the appellant is wholly inconsistent with that principle. What is suggested would amount to a lengthy time limited planning permission to continue the development carried out, at least in part. Should the appellant (and Taytime Ltd is not the appellant as has been continuously and consistently pointed out by several parties including the Planning Inspectorate) not have the means to carry out the work, the Council has the power to do so under s178 of the Act.

44. Furthermore, if for this reason, or in the light of any new information regarding the programme for the re-determination of the 2011 application that might be brought to its attention, the Council considers it appropriate to do so, it has the power under s173A(1) to waive or relax any requirement of the notice and, in particular, may extend the period for compliance. That in my view is the appropriate way to address the arguments put by the appellant. They do not go to the heart of an appeal on ground (g) which is for the appellant to explain why, in practical terms, the period specified falls short of what should reasonably be allowed.

The key steps – understanding the current position

45. There is no evidence that the appellant has investigated in any detail what will be required to comply with these three steps. The appellant was unable therefore to support with evidence any argument about the period that would be reasonable.

46. However, there is little evidence either that the Council considered in any detail what would be required to carry out these steps. There is no evidence of discussions with the Environment Agency (EA) before the notice was issued. It is clear from the evidence of the EA that the Council's assumption that the material could be moved off site with the same sort of speed with which it arrived is simply not realistic, especially under the current statutory environmental permitting regime. Moreover, the draining of the water bodies and the appropriate prior treatment of the fish stocks is simply not mentioned in the notice notwithstanding that it is a prerequisite for the removal of much of the material. As became clear from the evidence this will be far from simple and requires time both for the necessary permits to be issued and the work to take place.

47. Furthermore, as the Council accepted, the wording of some steps would introduce time constraints and in some cases are actually inconsistent with one

another. It was agreed that steps (vii), (xi), (xii) and (xiv) together would have the following consequences:

(a) The imported material would have to be separated from that excavated/mined from the site itself so that only the imported material was removed. In practice this would be a difficult task as the materials were now mixed together. Moreover, it would be necessary to separate the imported material into particular types of waste streams to ensure that waste carriers and receiving sites would be likely to remove it and accept it respectively under current regulatory conditions;

(b) Once separated, it could not be stockpiled on the site prior to removal since this is prohibited by step (vii);

(c) Although step (xiv) allows the depressions and holes to be filled with inert material 'currently' stored or placed on the land (that is at September 2008), step (xii) requires all imported fill material brought onto the land to be removed. These two steps are therefore incompatible and, furthermore, no materials balance has been carried out to assess whether sufficient material as specified in the notice is available to complete the step;

(d) However, no further material may be brought onto the site under step (vii);

(e) All of the material to be removed must, and can only, be taken to a licensed landfill site. There is no evidence about the location of suitable landfill sites, the capacity available in them or the planning or permit conditions under which they operate, all of which may affect the rate at which material can be taken off site.

48. I agree with counsel for Mr Padden that it is not within my remit to vary the steps specified in the notice when considering only an appeal on ground (g). The Council indicated that it would use its powers under s173A(1) of the Act to relax the steps in the following ways to address these issues. First, step (xii) would be relaxed by the insertion of the words "excluding inert material required to comply with step (xiv)" at an appropriate point in the step. Second, wherever in the steps the phrase "licensed landfill site" appears, this would be replaced by "site that holds an environmental permit, a recovery permit or a registered exemption under the Environmental Permitting (England and Wales) Regulations 2010 or any successor statute".

49. These are helpful concessions and clarifications by the Council. First, they remove any doubt that suitable imported material may be used to restore the original ground levels. Second, they widen the range of facilities to which the material may be taken. Both therefore affect the period that may be required to comply with the steps, almost certainly reducing the time necessary. Although not discussed at the Hearing to the point where alternative wording was offered, the Council may wish to consider if any further relaxations might also assist. Some relaxation of step (vii) (d), which prevents stockpiling material on the land, would appear to be essential.

50. The next point to understand is the amount of material that may need to be removed. The EA produced an estimate using Light Detection and Ranging (LIDAR) elevation data and aerial photography data (Document 3). The limitations of the assessment are set out within the Document and relate mainly to the way that vegetation and water bodies are treated by the

techniques used. It was agreed however that, as a working assumption, an imported fill volume of some 450,000 cubic metres would be of the right order.

51. There are only three voids to fill; lakes Bridges and Puma and the clay extraction void. The other lakes have been created above ground and the water bodies are contained by the engineered fill and other material. The Council estimated the areas of Puma and Bridges to be 34,750 and 45,000 square metres respectively. Although the depth is not known, the evidence is that the optimum for a fishing lake is some 2 metres on average. Using that assumption, the volume of material required to fill those two lakes is about 160,000 cubic metres. No estimate was available of the clay extraction void.

52. Taking all the available evidence together a very crude assumption was agreed that some 290,000 cubic metres of material would need to be removed from the appeal site. Allowing for the filling of the clay extraction area it would be less in reality. Again a crude working assumption was that an average lorry load would be 10 cubic metres. This would give a requirement for 29,000 lorry loads or 58,000 lorry movements.

53. Step (xxi) allows some 2500 hours per year when operations can take place. There is no evidence from the Council about the number of lorry movements that the highway authority might find acceptable in highway safety terms given that the access from the site is onto an 'A' road. The figures given in the Council's Hearing statement were confirmed as being a response from the EA to the question 'what are the implications for lorry movements of removing the material in the six months allowed in the notice'. They do not necessarily represent a desirable level of traffic movements.

54. Removing the material at a rate of 10 lorries an hour would generate a lorry movement into or out of the site every three minutes on average. Assuming that this rate of movement (100 cubic metres an hour) was maintained continuously throughout the period allowed by step (xxi), it would take about **14 months** to clear the site (250,000 cubic metres removed in a year with the remaining 40,000 cubic metres taking eight weeks at 5,000 cubic metres a week).

55. The final point is the draining of the lakes and the clay extraction void. The EA gave detailed written and oral evidence about the process and issues that would need to be addressed. These include:

    (a) A detailed methodology for the safe retrieval and then removal of the fish to another location. This methodology would need to be developed, submitted to the EA for approval and a permit issued. The EA has a target period of three months to issue such a permit;

    (b) Removal of any organic fraction at the bottom of lakes Bridges and Puma in particular prior to any discharge of waters to the River Beult which is a Site of Special Scientific Interest;

    (c) Control of the quality of the water to be discharged through either a Trade Effluent Permit or a local Area Agreement;

    (d) Control of the rate of discharge to prevent scouring of the river banks and bed as this would cause increased silt loading downstream.

56. There are several 'unknowns' including the volume and quality of the water in each of the above and below ground lakes and the clay extraction void, the

extent to which each of the lakes is stocked with fish and the volume of the organic fraction that would have to be removed. The appellant also suggested that the fish could only be removed at or below certain temperatures which could affect the time of year when removal and relocation could take place. That however is something that the required permit would address on the basis of clearer evidence than was available to me.

57. Taking all these factors into account there was a convergence around a period of **five months** as the minimum period for the draining of the water bodies.

The variation of the periods specified in the notice

58. It was agreed by the Council and Mr Padden that I should vary the periods specified in the notice to reflect the minimum that should reasonably be allowed to complete the phases necessary to achieve the ultimate requirement to return the land to its former condition. Given the lack of clear evidence available about some key matters it was acknowledged that the appellant may not be able to comply with certain steps within the periods set out for reasons outside his control. For example, there may be a delay in the issue of the required permits to allow the draining of the water bodies, the fish may indeed only be able to be removed below certain temperatures which could affect the start of the drain-down or seasonal issues may delay restoration. These are however matters which, if they occur, could be explained to Council which could, if appropriate, use its powers under s173A(1) of the Act to extend the periods for compliance.

59. Emboldened in the preceding paragraphs are the periods that emerged for that purpose from my consideration of the evidence. The total period would be some 22 months which is within the range suggested by the Council in closing submissions. Mr Padden maintained that the period should be shorter at about 15 months and suggested that the removal of material could begin while the necessary permits were being sought to drain the water bodies. I do not consider that to be practicable since in all of the voids there is water present which would have to be removed under permit prior to any significant material handling and movement.

60. It is only necessary to vary the periods for those steps that require material to be removed or used to fill holes and depressions and to restore the land. These are steps (xi) to (xiv) and (xvi) to (xx) respectively. For the first set, the period needs to take account of the draining of the water bodies and the removal of the material from the site. That period is 19 months. Since the notice is cumulative, the second set would be varied to 22 months to allow for the three month period agreed as reasonable.

61. The Council indicated that it would wish to waive step (xi) since the bund had been removed. Mr Padden disagreed and argued that it should be retained. Ultimately, that is a matter for the Council. Should the step be retained the period needs to be consistent with the other like steps. Step (xiii) is slightly different. Although the work required would appear to be capable of being carried out in the six months allowed, it may be that the tanks and pipework are incorporated within the earthworks that form the banks of the water bodies. I shall therefore vary the period to 19 months for consistency.

Conclusion

62. For the reasons given above I conclude that a reasonable cumulative period for compliance would be 22 months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Guy Harrison	Appellant
Emily Harrison	Appellant's partner

FOR THE LOCAL PLANNING AUTHORITY:

Megan Thomas of Counsel	Barrister instructed by Kate Jardine, solicitor for the Council
Richard Timms	Planning Officer

INTERESTED PERSONS:

James Maurici QC	Counsel for Mr Padden instructed by Rebecca Lord, Bell Cornwall LLP
Rebecca Lord MSc MRTPI	Associate, Bell Cornwall LLP, Planning consultant to Mr Padden
Dr Paul Ellis BSc, PhD, CGeol	Director, ESI Ltd, consultant hydrogeologist to Mr Padden
Ghada Mitri	Planning adviser Environment Agency
Neil Gunn CWEM Ceng	Environment Agency
Jamie Hamilton	Environment Agency
John Edwards	Hertsfield Residents Association
Darryl Parker	Hertsfield Residents Association
Jenny Mathie	Local resident
Alan Mathie	Local resident
Jeannie Highwood	Local resident
Bill Highwood	Local resident
David Padden	Local resident

DOCUMENTS

1 *Michael John Hill v Secretary of State for Transport, Local Government and the Regions and Mid-Sussex DC* [2003] EWCA Civ 1904 submitted by Mr Padden

2 *The Queen otao ZZZ Incorporated v Secretary of State for Transport, Local Government and the Regions* [2003] EWHC 1092 Admin submitted by Mr Padden

3 Volume change calculations for Monk Lakes (etc) from 6 March 2002 to February 2015 submitted by the Environment Agency

4 *Secretary of State for Communities and Local Government v Ioannou* [2014] EWCA Civ 1432 submitted by the Council

5 *Thomas Flattery, Japanese Parts Centre Limited v Secretary of State for Communities and Local Government and Nottinghamshire CC* [2010] EWHC 2868 (Admin) submitted by the Council

Costs Decisions

Hearing held on 28 April 2015
Site visit made on 28 April 2015

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2015

Application 1: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987
Land known as land lying to the east of Old Hertsfield Farm, Staplehurst Road, Marden, Tonbridge, Kent (formerly part of Riverfield Fish Farm) and land known as land lying to the north of Staplehurst Road, Marden, Tonbridge, Kent (formerly part of land known as Mallard Lakes), all now collectively known as 'Monk Lakes' ("the Land")

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Maidstone Borough Council for a partial award of costs against Guy Harrison.
- The hearing was in connection with an appeal against an enforcement notice alleging unauthorised development consisting of engineering, mining and building operations and unauthorised change of use of land to recreational fishing lakes and for waste disposal not in accordance with planning permission reference MA/03/0836, and unauthorised development by the change of use of the lakes on land formerly known as Mallard Lake and other parts of the former Riverfield Fish Farm for recreational fishing without the grant of planning permission.

Application 2: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987
Land known as land lying to the east of Old Hertsfield Farm, Staplehurst Road, Marden, Tonbridge, Kent (formerly part of Riverfield Fish Farm) and land known as land lying to the north of Staplehurst Road, Marden, Tonbridge, Kent (formerly part of land known as Mallard Lakes), all now collectively known as 'Monk Lakes' ("the Land")

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Maidstone Borough Council for a partial award of costs against Guy Harrison.
- The hearing was in connection with an appeal against an enforcement notice alleging unauthorised development consisting of engineering, mining and building operations and unauthorised change of use of land to recreational fishing lakes and for waste disposal not in accordance with planning permission reference MA/03/0836, and unauthorised development by the change of use of the lakes on land formerly known as Mallard Lake and other parts of the former Riverfield Fish Farm for recreational fishing without the grant of planning permission.

Application 3: Costs application in relation to Appeal Ref: APP/U2235/A/09/2093611
Riverfield Fish Farm, Staplehurst Road, Marden, Kent TN12 9BS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Padden for a full award of costs against Guy Harrison.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing. The application involves the formation of ponds and lakes, the erection of a building and the formation of a car park. The existing access to Staplehurst Road is to be improved as shown on drawing numbers 674/VIII-1 and OS plan received on 08/04/03 and as amended by additional documents being drawing number 674/VIII-2 received on 25/04/03, and as amended by additional documents being drawing number 674/VIII-1A received on 07/07/03, and as amended by additional documents being No. 1 Rider drawing to drawing number 674VIII-1 and No. 2 Rider drawing to drawing number 674/VIII-1A and received on 07/07/03, and as amended by additional documents being drawing number 674/VIII-1B and OS plan received on 10/07/03 without complying with a condition attached to planning permission Ref MA/03/0836, dated 17 September 2003.

Application 4: Costs application in relation to Appeal Ref: APP/U2235/A/09/2093624
Riverfield Fish Farm, Staplehurst Road, Marden, Kent TN12 9BS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Padden for a full award of costs against Guy Harrison.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for schemes to fulfil the pre-commencement conditions for planning permission reference MA/03/0386 (conditions 5, 7, 10, 12, 13 and 15).

Decisions

Application 1: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987

1. The application for an award of costs is allowed in the terms set out below.

Application 2: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987

2. The application for an award of costs is allowed in the terms set out below.

Application 3: Costs application in relation to Appeal Ref: APP/U2235/A/09/2093611

3. The application for an award of costs is refused.

Application 4: Costs application in relation to Appeal Ref: APP/U2235/A/09/2093624

4. The application for an award of costs is refused.

Introduction

5. Although four application details are listed in the summary above, there are in fact only two applications. That made by the Council concerns only the appeal

against the enforcement notice. That made by Mr Padden relates to all three of the appeals that were to be the subject of the Inquiry that was arranged. My appeal decision explains how all the grounds of appeal against the notice, except for that on ground (g), and the two s78 appeals were withdrawn on 3 March 2015 and the procedure changed to a Hearing.

6. I shall deal with both substantive applications together in this decision since the cases made by the Council and Mr Padden are essentially the same and the response by Mr Harrison to both is also almost identical.

Application 1: The submissions for Maidstone Borough Council

7. The Council's application was made in writing and submitted by email dated 24 April 2015. The Council seeks a partial award of costs in relation to the expense incurred on dealing with the appeals on grounds (b) and (c) from April 2014 and on ground (f) from November 2014.

8. The reasons for seeking an award from these dates are as follows. April 2014 is when the appeal was brought out of a lengthy period of abeyance. By that date settled case law had established that the appeal on ground (c) had no prospect of success. That and the related appeal on ground (b) should have been withdrawn then. Case law that established that the appeal on ground (f) had no prospect of success[1] was handed down late in October 2014. Notwithstanding the way Mr Padden put the same application, the Council confirmed that this was the date from which its costs were sought in respect of the appeal on ground (f).

Applications 2, 3 and 4: The submissions for Mr Padden

9. The applications made on behalf of Mr Padden are contained in a document dated 25 March 2015 prepared by his counsel. Application 2 is for a partial award only since it relates solely to the withdrawn grounds of appeal and not to the remaining appeal on ground (g). Applications 3 and 4 are however for a full award in respect of those withdrawn appeals. In each case, the application is for the costs incurred since the appeals were taken out of abeyance in April 2014 and Mr Padden was granted Rule 6 status in these matters.

10. By way of additions to the written statement attention was drawn to the earlier written submissions prior to the Pre Inquiry Meeting (PIM) in response to my note. With regard to the legitimate expectation point that formed the basis of the appellant's case on the linked ground (b) and (c) appeals, case law that this argument was bound to fail was settled in 2003. Similarly, while *Ioannou* is very recent, the key point goes back to *Wyatt*[2] and 2002. With regard to the two s78 appeals, the fact that no environmental impact assessment had ever been submitted as required by the relevant Regulations meant that these appeals too had no realistic prospect of success.

11. Replying to the response by Mr Harrison, what he believed on the basis of the advice he had received was irrelevant. The advice was bad and the appeals were bound to fail. Other remedies are available in respect of such advice but it cannot save an award of costs being made.

[1] *Secretary of State for Communities and Local Government v Ioannou* [2014] EWCA Civ 566
[2] *Wyatt Bros (Oxford) Ltd v Secretary of State for the Environment , Transport and the Regions* [2002] P.L.C.R. 18

Applications 1 to 4: The response by Mr Harrison

12. Although Mr Harrison responded separately to both the Council and Mr Padden orally at the Hearing the essence of those two replies was the same.

13. On the basis of the advice he had received when he was legally represented he considered that each of the appeals had some chance of success. His advice in respect of the discharge of conditions was that the applications had been made but not determined by the Council. He was no longer legally represented since all available funds had been directed to the work necessary to secure planning permission via the 2011 application that now stood to be re-determined by the Council. It was for this reason and the advice he had been given at the PIM that the eight (*sic*) appeals had been reduced to one. He believed that each party should meet its own costs.

Reasons

14. Guidance on the award of costs in appeal proceedings is given in the relevant parts of the Planning Practice Guidance (PPG). For an award to be justified there has to be both unreasonable behaviour on the part of one party and unnecessary or wasted expense incurred by another directly as a result of that unreasonable behaviour.

15. The PPG confirms an award of costs can be made against an appellant if an appeal is withdrawn without good reason. Appellants are encouraged to withdraw their appeal at the earliest opportunity if there is a good reason to do so and becoming aware that it stands little chance of success is given in the PPG as an example of a 'good reason'. However, it continues by saying that if the appeal is withdrawn without, in summary, any material change in circumstances relevant to the appeal, an award may be made against the appellant.

Applications 1 and 2

16. My understanding of the appellant's original grounds of appeal and subsequent statements of case is that the appeal made on ground (b) is, in reality, one made on ground (c). The points made under ground (b) claim that the numbered breach alleged is either directly allowed by the 2003 permission or ancillary to a permitted use or operational development. That amounts to an argument that what is alleged is development that has or does not need planning permission; that is a ground (c) appeal.

17. The basis for the appellant's assertion that the 2003 permission was implemented was one of legitimate expectation created by the actions of the Council. Both the Council and Mr Padden drew attention to the settled case law that established that such a public law argument could not be run where the planning code set out the procedure to be followed. This was unequivocally brought to the appellant's attention at the PIM. No contrary legal view was put by or on behalf of the appellant. Correctly in my judgement the appellant withdrew these two grounds of appeal. However, the relevant case law was already in place when the notice was issued and the appeals made. The appeals on these two grounds never had any prospect of success on that basis and should not therefore have been made.

18. The exact nature of the appellant's case on ground (f) has never really been articulated. The best evidence however is that an alternative scheme would have been promoted that allowed the lakes to remain in place. Again, where there is no appeal on ground (a) and no deemed planning application to consider, settled case law has determined that such an approach cannot succeed through an appeal on ground (f). No case was put against Mr Padden's assertion that the law on this point was settled in 2002 in *Wyatt Bros* and that this was therefore the position when the appeal on this ground was made. As with the points against the appeals on grounds (b) and (c), this was made clear to the appellant at the PIM and, as result, the appeal on ground (f) was withdrawn. However, on the basis that it was made, it too never had any prospect of success from the outset.

19. In my judgement there was no change in circumstances between the date when the appeals were made and the date when they were withdrawn. It was therefore unreasonable of the appellant to pursue grounds of appeal that had no reasonable prospect of success for as long as he did. Costs incurred as a result therefore amount to wasted expense.

20. In respect of the Council's application (application 1), I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that the partial award of costs sought is justified.

21. Turning to Mr Padden's application (application 2), the PPG advises that it is not anticipated that awards of costs will be made in favour of or against Rule 6 parties other than in exceptional circumstances. It does however say that an award may be made on procedural grounds and, elsewhere, it advises that the withdrawal of an appeal without good reason falls within the procedural grounds. The circumstances in this case amount to the withdrawal of an appeal without good reason (in that they should never have been made on that basis in the first place). I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that the partial award of costs sought is justified in respect of application 2.

Applications 3 and 4

22. It was common ground that the effect of the Consent Order was to limit the scope of the two s78 appeals to a consideration of their validity. Whether or not an environmental statement has been submitted has no bearing on that matter.

23. The Council and Mr Padden took different approaches to why these appeals should fail. Mr Padden raised a particular point which confirmed what, at the time, amounted to a lacuna in the statute.

24. It seems to me that the appellant did not withdraw these appeals because they had no reasonable prospect of success. Rather, he appreciated that by not challenging the notice through the ground (c) appeal, he was accepting that the 2003 permission was not now extant. Irrespective of the outcome therefore, pursuing the s78 appeals in those circumstances would serve no practical purpose.

25. That seems to me to be a change in circumstances (albeit a change brought about by the appellant's own actions) and therefore a withdrawal of the

appeals for a good reason (namely to limit the preparation for and the duration of the event).

26. Having regard to the advice in the PPG and in particular the exceptional circumstances required for an award to be made in favour of Rule 6 parties, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in respect of these two applications.

Costs Orders

Application 1: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987

27. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Guy Harrison shall pay to Maidstone Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the ground (b) and (c) appeals from April 2014 to 3 March 2015 and in responding to the ground (f) appeal from November 2014 to 3 March 2015.

28. The applicant is now invited to submit to Mr Guy Harrison, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Application 2: Costs application in relation to Appeal Ref: APP/U2235/C/08/2087987

29. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Guy Harrison shall pay to Mr David Padden, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the ground (b), (c) and (f) appeals from April 2014 to 3 March 2015.

30. The applicant is now invited to submit to Mr Guy Harrison, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Brian Cook

Inspector

ENVIRONMENTAL STATEMENT

On behalf of Taytime Ltd

February 2019

Report Status	FINAL
Date of Issue	February 2019
DISTRIBUTION	
Date	Issued To:
February 2019	**Maidstone Borough Council**
February 2019	**NextPhase Development Ltd**
February 2019	**Taytime Ltd**
N.B	This report has been produced by NextPhase Development Ltd within the terms of the contract with the client and taking account of the resources devoted to it by agreement with the clients representatives. We disclaim any responsibility to the client and others in respect of matters outside the scope of the above. We accept no responsibility of whatsoever nature to third parties to who this report, or part thereof, is made known. NextPhase Development Limited Registered in England and Wales No: 7525574.

CONTENTS

g) Cross Sections: Lakes 1, 2 and 3 (Drawing 2375/WIA/11) and Lane 2 and Borehole 4 (2375/WIA/12)

Volume 3:

Part F	Response 2 To Maidstone Borough Council Regarding Water Issues at Monk Lakes (Hafren Water, February 2019)
Part G	Response to Maidstone Borough Council regarding water issues at Monk Lakes (Hafren Water, July 2017)
Part H	Flood Risk Assessment, Proposed Fishing Lake Development Near Marden, Kent (N Reilly Consulting Engineer, February 2012)
Part I	Hydrogeological Appraisal Desk Study (Peter Brett Associates, July 2014)
Part J	Addendum to 2011 Environmental Statement (Hydrology and Flood Risk, January 2015)
Part K	Drainage Strategy Report (Peter Brett Associates, July 2015)
Part L	Groundwater Monitoring Report (Peter Brett Associates, July 2015)
Part M	Monk Lakes Groundwater Assessment (Mark Macdonald, November 2016)
Part N	Preliminary Ecological Appraisal (Phlorum Limited, August 2017)
Part O	Addendum to 2011 Landscape and Visual Impact Analysis Rev B, FLA, August 2017
Part Q	Landscape and Visual Impact Analysis Rev B, FLA, 2011
Part R	Statement of Heritage Impact (Barry Stowe, August 2017)

LIST OF TABLES

ABBREVIATIONS [in appearance order]

EIA	Environmental Impact Assessment
ES	Environmental Statement
MBC	Maidstone Borough Council
DETR	Departments for the Environment, Transport and Regions
DCLG	Department for Communities and Local Government
BAPs	Biodiversity Action Plans
NPPF	National Planning Policy Framework
NPPG	National Planning Policy Guidance
CRoW	Countryside and Rights of Way
NERC	Natural Environment and Rural Communities
BTO	British Trust for Ornithology
MAGIC	Multi-Agency Geographical Information for the Countryside
SSSI	Site of Special Scientific Interest
BS	British Standard
LVIA	Landscape and Visual Impact Assessment
KCC	Kent County Council
AoNB	Area of Outstanding Natural Beauty
NE	Natural England
EA	Environment Agency
mAOD	Metres Above Ordnance Datum
PBA	Peter Brett Associates
DAFOR	Dominant, Abundant, Frequent, Occasional, Rare
LWS	Local Wildlife Site
KMBRC	Kent and Medway Biological Records Centre
FLA	Furse Landscape Architects

VOLUME 1 – PART A

VOLUME 1 – PART A

1.0 INTRODUCTION, EIA REGULATIONS AS STANDARD

1.1 METHODOLOGY

1.2 Introduction

NextPhase Development Ltd have been commissioned by Taytime Ltd to coordinate an Environmental Impact Assessment (EIA) and prepare an Environmental Statement (ES) in support of a part retrospective planning application related to the retention of completed lakes Bridges and Puma, the retention and completion of part-completed raised reservoirs, Lakes 1, 2 and 3 (all for angling purposes) along with the club house and a detailed landscaping scheme at Monk Lakes, Staplehurst Road, Marden, Maidstone, TN12 9BS.

1.3 The site in question occupies land within the statutory authority area of Maidstone Borough Council (MBC) and it has been previously determined by means of a screening opinion, that an EIA is necessary. An addendum Environmental Statement was prepared in 2015 to supplement an original Environmental Statement created in 2011 by Parker Dann for the planning application to hand. Following further requests for information under Regulation 22 of the Environmental Impact Assessment Regulations 2017 and further discussion with the council and statutory consultees within the application process it has been concluded that a new Environmental Statement should be prepared following significant and conclusive investigations into outstanding environmental issues (particularly in relation to hydrology) that have now been completed.

1.4 As such whilst relevant correspondence in relation to the ongoing assessment of the application from the perspective of EIA regulations is found within Part D of Volume

2 of this Environmental Statement, it is confirmed that this Environmental Statement does not seek to supplement those previously provided but instead supersede them.

1.5 Guidance from this statement has been taken from the Town and Country Planning Act (Environmental Impact Assessment) Regulations of 2017 and retained guidance from the previous EIA Regulations.

1.6 This statement has also considered:

- The Town and Country Planning Act; and
- National Local Planning Policies and other guidance relevant to the environmental topics being assessed

1.7 The objective of this report is to identify the key environmental impacts that could arise during the construction and operation of the proposed scheme and detail any mitigation measures necessary to reduce these impacts. Each environmental topic that is necessary to be assessed will be assessed, each within a separate chapter with methodologies used to identify the key receptors and potential impacts detailed and suitable mitigation enhancement measures discussed as appropriate.

1.8 Throughout the process of planning and design in the proposals, environmental information has been gathered and analysed in order to make any necessary amendments to the proposal and to mitigate any adverse environmental effects.

1.9 This Environmental Statement attempts to adhere to the advice in the Essex Guide and Planning Policy Guidance that it should be presented in an understandable form for public scrutiny.

1.10 This is Volume 1 of the Environmental Statement and it sets out the principle assessment. Volume 2 includes key background documents and Volume 3 provides technical reporting undertaken to support the conclusions raised in the Environmental Statement.

1.11 This chapter includes:

- A description of the site history
- A description of the site as it is today
- A brief description of the development
- An overview of the process
- Phase 1 and 2 screening and scoping parameters where drawn
- Phase 3 environmental baselines
- An explanation about the contents of the Environmental Statement
- Phase 4 an understanding of the assessment process
- The identification of key issues taken from scoping consultations

1.12 <u>The Environmental Impact Assessment Team</u>

The EIA has been commissioned by Taytime Ltd and coordinated and edited by NextPhase Development Ltd. The production of this statement is drawn methodically from a wide range of research materials including original surveys, baseline studies and technical reports to identify issues, develop design solutions and provide mitigation where appropriate.

1.13 The team is as follows:

- **NextPhase Development Ltd (works undertaken by Christopher Whitehouse MRICS, RICS Accredited Expert Witness, BSc (Hons))**
    - EIA writing, editing and production

    - EIA projects coordination
    - Town and Country Planning
    - Planning Policy and procedure
- **Taytime Ltd**
    - Project management
- **Phlorum Ltd**
    - Ecological survey
- **Furse Landscape Architects Ltd**
    - Landscape and Visual Impact Assessment
- **Hafren Water Limited**
    - Hydrology, Hydrogeology & Flood Risk Assessment
- **Barry Stowe Architect**
    - Point Consultation and Cultural Heritage

1.14 Team meetings have taken place where necessary at key points in the design and assessment process together with regular liaison between consultants and clients throughout.

1.15 The source of the original material is acknowledged in the text and material in the technical appendices as the original material of each of the consultants.

1.16 The planning history of the site is referenced throughout as appropriate.

1.17 The existing parameters of the site have been central to the evolution of the design, ensuring that at all times the consideration of impacts and potential impacts have been discussed with the appropriate consultants with the existing infrastructure in mind in light of the relevant environmental information.

MAIDSTONE
Borough Council

12 March 2020

PLANNING DECISION NOTICE

APPLICANT:	**Mr & Mrs Harrison**
DEVELOPMENT TYPE:	**Small Maj Others**
APPLICATION REFERENCE:	**11/1948**
PROPOSAL:	**Part retrospective planning application for the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.**
ADDRESS:	**Monk Lakes Staplehurst Road Marden Maidstone Kent, TN12 9BU**

The Council hereby **REFUSES** Planning Permission for the above for the following Reason(s):

(1) The size, height and proximity of the raised lakes particularly the western bunding would cause less than substantial harm to the setting and significance of the Grade II listed Hertsfield Barn through loss of the open and level historic setting of the Barn which forms an important part of its significance and setting. This would be contrary to policies SP18 and DM4 of the Maidstone Local Plan and the NPPF and the less than substantial harm would not be outweighed by any public benefits from the development.

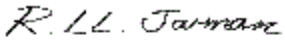
(2) Due to the height and proximity of the raised lakes along the western boundary of the site, their use for fishing would result in an unacceptable loss of privacy and perceived overlooking from anglers at an elevated position to the houses and gardens of Hertsfield Barn, and numbers 3, 4, 5, and 6 Hertsfield Farm Cottages, resulting in harm to their amenity contrary to policy DM1 of the Local Plan.

The Council's approach to this application:

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

This application was not considered to comply with the provisions of the Development Plan and NPPF as submitted, and would have required substantial changes such that a new application would be required.
The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.



Rob Jarman
Head of Planning Services
Maidstone Borough Council

IMPORTANT: YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

NOTIFICATION TO APPLICANT FOLLOWING REFUSAL OF PERMISSION OR GRANT OF PERMISSION SUBJECT TO CONDITIONS

This decision does not give approval or consent that may be required under any act, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority (LPA) to refuse permission for the proposed development, or to grant it subject to Conditions, then you can appeal to the Secretary of State (SoS) under Section 78 of the Town and Country Planning Act 1990. **Please see "Development Type" on page 1 of the decision notice to identify which type of appeal is relevant.**

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and if you want to appeal against the LPAs decision on your application, then you must do so within **28 days** of the date of this notice.

- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against the LPA's decision on your application, then you must do so within **28 days** of the date of service of the enforcement notice, or within **6 months** [**12 weeks** in the case of a **householder** or **minor commercial** application decision] of the date of this notice, whichever period expires earlier.

- If this is a decision to refuse planning permission for a **Householder** application or a **Minor Commercial** application and you want to appeal the LPA's decision, or any of the conditions imposed, then you must do so within **12 weeks** of the date of this notice.

- In all other cases, you will need to submit your appeal against the LPA's decision, or any of the conditions imposed, within **6 months** of the date of this notice.

Appeals can be made online at: https://www.gov.uk/planning-inspectorate.
If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority (planningappeals@midkent.gov.uk) and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

The SoS can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The SoS need not consider an appeal if it seems to the SoS that the LPA could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

For official use only (date received): 11/09/2020 16:13:17

The Planning Inspectorate

PLANNING APPEAL FORM (Online Version)

WARNING: The appeal **and** essential supporting documents **must** reach the Inspectorate within the appeal period. **If your appeal and essential supporting documents are not received in time, we will not accept the appeal.**

Appeal Reference: APP/U2235/W/20/3259300

A. APPELLANT DETAILS

The name of the person(s) making the appeal must appear as an applicant on the planning application form.

Name	See below See below See below
Company/Group Name	Monk Lakes Limited
Address	Staplehurst Road Marden Kent TN12 9BS

Preferred contact method — Email ☑ Post ☐

B. AGENT DETAILS

Do you have an Agent acting on your behalf? — Yes ☑ No ☐

Name	Ms Kate Simpson
Company/Group Name	Pegasus Group
Address	Pegasus Group, 10 Albemarle Street London W1S 4HH
Phone number	0203 897 1110
Email	kate.simpson@pegasuspg.co.uk

Preferred contact method — Email ☑ Post ☐

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority	Maidstone Borough Council
LPA reference number	11/1948
Date of the application	04/11/2011

Did the LPA validate and register your application? Yes ☑ No

Did the LPA issue a decision? Yes ☑ No ☐

Date of LPA's decision 12/03/2020

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes ☐ No ☑

Does the appeal relate to an existing property? Yes ☑ No ☐

Address

Monk Lakes
Staplehurst Road
Maidstone
Kent
TN12 9BU

Is the appeal site within a Green Belt? Yes ☐ No ☑

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes ☑ No ☐

Please describe the health and safety issues

Due to the nature of the site which comprises recreational fishing lakes, suitable footwear should be worn and due care should be taken around the lakes.

E. DESCRIPTION OF THE DEVELOPMENT

Has the description of the development changed from that stated on the application form? Yes ☑ No ☐

If YES, please state below the revised wording

Part retrospective planning application for the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.

Please attach a copy of the LPA's agreement to the change.

☑ see 'Appeal Documents' section

Area (in hectares) of the whole appeal site [e.g. 1234.56] 35 hectare(s)

Does the proposal include demolition of non-listed buildings within a conservation area? Yes ☐ No ☑

F. REASON FOR THE APPEAL

The reason for the appeal is that the LPA has:

1. Refused planning permission for the development. ☑
2. Refused permission to vary or remove a condition(s). ☐
3. Refused prior approval of permitted development rights. ☐
4. Granted planning permission for the development subject to conditions to which you object. ☐
5. Refused approval of the matters reserved under an outline planning permission. ☐

6. Granted approval of the matters reserved under an outline planning permission subject to conditions to which you object. ☐

7. Refused to approve any matter required by a condition on a previous planning permission (other than those specified above). ☐

8. Failed to give notice of its decision within the appropriate period (usually 8 weeks) on an application for permission or approval. ☐

9. Failed to give notice of its decision within the appropriate period because of a dispute over provision of local list documentation. ☐

G. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☐

2. Hearing ☑

You must give detailed reasons below or in a separate document why you think a hearing is necessary. The reasons are set out in

☑ the box below

The Inspector is likely to need to test the evidence by questioning or to clarify matters.

3. Inquiry ☐

H. FULL STATEMENT OF CASE

☑ see 'Appeal Documents'

		☐ No	☑
(a) Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? (Please attach draft version if available) ☑ see 'Appeal Documents' section	Yes	☑ No	☐
(b) Have you made a costs application with this appeal?	Yes	☐ No	☑

I. (part one) SITE OWNERSHIP CERTIFICATES

Which certificate applies?

CERTIFICATE A

I certify that, on the day 21 days before the date of this appeal, nobody, except the appellant, was the owner of any part of the land to which the appeal relates; ☐

CERTIFICATE B

I certify that the appellant (or the agent) has given the requisite notice to everyone else who, on the day 21 days before the date of this appeal, was the owner of any part of the land to which the appeal relates, as listed below: ☑

Owner's Name:	Taytime Limited
Address at which notice was served:	Camburgh House, 27 New Dover Road, Canterbury, CT1 3DN
Date the notice was served:	11/09/2020

CERTIFICATE C and D

If you do not know who owns all or part of the appeal site, complete either Certificate C or Certificate D and attach it below. ☐

I. (part two) AGRICULTURAL HOLDINGS

We need to know whether the appeal site forms part of an agricultural holding.

(a) None of the land to which the appeal relates is, or is part of, an agricultural holding. ☑

(b)(i) The appeal site is, or is part of, an agricultural holding, and the appellant is the sole agricultural tenant. ☐

(b)(ii) The appeal site is, or is part of, an agricultural holding and the appellant (or the agent) has given the requisite notice to every person (other than the appellant) who, on the day 21 days before the date of the appeal, was a tenant of an agricultural holding on all or part of the land to which the appeal relates, as listed below. ☐

J. SUPPORTING DOCUMENTS

01. A copy of the original application form sent to the LPA. ☑

02. A copy of the site ownership certificate and agricultural holdings certificate submitted to the LPA at application stage (if these did not form part of the LPA's planning application form). ☐

03. A copy of the LPA's decision notice (if issued). Or, in the event of the failure of the LPA to give a decision, if possible please enclose a copy of the LPA's letter in which they acknowledged the application. ☑

04. A site plan (preferably on a copy of an Ordnance Survey map at not less than 10,000 scale) showing the general location of the proposed development and its boundary. This plan should show two named roads so as to assist identifying the location of the appeal site or premises. The application site should be edged or shaded in red and any other adjoining land owned or controlled by the appellant (if any) edged or shaded blue. ☑

05. (a) Copies of all plans, drawings and documents sent to the LPA as part of the application. The plans and drawings should show all boundaries and coloured markings given on those sent to the LPA. ☑

05. (b) A list of all plans, drawings and documents (stating drawing numbers) submitted with the application to the LPA. ☑

05.(c) A list of all plans, drawings and documents upon which the LPA made their decision. ☑

06. (a) Copies of any additional plans, drawings and documents sent to the LPA but which did not form part of the original application. ☐

06. (b) A list of all plans, drawings and documents (stating drawing numbers) which did not form part of the original application. ☐

07. A copy of the design and access statement sent to the LPA (if required). ☐

08. A copy of a draft statement of common ground if you have indicated the appeal should follow the hearing or inquiry procedure. ☑

09. (a) Additional plans, drawings or documents relating to the application but not previously seen by the LPA. Acceptance of these will be at the Inspector's discretion. ☑

09. (b) A list of all plans and drawings (stating drawing numbers) submitted but not previously seen by the LPA. ☐

10. Any relevant correspondence with the LPA. Including any supporting information submitted with your application in accordance with the list of local requirements. ☑

11. If the appeal is against the LPA's refusal or failure to approve the matters reserved under an outline permission, please enclose:

(a) the relevant outline application; ☐

(b) all plans sent at outline application stage; ☐

(c) the original outline planning permission. ☐

12. If the appeal is against the LPA's refusal or failure to decide an application which relates to a condition, we must have a copy of the original permission with the condition attached. ☐

13. A copy of any Environmental Statement plus certificates and notices relating to publicity (if one was sent with the application, or required by the LPA). ☑

14. If the appeal is against the LPA's refusal or failure to decide an application because of a dispute over local list documentation, a copy of the letter sent to the LPA which explained why the document was not necessary and asked the LPA to waive the requirement that it be provided with the application. ☐

K. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes ☐ No ☑

L. CHECK SIGN AND DATE

(All supporting documents must be received by us within the time limit)

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledege.

I confirm that I will send a copy of this appeal form and supporting documents (including the full statement of case) to the LPA today.

Signature	Ms Kate Simpson
Date	11/09/2020 16:14:05
Name	Ms Kate Simpson
On behalf of	See below See below See below

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018. Further information about our Data Protection policy can be found on our website under Privacy Statement.

M. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full statement of case) not previously sent as part of the application to the LPA. If you do not send them a copy of this form and documents, we may not accept your appeal.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:

  https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the decision notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

N. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. Please ensure that any correspondence you send to us is clearly marked with the appeal reference number.

You will not be sent any further reminders.

The documents listed below were uploaded with this form:

Relates to Section:	DESCRIPTION OF DEVELOPMENT
Document Description:	A copy of the LPA's agreement to the change.
File name:	P20-0831 - Descrption of Development Note - 11.09.2020.pdf
Relates to Section:	FULL STATEMENT OF CASE
Document Description:	A copy of the full statement of case.
File name:	P20-0831 - Statement of Case - 11.09.2020.pdf
Relates to Section:	FULL STATEMENT OF CASE
Document Description:	A planning obligation (a section 106 agreement or a unilateral undertaking).
File name:	Draft Section 106 Agreement Final Draft January 2020.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	01. A copy of the original application sent to the LPA.
File name:	Application Form.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	03. A copy of the LPA's decision notice (if issued). Or, in the event of the failure of the LPA to give a decision, if possible please enclose a copy of the LPA's letter in which they acknowledged the application.
File name:	11_1948-Refused-4858630.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	04. A site plan (preferably on a copy of an Ordnance Survey map at not less than 10,000 scale) showing the general location of the proposed development and its boundary. This plan should show two named roads so as to assist identifying the location of the appeal site or premises. The application site should be edged or shaded in red and any other adjoining land owned or controlled by the appellant (if any) edged or shaded blue.
File name:	Site Location Plan @A1 (ref. PDA-MON-101).pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	05.a. Copies of all plans, drawings and documents sent to the LPA as part of the application. The plans and drawings should show all boundaries and coloured markings given on those sent to the LPA.
File name:	Site Location Plan @A1 (ref. PDA-MON-101).pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	05.b. A list of all plans, drawings and documents (stating drawing numbers) submitted with the application to the LPA.
File name:	P20-0831 List of Appeal Documents September 2020.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	05.(c) A list of all plans, drawings and documents upon which the LPA made their decision.
File name:	P20-0831 List of Refused Documents and Plans September 2020.pdf
Relates to Section:	SUPPORTING DOCUMENTS

Document Description:	08. A copy of a draft statement of common ground.
File name:	P20-0831 - Statement of Common Ground - 11.09.2020.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	09.a. Copies of additional plans, drawings or documents relating to the application not previously seen by the LPA. Acceptance of these will be at the Inspector's discretion.
File name:	P20-0831_01A Illustrative Landscape Site Sections Sh1-4.pdf
File name:	P20-0831_02A Proposed Landscaping Plan.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	10. Any relevant correspondence with the LPA, including any supporting information submitted with your application in accordance with the list of local requirements.
File name:	Environment Agency Correspondence.zip
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	13. A copy of any Environmental Statement plus certificate and notices relating to publicity (if one was sent with the application, or required by the LPA).
File name:	Supplementary Environmental Statement Part 1.pdf
Completed by	MS KATE SIMPSON
Date	11/09/2020 16:14:05

IN THE HIGH COURT OF JUSTICE **CO/ /2021**

IN THE PLANNING COURT

R (DAVID PADDEN)

Claimant

and

THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

Defendant

(1) MAIDSTONE BOROUGH COUNCIL
(2) MONK LAKES LIMITED

Interested Party

DETAILED STATEMENT OF FACTS AND GROUNDS

Introduction

1. The Claimant is Mr David Padden, who owns and occupies Hertsfield Barn, Hertsfield Lane, Marden, Kent which is a Grade II listed building.

2. Mr Padden and his property have been significantly adversely affected by what has taken place on land directly adjoining his home. It is no exaggeration to say that this involves one of the largest breaches of planning control in the history of the planning system.

3. The owners of the adjoining land deposited hundreds of thousands of tonnes of waste material on this land. This waste was used to form vast raised fishing lakes - the banks of which being over 6m metres high. These artificial lake structures are so large that they are defined as reservoirs under the Reservoir Act 1975, albeit they were constructed without a supervising engineer as is required by that legislation. This is just one of many concerns that Mr Padden has about what has taken place without planning permission on the adjoining land.

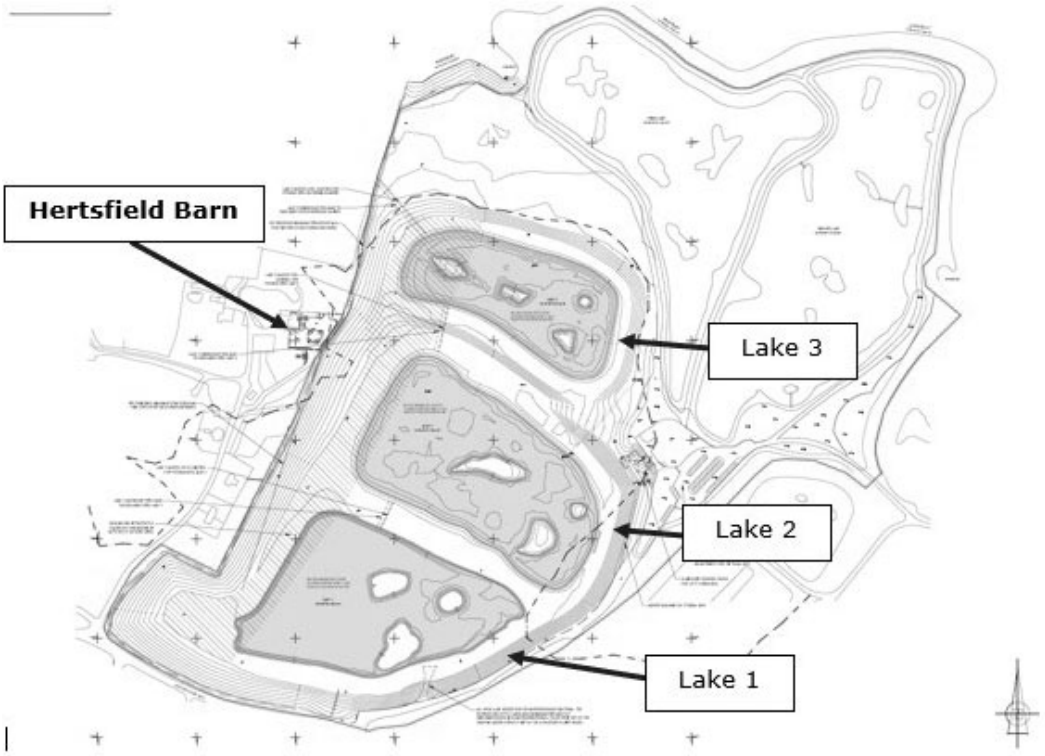
4. The unauthorised development, which it is accepted is EIA development – that is to say development likely to have a significant effect on the environment began in around 2003-2004 and only stopped in 2008 when a temporary stop notice [CB/1/40] and then an enforcement notice [CB/2/43] were somewhat belatedly served by the local planning authority, Maidstone Borough Council ("the Council"). By that time there was a continual

stream of lorries delivering waste to the site all day long. To be clear none of this vast scale of activity and development had any planning permission at all.

5. In earlier judicial review proceedings, see below, in which Mr Padden was successful the Judge summarised the position in this way (see para. 5) [CB/3/58]:

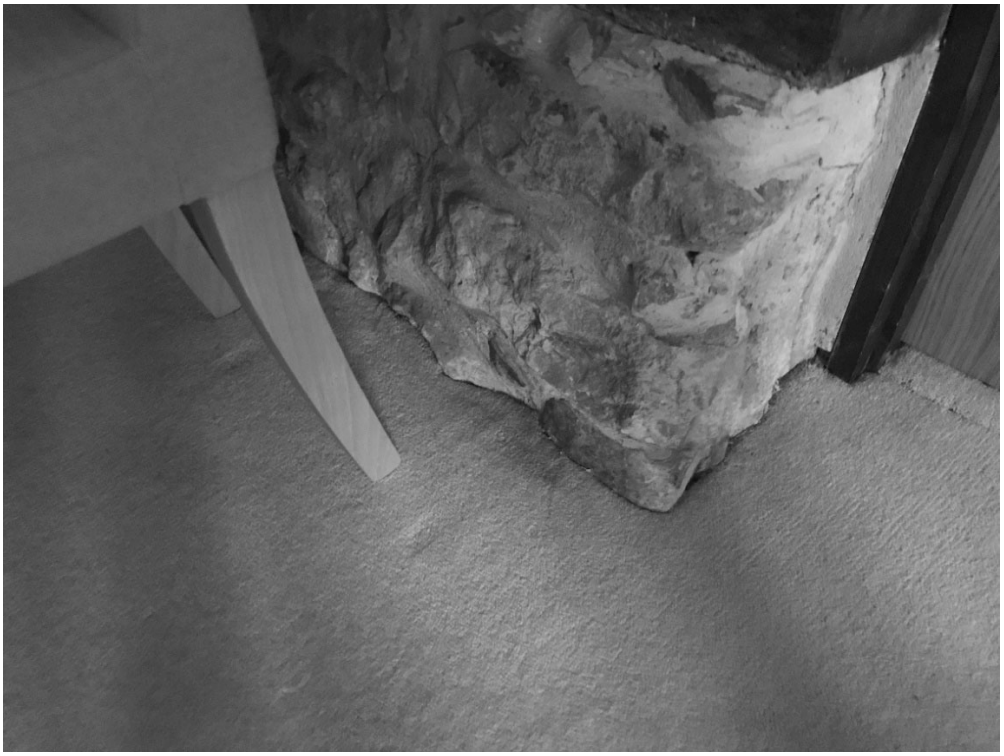
> "The unauthorised works took place between 2003 and 2008 and involved the importation of very large amounts of construction waste material including glass, plastic and asbestos. The Environment Agency has estimated that about 650,000 cubic metres of waste material were deposited on the land between March 2003 and January 2008 with even more since. The material was formed into, amongst other things, massive 8 metre high retaining bunds close to neighbouring residential properties including Hertsfield Barn"

6. This all took place on land, which is now known as Monk Lakes, Staplehurst Road, Marsden ("Monk Lakes"). This is shown below along with its close relationship with Hertsfield Barn, Mr Padden's home. It can be seen it immediately and very closely adjoins Mr Padden's home.



7. The impacts of the unauthorised development on Mr Padden's home have included ground water flooding, with a consequent impact on the fabric of the listed building in which he lives.

8. This is illustarted by these photographs:



Mould and damp below moquette of living room on the ground floor

Rising damp evident within the Kentish ragstone random wall plinth.

Recent repair of saturated stonwork to plinth on north side of the Barn and rising damp wihtin brickwork to left

10. The unauthorised development of Monk Lakes has also impacted adversely on: (i) the setting of the listed building in which Mr Padden lives, (ii) the landscape character of the area and associated views from Hertsfield Barn which were previously across agricultural fields and (iii) Mr Padden's residential amenity.

11. The vast raised banks created close to the boundary with Mr Padden's property have truncated any views, significantly diminishing the perception of openness and space and elevating a path for those using Monks Lakes for fishing, increasing the potential for overlooking directly into the garden of Mr Padden's home. The photographs below illustrate this:

All these photographs are taken from the curtilage of Hertsfield Barn or from the property itself looking towards the banks created at Monks Lakes (the van in the foreground in the first photograph is also within the curtilage of Hertsfield Bar).

12. This is somewhat regrettably the third time that Mr Padden has had to lodge judicial review proceedings in relation to this matter, the previous two judicial reviews having been successful: see below.

13. This judicial review, like the first one that took place back in 2013 - 2104, relates to a planning application (App No 11/1948) made by Mr & Mrs Harrison ("the Harrisons") – who control a company called Monk Lakes Limited. This application was made as long ago as 2011 and sought, inter alia, retrospective consent for the vast unauthorised development of Monk Lakes that had already taken place.

14. That application was originally granted planning permission by the Council back in September 2012 but this was successfully judicial reviewed by Mr Padden: see ***R (Padden) v Maidstone BC*** [2014] Env. L.R. 20 with judgment handed down in January 2014 [CB/3/58]. The permission was quashed.

15. Following that quashing further submissions of documentation have been made by the Harrisons to the Council to seek to remedy the very serious defects in the process found by the High Court. As a result the planning application made in 2011 only finally came back before the Council for re-determination on 5 March 2020. This time around though the Council did not grant the permission but instead refused it [CB/6/110].

16. Monk Lakes Limited then appealed to the Secretary of State under s. 78 of the Town and Country Planning Act 1990 ("the TCPA 1990").

17. The appeal is being dealt with by the Planning Inspectorate ("PINS") under powers delegated to it under the TCPA 1990 by the Secretary of State, the Defendant to these proceedings.

18. This judicial review concerns the decision made by PINS under s. 319A of the TCPA 1990 as to the mode of determination of that planning appeal [CB/24/182].

19. The decision made on this is unfair, unlawful and highly prejudicial to the interests of Mr Padden who seeks only the opportunity to be able to fully present his case – supported by a team of expert witnesses (see below) - against the grant of planning permission for the unauthorised development that has so badly affected him and his home for over 15 years now. The stress caused by all of this has taken its toll on Mr Padden, and it a cause of real

concern that he must yet again bring judicial review proceedings just to ensure that the issues he is raising are properly and fully considered in the planning appeal process.

The legislative background

20. Where a local planning authority refuses planning permission, including for retrospective permission, the applicant may appeal that refusal to the Secretary of State: see s. 78 of the TCPA 1990 [CB/23/180].

21. Where development is EIA development, as is the case here, the EIA legislation places very strict limits on the ability to consent such development retrospectively: see the judgment of the High Court in Mr Padden's first judicial review and the case-law cited therein. The decisions of the European Court of Justice ("ECJ") in Case C-215/06 ***Commission v Ireland*** [2008] ECR I-4911 and the Court of Appeal in ***R. (Ardagh Glass Ltd) v Chester City Council & Others*** [2011] P.T.S.R. 1498 emphasise that it is only exceptionally that retrospective planning permission can lawfully be granted for EIA development and even then only if the developer does not obtain any improper advantage from having pre-emptively undertaken the development.

22. Appeals under s. 78 of the TCPA 1990 are delegated to PINS to be determined by planning inspectors unless such an appeal is recovered by the Secretary of State.

23. S. 319A of the TCPA 1990 [CB/24/182] provides so far as is relevant:

> *"319A Determination of procedure for certain proceedings*
>
> *(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.*
>
> *(2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Secretary of State to be appropriate –*
>
> *(a) at a local inquiry;*
>
> *(b) at a hearing;*
>
> *(c) on the basis of representations in writing.*
>
> *(3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.*
>
> *(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.*
>
> *(5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).*

(6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).

(7) This section applies to

…

(b) an appeal under section 78 against a decision of a local planning authority in England;

…"

24. In relation to s. 319A(6) the criteria which must be published on making determinations as to the mode of determination of a planning appeal are set out in Annexe K of PINS Procedural Guide Planning appeals – England (March 2021) ("the Guide")[CB/24/182].

25. The Guide states:

"1.5.2 The Business and Planning Act 2020 provides greater flexibility allowing appeal procedures to be combined (s20 of the Business and Planning Act 2020 amends s319A of the Town and Country Planning Act 1990, s88D of the Planning (Listed Buildings and Conservations Areas) Act 1990 and s21A of the Planning (Hazardous Substances) Act 1990). Therefore, if we decide initially that an appeal should be dealt with through a hearing or an inquiry, the appointed Inspector may subsequently also consider, based on the submitted evidence and relevant issues, whether a 'combined procedure' might be appropriate, again taking account of the criteria within Annexe K on an issue by issue basis. For example, a hearing could have a written representations element to deal with a certain issue and an inquiry could have hearing (round table discussion) and/or written representations elements, if those approaches are considered more appropriate to deal with certain issues. How the combined procedure should operate is at the discretion of the Inspector on a case by case basis. In relation to inquiries, that approach was recommended by the Rosewell Review. If the appointed Inspector considers that a 'combined procedure' is appropriate, the parties may be invited to comment, which for inquiries will be prior to or during the case management conference call, before a decision on any 'combined procedure' is finalised.

2.7 Who determines the appeal procedure?

2.7.1 Sections 319A of the Town and Country Planning Act 1990, 88D of the Planning (Listed Buildings and Conservation Areas) Act 1990 and 21A of the Planning (Hazardous Substances) Act 1990 give the Secretary of State the duty to determine the procedure for dealing with various appeals. This duty, which applies in relation to planning, advertisement, listed building, enforcement and hazardous substance appeals, will be exercised by us on behalf of the Secretary of State, taking account of the criteria for determining the appeal procedure (please see Annexe K). When making their appeal, the appellant must identify which of the three main procedures (i.e. written representations, hearing or inquiry) they consider to be the most appropriate and give reasons to support this.

2.7.2 At this initial stage we will ensure that the most appropriate of those three main appeal procedures is selected, taking account of the criteria within Annexe K, the views of the appellant, the local planning authority and any appropriate expert involvement.

2.7.3 We will give reasons for the determination where this differs from the procedure requested by the appellant or the local planning authority. The appellant or the local planning authority may ask for the determination to be reviewed by a senior officer.

2.7.4 If we decide at the initial stage that the appeal should proceed as a hearing or as an inquiry, the appointed Inspector will also subsequently consider, whether a 'combined procedure' would be appropriate, such as a hearing with some elements dealt with written representations or an inquiry with hearing and/or written representation elements, on the basis of the criteria within Annexe K (see

paragraph 1.5.2). If so, the parties may be invited to comment on any such proposal prior to the hearing or inquiry. Please refer to Annexes E, F or G, as appropriate, for further details.

2.7.5 In any event, we will keep the determined procedure, including any combined procedure, under review during the appeal and may change it at any point before a decision on the appeal is made (subject always to any notification and procedural requirements).

2.8 What is the process for challenging a decision made during the processing of an appeal?

2.8.1 If the appellant, the local planning authority or an interested person thinks that we have made an administrative decision during the processing of an appeal that is wrong, they should write to our Case Officer giving clear reasons why they think we should review our decision."

26. Annexe K provides so far as is relevant:

*"**K Criteria for determining the procedure for planning, listed building, enforcement, hazardous substances, advertisement and discontinuance notice appeals***

The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply and more than one procedure (in combination) may be appropriate on an issue by issue or ground by ground basis.

Written representations - written representations would be appropriate if:

- *the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required - a small number of appeals do not require a site visit and can be dealt with solely on the basis of the appeal documents); or*
- *the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters; or*
- *in an enforcement appeal the alleged breach, and the requirements of the notice, are clear.*

Hearing - a hearing would be appropriate if:

- *the Inspector is likely to need to test the evidence by questioning or to clarify matters (for example, where detailed evidence on housing land supply needs to be tested by questioning); or*
- *the status or personal circumstances of the appellant are at issue (For example whether in traveller appeals the definition in Annex 1 of MHCLG's planning policy for traveller sites is met); or*
- *there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or*
- *the case has generated a level of local interest such as to warrant a hearing; or*
- *it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them; or*
- *in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.*

Inquiry - an inquiry would be appropriate if:

- *there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an appellant representing themselves as an advocate); or*
- *the issues are complex (for example, where large amounts of highly technical data are likely to be provided in evidence); or*

- *the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing ; or*

- *in an enforcement appeal, evidence needs to be given on oath (for example, where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place); or*

- *in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.*

Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity."

27. A challenge to a decision under s. 319A of the TCPA 1990 is not challengeable under s. 288 of the TCPA 1990, but instead by way of a judicial review: see ***Westerleigh v SSCLG*** [2014] EWHC 4313 (Admin) at para. 23.

28. The procedures for the various modes of determination are set down in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, the Town and Country Planning (Hearings Procedure) (England) Rules 2000 and the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000.

29. In the inquiry procedure persons interested in an appeal, such as Mr Padden, can seek rule 6 status. This gives such a party equal status to the appellant and the local planning authority. It allows such parties to call expert witnesses, to cross-examine other parties witnesses and to make opening and closing speeches: . See further the "Guide to Rule 6 for interested parties involved in an inquiry- planning appeals and call-in applications – England" [SB/10/122]. Para 2.2. says "*Rule 6 parties can offer significant value to the inquiry process. However this is only the case where Rule 6 parties add substantively to the case being made by the local planning authority or the appellant (for an appeal)* …". Para. 2.5 says "*With "Rule 6 status" you will be considered to be a main party*". Rule 6 for these purposes refers to rule 6(6) of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000.

<u>The factual background in more detail</u>

30. The background to this matter is very extensive indeed. This case has one of the most complex and lengthy planning histories imaginable; and concerns – as already stated –

what is perhaps the largest breach of planning control in the history of the planning system.

31. Moreover, the application the subject of the appeal to PINS and in issue in these judicial review proceedings was, as already noted, made as long ago as November 2011 and has been the subject of two sets of previous successful judicial review proceedings.

32. By an appeal made under s. 78 of the TCPA 1990 the appellant, Monk Lakes Limited, seek retrospective planning permission for what was a truly vast unauthorised waste operation that resulted in the deposit of hundreds of thousands of tonnes of waste and the creation of two very large and obtrusive raised lakes directly adjacent to Mr Padden's home – Hertsfield Barn. The application also seeks prospective planning permission to complete Lake 1 (see above) and which would involve the further importation of an additional 89,000 m3 of material.

33. There remains no stated reason or justification by either Monk Lakes Limited or the Council for the importation of waste material on the scale that was undertaken and the creation and retention of the plateaus (4m high approx.) upon which the reservoirs (fishing lakes) are situated creating banks in excess of 6m above ground level on the western side of the site. Fishing lakes do not need to be raised. In reality what was happening was essentially a huge unlawful waste disposal operation: see below. The land raising and the banks created were it seems justified solely by the monies – the gate fees - being made from this huge unauthorised waste disposal operation.

34. The impacts on Mr Padden of what is a vast unauthorised waste development have been very great indeed. A key concern of Mr Padden, supported by detailed expert evidence obtained by him, is that the development has been and still is causing severe ground water flooding to Hartsfield Barn. Moreover, the visual impacts of the unauthorised development are - given the sheer scale of what has been done - also very severe in their impact on Mr Padden. Further, the development adversely impacts on the setting of, and the fabric of, Hertsfield Barn which is itself a listed building. There are also adverse impacts on amenity: see above.

35. The unlawful development including importation of waste commenced in around 2004200and only stopped when a temporary stop notice and enforcement notice were issued in late 2008.

36. The enforcement notice was appealed under s. 174 of the TCPA 1990, ref APP/U2235/C/08/2087987, and there were also two other related planning appeals at that time under s. 78 of the TCPA 1990. The appeals were all made by Mr Harrison – the man behind Monk Lakes Limited. In those appeals Mr Padden was granted rule 6 status (see above) and was represented in the appeal process by Leading Counsel.

37. The enforcement appeal was pursued by Mr Harrison on multiple grounds but was rejected save in respect of ground (g) so that some additional time for compliance was granted [CB/4/88]. Save for this the enforcement notice was fully upheld and Mr Harrison's appeal dismissed. The related planning appeals were in the end withdrawn.

38. The enforcement notice upheld on appeal required the removal of the vast unauthorised development that has taken place. Needless to say many years on this has not happened. Mr Padden was also awarded some of his costs of these appeals because of unreasonable conduct by Mr Harrison [CB/5/103].

39. In relation to this enforcement appeal PINS had initially sought to hold that appeal indefinitely in abeyance. Mr Padden was thus forced to lodge judicial review proceedings challenging that procedural decision by PINS, just to allow the appeals to take place. PINS conceded the judicial review and thus the enforcement appeal was allowed to take place in 2015 and Mr Padden was wholly successful in that appeal in ensuring that the notice was upheld.

40. The present appeal that is before PINS relates, as has been noted, to the planning application made for retrospective planning permission made back in 2011 (planning application reference 11/1948).

41. Originally, back in 2013 planning permission was granted by the Council pursuant to planning application 11/1948. Mr Padden though successfully judicially reviewed that decision: see ***R (Padden) v Maidstone BC*** [2014] Env. L.R. 20 [CB/3/58]. The Court found that because what was being sought was retrospective permission for EIA development

this meant that planning permission could only be granted in exceptional circumstances and that Monk Lakes Ltd were disbarred by CJEU case-law from deriving any benefit from this being a retrospective application. The Court also found that the Council had failed properly to investigate ground water flooding impacts caused at Hertsfield Barn. Accordingly, the Court on 22 January 2014 quashed the planning permission.

42. The Harrisons have over the last 7 years sought to submit further information to make up for the multiple failings in the original application. This has been a lengthy and complex process with a supplementary Environmental Statement submitted in July 2015, and a yet further Environmental Statement in February 2020. At each stage Mr Padden has through experts engaged by him challenged these submissions.

43. So it was that the Council only came to redetermine the 2011 planning application, the subject of the quashing order of the High Court in 2014, in March 2020. That is to say more than six years after the quashing, and approaching 10 years from the date when the application was made. This time around the Council refused planning permission [CB/6/110]. The grounds for refusal of permission by the local planning authority relate only to harm to the setting and significance of Hertsfield Barn and loss of privacy and overlooking to Hertsfield Barn and other properties (it should be noted that it is not just Mr Padden who is effect but also a number of his neighbours). Mr Padden's case, supported by his expert team, is that there are further and additional reasons why permission should be refused including because of the impact of groundwater flooding.

44. Following the refusal of planning permission Monk Lakes appealed under s. 78 of the TCPA 1990 in September 2020. The appeal was lodged towards the end of the six month period allowed for the bringing of such an appeal. Extensive documentation was attached to the Statement of Case of Monks Lakes Limited. The Statement of Case thus runs to 93 pages and has no less than 29 separate attachments [CB/4/88].

45. None of this voluminous material, which PINS itself has had since September 2020, was made available to Mr Padden and those acting for him until 22 February 2021. This was despite numerous requests to see this material – see below. This is relevant to Ground 2 below.

46. Mr Padden's objections as a party directly affected by this unauthorised development go much further than those of the Council. The Council in refusing permission upheld some of Mr Padden's concerns but not others. Mr Padden's position is that the Council was wrong to have rejected his case – supported by expert evidence – on matters such as ground water flooding.

47. Mr Padden will be contending on the s. 78 appeal, as he has in relation to the re-determination of the panning application when it was before the Council, that planning permission should be refused on these grounds:
    1) Landscape and visual impact;
    2) Impact on amenity of neighbours;
    3) Impact on the setting and significance of Hertsfield Barn as a listed building;
    4) Ground water flooding impacts on neighbours – it being Mr Padden's case – supported by expert evidence – that the appellants have still not properly investigated these issues and that the proposed mitigation (wrongly accepted by the local planning authority) has not been demonstrated to be effective;
    5) Ground water flooding impacts on the fabric of Hertsfield Barn;
    6) Mineral safeguarding;
    7) Waste policy issues;
    8) Issues under the Reservoirs Act 1975.

48. Issues 4 – 8 go beyond the reasons for refusal of the Council, and hence the case it will seek to pursue on the s. 78 appeal.

49. Mr Padden has instructed the following experts to provide evidence on the following to the appeal: to the appeal:

Witness	**Subject matters covered**	**Qualifications/memberships**
Rebecca Lord	Planning, including minerals and waste	MSc MRTPI
Dr Paul Ellis	Ground water flooding	BSc PHD CGeol FGS
Andrew Smith	Visual and landscape impacts	BSc (Hons) MSC CMLI
Christopher Griffiths	Heritage	LLB(Hons) MA IHBC

50. All the above matters are issues which whether pursued by the local planning authority or not on the s. 78 appeal the Inspector will need to be informed on and reach a view on. Mr Padden's case against the grant of planning permission is a detailed one, and the issues raised are complex.

51. Moreover, the effects of the development of Monk Lakes are having on-going effects on Mr Padden's home (see above) and there has been correspondence between the parties on liability in nuisance. Mr Padden has reserved his right to bring proceedings for nuisance. The grant of planning permission on appeal here will have an impact on Mr Padden's private law rights and reduce his ability to be able to obtain injunctive relief in relation to the nuisance still being caused by the Monk Lakes development to his property: see the Supreme Court's decision in ***Coventry (t/a RDC Promotions) v Lawrence*** [2014] A.C. 822. The outcome of the appeal is thus one that has particular and unusual impacts on Mr Padden and his private and, indeed human, rights.

52. On 24 September Rebecca Lord, Mr Padden's planning consultant wrote to PINS [CB/7/112] saying:

> *"Dear Sir / Madam, I am aware that an appeal has been lodged as per the above details, but that a start date letter has not as yet been issued. Although the Local Planning Authority has a set of documents this material has not been published on line at this time.*
>
> *I act for Mr Padden of Hertsfield Barn, a neighbour to the appeal site. This is a longstanding matter, which was previously the subject of an enforcement appeal (ref APP/U2235/C/08/2087987). In this process my client successfully challenged the Inspectorate's decision to hold the appeal in abeyance (PINS conceded) and was a Rule 6 Party at the subsequent Public Inquiry in 2015 when the appeal was dismissed. Further a previous decision by the LPA to grant consent for the retrospective development the subject of this appeal (LPA application ref 11/1948) was the subject of a successful legal challenge by my client in 2014, it then took until 2020 for the application the subject of this appeal to be refused by the LPA.*
>
> *The LPA has provided me with a copy of the appeal form, but does not feel in a position to provide me with the accompanying material. In order to prepare for this appeal my client intends to instruct Counsel and to ensure my client is not at a disadvantage in the process we request copies of all the appeal submissions.*
>
> *If considered necessary, this request is made pursuant to the Freedom of Information Regulations or the Environmental Information Regulations. I am happy to receive the information that is not currently available online electronically on the LPAs website, in particular:*
>
> - *The full statement of case*
> - *Draft S.106*
> - *List of all plans and documents*

- *Draft Statement of Common Ground*

- *Copies of all additional plans not previously seen by the LPA [the landscape plans referred to in the form at 9(a)]*

- *Supporting documents – Environment Agency correspondence*

On the matter of the appeal process the request for a Hearing is noted. However, in view of the complexities of this matter and the need to test evidence under cross examination, it is our view that this matter cannot be dealt with by way of a Hearing, and should be the subject of a Public Inquiry.

The Inspector's assessment of this major EIA retrospective development will not of course be limited to the LPAs reason for refusal. Further the law requires that permission is only given in exceptional circumstances, and that the applicant / appellant derives no benefit from the fact this application is largely retrospective.

It will be my client's intention to ask the Inspector to consider planning and technical matters where there are significant disagreements with both the LPA's and Appellants assessment's and conclusions. It is also highly likely that my client will wish to be a Rule 6 Party to the appeal process.

I look forward to hearing from you."

53. On 22 October 2020 PINS [CB/8/114] responded saying:

"Dear Ms Lord
Thank you for your email of 24 September.
The Planning Inspectorate determines the procedure under section 319A of the 1990 Planning Act (as amended) by applying the published criteria in Annex K of PINS' Procedural Guide - Planning appeals – England. The case has been reviewed by an Inspector. We have decided that the appeal is suitable for the hearing procedure. This is because there are limited issues of complexity which will not require advocacy and so an inquiry is not justified. A hearing will however allow the Inspector to test the evidence through discussion.
Whilst these views are based on the material and evidence currently before us, as required under S319A of the Town and Country Planning Act 1990 (as amended), the procedure will be kept under review as further evidence is submitted. Ultimately, the appointed Inspector has the power to review the appropriateness of the procedure and can invoke the provisions of section 319A at any time until a decision is issued.
With regard to your request for copies of all the appeal submissions. We would not disclose documents prior to them first being disclosed by the local planning authority (LPA) as part of the normal planning process. Disclosure early and prior to the start of the appeal may be prejudicial to other parties and does not meet our impartiality responsibilities.
Separately we note that you also wish your request to be considered on the basis of the Freedom of Information Act 2000. In our view the relevant legislation for your request is the Environmental Information Regulations 2004 (EIR). Regulation 12(5)(b) of the EIR provides an exception to the public disclosure of information where that disclosure would affect the course of justice.
In this case, the existing planning procedure rules are considered to provide appropriate rules for the notification of appeals and making available of planning appeal representations to interested parties once the appeal is started – (see for instance rule 4 and 6 of https://www.legislation.gov.uk/uksi/2000/1626/article/6/made). Although we note your clients desire to receive the documents before the appeal is started, that is not necessarily the same as any wider public interest in the disclosure of this information; and the preferential disclosure of documents to your client would have adverse impacts on the Inspectorate's overarching requirement to act in an impartial way. It is also not an effective use of our resources to privately provide your client with their own copy of the appeal representations, or to make an exceptional public disclosure of these particular appeal documents, when the public availability of these (once the appeal is validated and started) is already provided by planning legislation. As such we consider that EIR regulation 12(5)(b) is engaged and the public interest in withholding the information requested exceeds that for disclosure.
I hope that this clarifies our position on the points that you have raised.
A copy of this email has been sent to both the agent for the above appeal and the LPA for information."

54. Ms Lord replied by a letter dated 2 November 2020 [CB/9/117]. Having set out the background it stated:

> *"**Mode of determination***
>
> *In the light of the above we would ask that the Inspector please reconsider the decision that this is an appeal suitable for a hearing.*
>
> *In your email you say that a hearing has been determined because "[t]his is because there are limited issues of complexity which will not require advocacy and so an inquiry is not justified. A hearing will however allow the Inspector to test the evidence through discussion".*
>
> *This decision is as you confirm based on "the material and evidence currently before us".*
>
> *It is our view, and the advice we have obtained, that this is plainly a case that requires determination by an inquiry. We make the following points:*
>
> 1. *The scale of the development is such as to clearly warrant an inquiry – this is one of the largest ever unauthorized waste operations involving the deposit of millions of tonnes of material;*
> 2. *The development is EIA development and the case-law domestic and European closely prescribes and limits the circumstances where permission for such development can lawfully be granted retrospectively. These legal issues – tied as they are to the evidential issues - will need to be carefully examined. An inquiry provides the only proper forum for this to happen;*
> 3. *The impacts on Mr Padden and indeed other neighbours have been very severe indeed – see above;*
> 4. *Some of the issues that Mr Padden will be raising, especially a regards ground water impacts, are highly technical and complex;*
> 5. *The grant of planning permission would have consequences on Mr Padden going beyond planning. His ability to seek injunctive relief for the nuisance being caused by ground water impacts would effectively be affected by the grant of planning permission: see **Coventry (t/a RDC Promotions) v Lawrence** [2014] A.C. 822*
>
> *Thus, turning to the criteria in Annex K the position is as follows:*
>
> 1. *It cannot be reasonably expected that the parties will be able to present their cases without the need for an advocate. The case raises not just complex technical issues, see below, but also issues of law as to whether it is lawful to grant this permission for what is retrospective EIA development. The legal requirements in this regard derive from case-law, both domestic and European and need to be fully explored in the light of the evidence;*
> 2. *The evidence that will be brought forward by Mr Padden includes evidence of a highly technical nature. It is complex. It will involve looking at data. This is especially so in relation the evidence on ground water flooding impacts. This evidence will clearly need to be tested in cross-examination;*
> 3. *The issues raised on this appeal – whatever the mode of determination – cannot be limited to those pursued by the local planning authority. The issues are wider. They are complex, technical and difficult;*
> 4. *The impacts on Mr Padden and others if this development is granted permission are acute. He must be entitled to participate fully in this appeal. This is only feasible through an inquiry process with him being granted Rule 6 status.*
>
> *Please can we ask that the Inspector revisit his decision in the light of the above matters.*
>
> *We note that you say that "the procedure will be kept under review as further evidence is submitted. Ultimately, the appointed Inspector has the power to review the appropriateness of the procedure and can invoke the provisions of section 319A at any time until a decision is issued." We say that in order for Mr Padden to be given the opportunity to participate properly this needs to be an inquiry and he needs to be given rule 6 status now.*
>
> *It is extraordinary that as matters stand, notwithstanding his longstanding interest in this matter and the impact that it will have on him and his home, that he cannot obtain access to the appeal submissions.*

This is both unfair and wrong. The requirements of fairness are not limited by what is provided for in statutory rules; the common law can and does sometimes require more. Here Mr Padden is being excluded from any fair opportunity for meaningful participation in this appeal. This appeal is only happening because of his own actions in challenging previous decisions of the local planning authority and PINS.

Please note that we reserve the right to bring judicial review proceedings if the matter is not dealt with in a way that properly allows Mr Padden's interests to be represented."

55. Having received no reply at all Ms Lord chased a reply on 22 November 2020 [CB/10/122]. This elicited no response and so Ms Lord chased again on 8 December 2020 [CB/11/126]. On the same day PINS sent a holding response:

"Dear Ms Lord
Thank you for your email.
Please accept my apologies for not replying to your email of 23 November.
I did refer your email and attached letter of 2 November to my line manager Joanne Hodgson, who assured me that she was going to respond.
I will bring this matter to her attention immediately and hopefully you will hear from her shortly.
Once again, please accept my apologies."

56. Finally, on 10 December 2020 PINS replied in these terms [CB/12/132]:

"*Good Morning Ms Lord, your e-mail has been passed to me to respond.*

This appeal has been reviewed several times, we have also obtained comments from the main parties, at this stage and until an Inspector is appointed by the Sectary of State to conduct the appeal on their behalf the procedure will remain as is requested by the main parties and which the Planning Inspectorate agree.

Once the appeal is started and the timetable of evidence submission begins and once all the evidence has been received the appointed Inspector will further consider the procedure, as is the power afforded to them sunder S.319a TCPA 1990.

I am afraid there is nothing further that we can add at this stage and no further reviews will be undertaken.

You will receive notification of the start date of the appeal by the Local Planning Authority setting out the time frame in which to submit your evidence alongside other interested parties and the Local Planning Authority, you will also have an opportunity to be present at the event and to speak if you should wish so.

The Appeal was received on the 11th September 2020, below is an extract from .Gov which shows how long appeal decisions are taking, I would not expect this appeal to be started until well into the new year."

57. So it appeared to be that the appeal was to proceed by way of a hearing not an inquiry but that it was left open that this might be revisited by the Inspector.

58. No more was heard until the start date letter was received [CB/13/138]. This letter is dated 17 February 2021 and this letter:

    1) Stated that:

"The appellant(s) has requested the Written representations procedure. In accordance with s319A of the Act we have applied the criteria and considered all representation received, including the appellant(s) preferred choice. We consider that the Written representations procedure is suitable and we intend to determine this appeal by this procedure.
The date of this letter is the starting date for the appeal(s). The timetable for the appeal(s) begins from this date."

2) Laid down a timetable which requires that Mr Padden make any submissions in response to the appeal by 24 March 2021.

59. So this letter indicated that PINS decision now was that the appeal would not even benefit from a hearing, let alone an inquiry. Instead it would be determined by written representations – the process usually reserved for the simplest cases.

60. As noted above the documents submitted with the appeal by Monk Lakes Limited are very extensive. They have been sitting with PINS since September 2020. But despite repeated requests these were not made available to Mr Padden or published until 22 February 2021. This left Mr Padden and his team with just a few short weeks to prepare detailed responses to documents that Monk Lakes had 6 months to prepare. This is covered under Ground 2.

61. In the light of this a letter before claim was sent to PINS on 5 March 2021 [CB/14/141].

62. Various requests for extensions for a response have been made by PINS and partially acceded to.

63. On 24 March 2021 Mr Padden had to submit his written case on the s. 78 appeal in accordance with the extant PINS directions for the written representations procedure – as set down in the letter the subject of these proceedings. Mr Padden complied with this with statements submitted from each of his four expert witnesses [SB/6-9]. These statements were accompanied by a covering letter that said [SB/5/103]:

"These submission in response to the above appeal are made on behalf of our client Mr David Padden and have been made in accordance with the timetable currently set by the Inspectorate. This notwithstanding the issue of fairness of process raised our letter to the Inspectorate on the 02/11/2020 (when a Hearing was proposed) and as set out in the letter before claim submitted on to the Inspectorate on behalf of our client by David Warman of Richard Max and Co Solicitors, following notification of the current written representations process. We are currently awaiting a response."

64. On the same day PINS replied to the letter before claim indicating that the mode of determination issue would be reviewed by a senior Inspector (CB/15/149].

65. By an email sent on 29 March 2021 the Government Legal Department wrote in these terms [CB/17/156]:

> *"Dear Sirs/Madam,*
> *1. The Parties will be aware that a pre-action letter was served by an interested party, asserting that this appeal should proceed by way of an inquiry.*
> *2. The Secretary of State has a wide discretion in relation to his duty to select the appeal procedure. However, in accordance with the Procedural Guide, PINS keeps the determined procedure under review during the appeal, and is entitled to change the determined procedure at any point before a decision on the appeal is made (see para. 2.7.5 Procedural Guide).*
> *3. In light of the Council's expressed concerns about the selection of the written representations procedure, the interested party's correspondence and pre-action letter, and the email responses from the LPA and Appellant dated 26th March 2021, the decision to proceed by way of written representations has been reviewed by a senior Inspector in accordance with paras. 2.7.3 and para. 2.8.1 of the Procedural Guide.*
> *4. The review Inspector has considered the documents which have been submitted by the Parties, including the interested party, and has determined that it would be appropriate for this appeal to proceed by way of the hearing procedure, and has further noted that the appeal should be listed for two days. In reaching this decision, the Inspector considered the range of issues raised by Mr Padden, the various representations made by the Parties and interested parties, and the potential need for heritage evidence which would be better suited to the hearing format.*
> *5. In light of the Inspector's review, this appeal will now proceed under the hearing procedure. In accordance with the Procedural Guide, PINS will continue to keep the appeal procedure under review over the course of the appeal."*

66. Mr Padden was not made aware of the views of the other parties or that these had been sought. These were requested and provided. Monk Lakes Limited argued for written representations. The Council which had previously supported a hearing responded to PINS saying, "*On review, and largely based on the issues raised by 3rd parties some of which are complex, and the substantial local interest from those directly affected by the development, it is the LPAs view that an Inquiry would be an appropriate procedure in this case."*[CB/16/152]

67. On 1 April 2021 PINS wrote to Monk Lakes Limited requesting further environmental information under reg. 25 of the EIA Regulations "*it may be necessary to delay the appeal timetable as the appeal is suspended until either 30 days after the date on which the further information is sent to all persons to whom the ES was sent, or 30 days after the date on which the notice is published in the local newspaper or on a website, whichever is the latter*".[CB/20/164]

68. On 14 April 2021 Mr Padden's solicitors wrote to the Government Legal Department regarding PINS' request for further environmental information, the hearing procedure

generally, the need for cross-examination of certain aspects of evidence as part of the hearing and access to information during the appeal process [CB/21/167].

The grounds

Ground 1: failure to apply the relevant criteria/ failure to give reasons/ irrationality

69. In the light of the reasons set out in Ms Lord's letter dated 2 November 2020 [CB/9/117] this is clearly a case which must - applying PINS own criteria - be determined via the inquiry procedure..

70. The decision that this appeal be determined via a hearing is unlawful for the following reasons:

    1) PINS have clearly failed to apply its own published criteria set out in the Guide on deciding the mode of determination. Those criteria are required to be published by s. 319A(6) of the TCPA 1990 (see above), and must be had regard to and applied unless there are good reasons for departing from these. Had these criteria been considered and applied it is clear that the only rational decision here is an inquiry. Thus:
        i. the issues raised on this appeal are highly complex – in particular the issue of ground water flooding, but also in respect of a number of the other issues e.g. as to the Reservoir Act 1975. Consideration of these issues will involve consideration of highly technical data;
        ii. this evidence is in dispute between experts and will need to be the subject of testing through cross-examination;
        iii. the appeal, as the Council has stated, has given rise to "*substantial local interest from those directly affected by the development*"
    2) PINS have not to date given any, or any adequate reasons for departing from its own guidance as set out in the Guide;
    3) The Guide, see above, requires (see para. 2.7.3) that PINS [CB/24/182] "*will give reasons for the determination where this differs from the procedure requested by the appellant or the local planning authority*". Here the decision to proceed by hearing conflicts with the view of the Council as local planning authority that this be an inquiry, and the review decision under challenge gives no substantive reasons at all for this being a hearing as opposed to an inquiry;

4) The decision to determine an appeal as complex as this by way of a hearing and given what is at stake for Mr Padden is irrational. The suggestion made in earlier communications from PINS that this appeal raises limited issues of complexity is irrational given the content of the expert evidence now submitted by Mr Padden to PINS and the extent of the disputes that arise. Despite the review it seems to remain PINS view that this case is not a complex one. That is erroneous.

Ground 2: Breach of natural justice/ Breach of Article 6 of the ECHR

71. The unfairness here is also a breach of Article 6 of the European Convention on Human Rights:
    1) Monk Lakes Limited had nearly six months to develop its case on appeal and to develop and deploy a range of appeal documentation in support of its appeal;
    2) The written representations procedure that was adopted by the start letter, and the directions that letter contained, gave Mr Padden – and his expert team – just a few short weeks to digest all this material and produce expert evidence from four witnesses on a range of matters. Those experts have done the best they can in the time but the extent to which they could respond has been curtailed. This is especially egregious because PINS had all the material submitted by Monk Lakes Limited for a full 5 months before it actually provided it to Mr Padden. PINS refused to provide this to him earlier for reasons that were wholly spurious;
    3) The change to a hearing does not deal with these issues as Mr Padden has already had to submit his statements on the previously imposed timetable that applied to the written representations procedure. No indication is given of whether further submissions will now be allowed;
    4) The unfairness is worsened as the grant of permission on appeal here will have effects on Mr Padden's private law rights to seek injunctive relief in relation to the nuisance still being caused by the Monk Lakes development to his property: see above and the references in the correspondence to the effect of the Supreme Court's decision in ***Coventry v Lawrence***;
    5) The expert evidence, especially on matters of ground water flooding, clearly needs to be tested in cross-examination.

72. Mr Padden will also rely on Art.6(3) of the Aarhus Convention, and referred to in the ***Ashley*** case. This provides "*[t]he public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time … for the public to prepare and participate effectively during the environmental decision-making.*" It is submitted that the principle there expressed should be respected in domestic planning procedures; it has not been thus far.

Ground 3: Appearance of pre-determination

73. The approach taken by PINS to the procedural issues gives rise to an appearance of bias.

74. It would appear to the reasonable observer that a conclusion has been arrived at that the only substantive issues on this appeal are those arising from the Council's reasons for refusal and that there is little or no merit in the detailed technical points being pursued by Mr Padden that go beyond the Council's case: se e.g. ***R (Miller) v Health Service Commissioner*** [2018] PTSR 801 at paras. 57 and 66 and ***R (Electronic Collar Manufacturers Association) v SSEFRA*** [2019] EWHC 2813 (Admin) at para. 140.

75. This gives the impression that Mr Padden's case has been dismissed out of hand before it has been considered substantively by an Inspector.

Procedural matters

76. There are three procedural matters that arise

77. First, Mr Padden says that this is an Aarhus Convention claim, and the Court is asked so to direct. The Aarhus costs rules apply to any claim falling within the scope of Article 9 of the Aarhus Convention, that is to say any matter within the scope of environmental law. In ***Venn v SCHLG*** [2015] 1 W.L.R. 2328 the Court of Appeal said (see para. 11) that "*the Convention is arguably broad enough to catch most, if not all, planning matters*". This case concerns Mr Padden's attempt to obtain a fair process in relation to the determination of a planning appeal that has a number of environmental consequences. This is clearly a case covered by the Aarhus costs rules.

78. Second, Mr Padden seeks pursuant to CPR 54.10 a stay of the s. 78 appeal proceedings, the subject of this judicial review, until such time as this claim is determined.

79. Third, this case should be treated as a significant planning case for the purposes of the Part 54E PD.

The relief sought

80. Mr Padden thus seeks:

    1) Permission to apply for judicial review;
    2) A stay of the s. 78 planning appeal;
    3) The quashing of the decision made by PINS under s. 319A;
    4) Further or other declaratory relief;
    5) An order that the Secretary of State pay the costs of these proceedings.

JAMES MAURICI QC

Landmark Chambers

INSOLVENCY ACT 1986

Notice of Special Resolution

Resolutions of:	Monk Lakes Limited **("the Company")**
Company Number:	05234067
Passed:	15/07/2021

By way of Written Resolution of the Members of the above-named company, the following resolutions were passed by the Members: 1 as a Special resolution and 2 as an Ordinary resolution.

RESOLUTIONS

1. "That the Company be wound up voluntarily"; and
2. "That Duncan Beat and Andrew Watling, Licensed Insolvency Practitioners, be appointed Joint Liquidators of the Company and that they be authorised to act jointly and severally".

.....

Guy Harrison

Chair of Board of Directors

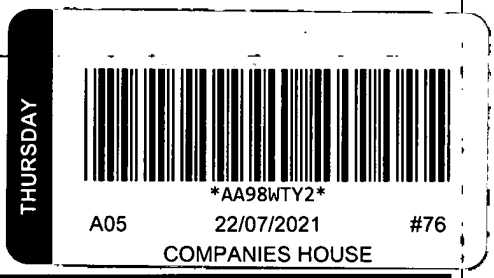
Dated: 16/07/2021

QCVL02A17NR

In accordance with Rules 6.2, 6.3 & 6.5 of the Insolvency (England & Wales) Rules 2016 and Sections 95 & 99 of the Insolvency Act 1986.

LIQ02
Notice of statement of affairs

Companies House



1 Company details

Company number	0 5 2 3 4 0 6 7
Company name in full	Monk Lakes Limited

→ **Filling in this form**
Please complete in typescript or in bold black capitals.

2 Liquidator's name

Full forename(s)	Duncan
Surname	Beat

3 Liquidator's address

Building name/number	Office D
Street	Beresford House
Post town	Town Quay
County/Region	Southampton
Postcode	S O 1 4 2 A Q
Country	

4 Liquidator's name ❶

Full forename(s)	Andrew
Surname	Watling

❶ **Other liquidator**
Use this section to tell us about another liquidator.

5 Liquidator's address ❷

Building name/number	Office D
Street	Beresford House
Post town	Town Quay
County/Region	Southampton
Postcode	S O 1 4 2 A Q
Country	

❷ **Other liquidator**
Use this section to tell us about another liquidator.

LIQ02
Notice of statement of affairs

6 Date of statement of affairs

Date: 09 07 2021

7 Statement of affairs

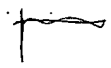
I attach:

- ☐ Statement of affairs by the liquidator under section 95(1A) of the Insolvency Act 1986
- ☑ Statement of affairs by a director under section 99(1) of the Insolvency Act 1986
- ☐ Statement of concurrence

8 Sign and date

Liquidator's signature

Signature

X  X

Signature date: 20 07 2021

LIQ02
Notice of statement of affairs

Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name: Daniel Salmon

Company name: Quantuma Advisory Limited

Address: Office D
Beresford House

Post town: Town Quay

County/Region: Southampton

Postcode: S O 1 4 2 A Q

Country:

DX:

Telephone: info@quantuma.com
02380336464

Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.

Important information

All information on this form will appear on the public record.

Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

Further information

For further information please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse

Statement of Affairs

Statement as to affairs of

Monk Lakes Limited
Company Registered Number: 05234067

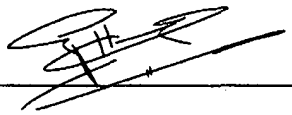
on the 9 July 2021, being a date not more than 14 days before the date of the resolution for winding up

---

Statement of truth

I believe that the facts stated in this Statement of Affairs are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full Name Guy Harrison

Signed 

Dated 12/07/2021

Monk Lakes Limited
Company Registered Number: 05234067
Statement Of Affairs as at 9 July 2021

A - Summary of Assets

Assets	Book Value £	Estimated to Realise £
Assets subject to fixed charge:		
Assets subject to floating charge:		
Uncharged assets:		
Leasehold Property	77,163.00	NIL
Plant & Machinery	12.16	NIL
Fixtures & Fittings	55,101.88	400.00
Stock	10,000.00	Uncertain
Estimated total assets available for preferential creditors		400.00

Signature _____ Date 12/07/2021

Monk Lakes Limited
Company Registered Number: 05234067
Statement Of Affairs as at 9 July 2021

A1 - Summary of Liabilities

		Estimated to Realise £
Estimated total assets available for preferential creditors (Carried from Page A)		400.00
Liabilities		
Preferential Creditors:-		
Pension Schemes	165.83	
		165.83
Estimated deficiency/surplus as regards preferential creditors		234.17
2nd Preferential Creditors:-		
HMRC PAYE/NIC (Employees)	1,607.46	
HMRC - VAT	31,062.33	
		32,669.79
Estimated deficiency/surplus as regards 2nd preferential creditors		(32,435.62)
Debts secured by floating charges pre 15 September 2003		
Other Pre 15 September 2003 Floating Charge Creditors		
		NIL
		(32,435.62)
Estimated prescribed part of net property where applicable (to carry forward)		NIL
Estimated total assets available for floating charge holders		(32,435.62)
Debts secured by floating charges post 14 September 2003		
		NIL
Estimated deficiency/surplus of assets after floating charges		(32,435.62)
Estimated prescribed part of net property where applicable (brought down)		NIL
Total assets available to unsecured creditors		(32,435.62)
Unsecured non-preferential claims (excluding any shortfall to floating charge holders)		
Trade & Expense Creditors	15,180.35	
Banks/Institutions	61,984.57	
HM Revenue and Customs - Corporation Tax	8,547.44	
Intercompany	2,771.10	
		88,483.46
Estimated deficiency/surplus as regards non-preferential creditors (excluding any shortfall in respect of F.C's post 14 September 2003)		(120,919.08)
Estimated deficiency/surplus as regards creditors		(120,919.08)
Issued and called up capital		
Ordinary Shareholders	100.00	
		100.00
Estimated total deficiency/surplus as regards members		(121,019.08)

Signature _____ Date 12/07/2021

Quantuma Advisory Limited
Monk Lakes Limited
Company Registered Number: 05234067
B - Company Creditors

Key	Name	Address	£
CA00	Andrew Sykes	St David's Court, Union Street, Wolverhampton, WV1 3JE	1,980.00
CB00	Burgess Hodgson	Camburgh House, 27 New Dover Road, Canterbury, CT1 3DN	7,009.50
CC00	Castle Water	1 Boat Brae, Rattray, Blairgowrie, PH10 7BH	6,190.85
CH00	HM Revenue & Customs	NOTE: CVL NOTIFICATION ONLY, Pre Appointment Notifications Only	8,547.44
CH01	HM Revenue & Customs	Warkworth House, Benton Park View, Longbenton, Newcastle Upon Tyne, NE98 1ZZ	31,062.33
CH02	HM Revenue & Customs		1,607.46
CN00	National Westminster Bank	3 High Street, Maidstone, Kent, ME14 1HJ	50,000.00
CN01	NEST	Nene Hall, Lynch Wood Business Park, Peterborough, PE2 6FY	165.83
CR00	Royal Bank of Scotland	Commercial cards divison, Cards Customer Services, PO Box 5747, Southend on sea, SS1 9AJ	11,984.57
CT00	Taytime	27 New Dover Road, Canterbury, CT1 3DN	2,771.10
10 Entries Totalling			**121,319.08**

Signature

Quantuma Advisory Limited
Monk Lakes Limited
Company Registered Number: 05234067
C - Shareholders

Key	Name	Address	Type	Nominal Value	No. Of Shares	Called Up per share	Total Amt. Called Up
HM00	Merrymove Limited	Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN	Ordinary	1.00	80	1.00	80.00
HM01	Merrymove Limited	Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN	Ordinary	1.00	20	1.00	20.00
2 Ordinary Entries Totalling					100		

Signature

THIS INDEMNITY AGREEMENT is made on 27th September 2021

PARTIES

Of the first part

(1) Duncan Beat and Andrew Watling (as Liquidators of Monk Lakes Limited without personal liability), whose address is Quantuma Advisory Limited, High Holborn House, 52-54 High Holborn, London WC1V 6RL ("the Liquidators"); and

Of the second part

(2) Taytime Limited ("Taytime") of Camburgh House 27 New Dover Road, Canterbury, Kent, CT1 3DN; and

(3) William Morgan Edward Kinsey-Jones ("Mr Kinsey-Jones") of Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU

BACKGROUND

(A) Monk Lakes Limited operated a fishery business at Monk Lakes, Staplehurst Road, Marden, Maidstone Kent TN12 9BU ("the Property").

(B) The Property was at all material times owned by Taytime.

(C) Taytime hold an Asset Purchase Agreement for the rights to any planning permission, application or appeal associated with the Property.

(D) A planning application was submitted in the name of Monk Lakes Limited rather than that of Taytime (in error) and was refused by Maidstone Council decision 11/1948.

(E) On the basis the planning application should have been in the name of Taytime and that Monk Lakes Limited had (and has never had) any interest therein, the Liquidators have agreed to permit Taytime to adopt the planning appeal against the decision 11/1948, provided that they are indemnified as to any costs expenses damages and adverse costs arising therefrom.

(F) Mr Kinsey-Jones is the sole director in Taytime and has agreed to provide a personal indemnity to the Liquidators jointly and severally with that given by Taytime to facilitate the appeal.

THE PARTIES AGREE:

1 **Definitions and interpretation**

1.1 **Definitions**

In this Agreement:

Planning Appeal or Appeal	means an appeal against decision 11/1948 by Maidstone Council;

Decision	means the decision 11/1948 referred to.
Liquidators	means Duncan Beat and Andrew Watling of Quantuma Advisory Limited and includes their successors
Taytime	means Taytime Limited of Camburgh House 27 New Dover Road, Canterbury, Kent, CT1 3DN
Mr Kinsey-Jones	means William Morgan Edward Kinsey-Jones of Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent TN12 9BU, including his heirs successors or assigns.

1.2 **Interpretation**

1.2.1 Words denoting the singular number only include the plural and vice versa.

1.2.2 Words denoting any gender include all genders and words denoting persons include firms and corporations and vice versa.

1.2.3 Unless the context otherwise requires, reference to any clause, sub-clause, paragraph or schedule is to a clause, sub-clause, paragraph or schedule (as the case may be) of or to this Agreement.

1.2.4 Any covenant or stipulation entered into by more than one party shall be deemed to be entered into jointly and severally.

1.2.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2. The Liquidators consent (insofar as it is needed) to Taytime having conduct of the Appeal at its own expense and will sign, do and permit all documents and things reasonably necessary for that purpose.

3 **Indemnity**

3.1 In consideration of that consent, Taytime and Mr Kinsey-Jones jointly and severally covenant with the Liquidators that, so long as the Appeal is on foot, and after that period shall have expired, they will pay and discharge all the costs and expenses of and occasioned by the Appeal or any damages arising therefrom and will keep the Liquidators and their personal representatives indemnified against all such costs and expenses and damages and against all claims, proceedings, costs, demands and expenses in respect of them.

3.2 Taytime and Mr Kinsey-Jones further jointly and severally covenant with the Liquidators that, so long as the Appeal or any costs decision in relation thereto remains live, they will retain the Property in the ownership of Taytime.

4. **Further assurance**

The Director of Taytime for the time being shall do all such acts and things and execute such deeds and documents as may be necessary fully and effectively to give effect to this Agreement.

5. **Counterparts**

This Deed may be entered into in any number of counterparts, and by the parties on separate counterparts, all of which when duly executed will together constitute one and the same instrument.

6. **Governing law and jurisdiction**

6.1 This Deed and any non-contractual rights and obligations arising out of or in connection with it will be governed by and construed in accordance with English Law.

6.2 Each of the parties irrevocably:

6.2.1 agrees that the English courts will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed (including any non-contractual rights and obligations) and the documents to be entered into pursuant to it and. Accordingly, that proceedings arising out of or in connection with this Deed will be brought in such courts; and

6.2.2 submits to the jurisdiction of such courts and waives any objection to proceedings being brought in any such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

This Deed is executed as a deed and delivered on the date first stated above.

Signed by Duncan Beat for and on behalf of himself and
Andrew Watling
And Monk Lakes Limited (In Liquidation)

Witness Name NICOLA LADLOW
Address 1 BRITANNIA CLOSE, BILLERICAY, ESSEX, CM11 1AQ
Occupation PERSONAL ASSISTANT

Signed as a DEED by

Name W. Kinsey-Jones

Director duly authorised for

Taytime Limited

Signed C. Williams

Witness Name C. WILLIAMS

Address MONK LAKES STAPLEHURST RD
MARDEN KENT TN12 9BS

Occupation SECRETARY

Signed as a DEED by

Name WILLIAM MORGAN EDWARD KINSEY-JONES

On his own behalf

Signed C. Williams

Witness Name C. WILLIAMS

Address MONK LAKES STAPLEHURST RD
MARDEN KENT TN12 9BS

Occupation SECRETARY

High Holborn House
52-54 High Holborn
London
WC1V 6RL

T: +44 20 3856 6720

www.quantuma.com

22 September 2021

Ms Joanne Hodgson
Room 3/P Temple Quay House
2 The Square
Bristol
BS1 6PN

By email: JOANNE.HODGSON@planninginspectorate.gov.uk

Dear Ms Hodgson

RE: Appeal 3259300 – Monk Lakes

Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal.

Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land.

Should you have any queries in this regard then please do not hesitate to contact me.

Yours faithfully

Duncan Beat
Managing Director
Quantuma Advisory Limited
duncan.beat@quantuma.com

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Our Ref: DW:100351.0001

12 October 2021

ITEM 3

Milena Opolska
The Planning Inspectorate
3M, Kite Wing, Temple Quay House,
2 The Square,
Temple Quay,
Bristol
BS1 6PN

Dear Madam

Appeal by Monk Lakes Limited
APP/U2235/W/20/3259300 ("the Appeal")
Monk Lakes, Staplehurst Road, Marden TN12 9BS

We act for Mr David Padden in respect of the above appeal. We have been provided with a copy of your letter to Maidstone Borough Council dated 5 October 2021 by our client's planning consultant, Rebecca Lord.

By way of background, you will be aware that earlier this year our client brought a claim for judicial review in respect of the Planning Inspectorate's decision to allocate the Appeal to the hearing procedure.

That litigation has now concluded following the agreement of a Consent Order, and we attach a copy of the sealed Consent Order agreed between the parties for your ease of reference dated 16 September 2021.

Under the terms of the Consent Order the Planning Inspectorate is required to take three actions as follows:

i. To appoint an Inspector to the appeal within 21 days of the order – by 7 October 2021;
ii. To send the appointed Inspector, copies of all previous correspondence, the appeal documentation and all documents filed in support of the litigation;
iii. The Inspector will use reasonable endeavours to make a determination as to the mode of the appeal within one month of their appointment – by 8 November at the latest.

We note from your letter 5 October 2021, that the Inspector Acton has been appointed and that the intention is to hold a Case Management Conference ("CMC") on either 28 or 29 October 2021. We also note that the Inspector has provided a preliminary indication that the appeal should be determined by way of a hearing to take place in November or December 2021.

Against this background we would raise the following points in response to your letter:

a. We would request that our client is invited to attend and participate in the proposed CMC. Our client will be represented by Leading Counsel and our preference would be for the CMC to be scheduled for the 29 October date. Please confirm by return that our client will be permitted to participate in the CMC and provide relevant access details.
b. As set out above the terms of the Consent Order require the appointed Inspector to be sent copies of all the previous correspondence and documentation filled in support of the litigation (including the Statement of Facts and Grounds). Please can you confirm that this material has already, or will be made available to Inspector Acton before the CMC? This documentation sets out our client's position in full and in explains in detail why the Appeal should be allocated to a public inquiry. It is crucial that the Inspector is provided with and properly considers this information before making a final decision on the Appeal procedure. The Inspector will need to provide reasons for the decision reached.
c. We note the proposed intention for the hearing to take place in November or December 2021. Whilst our client very strongly welcomes the appeal process being expedited, we are unable to reconcile this proposal with the Planning Inspectorate's letter of 1 April 2021, which required the appellant to provide further environmental information pursuant to Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"). Our understanding is that no further action has been taken by the Planning Inspectorate following that letter and the requested information has not been provided by the Appellant (who indicated that the material would take approximately 6 months to produce) We do not therefore consider a hearing or public inquiry can take place in November or December 2021 in advance of the publication (and consultation upon) of the further environmental information in accordance with the requirements of the EIA Regulations.
d. Finally, and notwithstanding all the above points, the Inspector should be made aware that the appellant, Monk Lakes Limited has now filed for voluntary liquidation. Notices were published in the Gazette on 21 July 2021 confirming the resolution to appoint liquidators,and notice of the proposed striking off of the company was filed at Companies House on 27 July. Section 78 of the Town and Country Planning Act 1990 is clear that only the applicant for planning permission may pursue an appeal. The original application was made in the name of Monk Lakes Limited. Given that that company is in the process of being dissolved pursuant to voluntary liquidation, we consider that the appeal should be automatically dismissed. Please would you confirm by return what action the Planning Inspectorate intends to take given the liquidation of the appellant.

We look forward to hearing from you by return.

Yours faithfully

RICHARD MAX & CO

From:	East3
To:	planningappeals@midkent.gov.uk; Jim Tarzey; Richard Timms; Beth Lambourne
Cc:	Rebecca Lord
Subject:	Planning Inspectorate APP/U2235/W/20/3259300: Monk Lakes, TN12 9BU
Date:	17 November 2021 11:22:00

ITEM 4

Good morning

Having regard to Annex K of the Procedural Guide: Planning appeals – England October 2021 and the evidence that is currently before him, please find set out below the Inspector's determination as to the procedure the appeal ref: APP/U2235/W/20/3259300 will follow.

The reasons for refusal set out in the Council's decision notice dated 12 March 2020 for application 11/1948 can be summarised as:

- The effect on designated heritage assets.
- Unacceptable effects on the living conditions of the occupiers of Hertsfield Barn and Nos. 3, 4, 5 and 6 Hertsfield Farm Cottages, with particular regard to privacy.

In short, both the Council and the appellant originally requested a hearing but in a letter dated 10 May 2021 from the Council it is requested that an inquiry is considered appropriate for the following reasons:

- Increasingly aware of a heightened public interest.
- Members of the local community wish to cross examine the appellant.
- The case is complex and long standing.
- A public inquiry would ensure maximum engagement and transparency.

Mr. Padden, a neighbour to the site and interested party also requests an inquiry to raise the following issues, which are not concerns of the Council:

- Landscape impacts
- Ground water flooding impacts - including on the fabric of Hertsfield Barn.
- Minerals.
- Waste.

There is also a request for an inquiry from at least one other third party who was a Councillor (Wendy Young email dated 31 December 2020). There are a further 6 letters of representation to the appeal, including a letter and photographs from Hertsfield Residents Association raising objections on similar issues to Mr. Padden along with other matters relating to the background and planning history.

Whilst the Council refer to heightened public interest in the absence of anything substantive to demonstrate that, there does not appear to be a substantial local interest in this appeal beyond the small number of representations received. Both of the reasons for refusal involve a level of subjectivity and judgment that in the Inspector's experience are more suited to a round table discussion, led by his own questioning. The Inspector considers that it is not necessary for these matters to be tested through formal questioning by an advocate, and they appear to be not so complex as to warrant an inquiry. The additional issues raised by interested persons are more technical, but again are not so complex that they require formal presentation and examination of evidence as to justify an inquiry and sufficient time can be allocated for questioning and discussion on those issues led by the Inspector.

Legal advocacy or the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. The Inspector's view is that this is a matter for discussion at the CMC but sees no reason why those submissions could not be made via an exchange of written statements prior to the event. Any matters arising could then be addressed by the Inspector and the parties through discussion, if necessary.

Therefore, the Inspector considers that a 2 day hearing would be appropriate for this appeal and proposes a Case Management Conference ('CMC') including Mr Padden along with other interested persons. The Inspector requests that the Council and the appellant submit a signed statement of common/uncommon ground and that this is submitted prior to the CMC. It would also be helpful to the Inspector's preparation if Mr Padden and the appellant were to complete a separate statement. The statements should focus on the main details of the agreements and disputes for each relevant issue and be clear and concise on the respective position of the parties. The statements will inform the Inspector's questioning and the discussion at the event.

In terms of the consequences for the appeal timetable, the Inspector considers there is no need to re-start the timetable but is mindful of the additional environmental information to be submitted by the appellant in December and the need for this to be considered by all parties. He considers it would therefore be most appropriate for a CMC to be arranged as early as possible in January 2022 and once all of the parties and PINS have had a reasonable opportunity to consider the submitted information. The Hearing could then be scheduled to be held in February. The Inspector has also indicated he will allow some flexibility for any necessary additional submissions or rebuttals from the parties to be submitted but this must be agreed with him beforehand. The Inspector confirms he will keep the procedure under review and reminds the parties that he can invoke the provisions of section 319A at any time until the decision is issued.

The case officer, Milena Opolska will be in contact in due course to arrange provisional dates for the CMC.

Finally, I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal.

Your sincerely

Andy Lumber

Planning Casework Manager

DPC:76616c646f72

STATEMENT OF COMMON GROUND

BETWEEN TAYTIME LIMITED & MAIDSTONE BOROUGH COUNCIL

LAND AT MONK LAKES, STAPLEHURST ROAD, MARDEN, MAIDSTONE, KENT, TN12 9BU

PINS REF: APP/U2235/W/20/3259300
LPA REF: 11/1948
PEGASUS REF: P20-0831

DATE: DECEMBER 2021

VERSION: FINAL

SIGNED: 	**SIGNED:** 
NAME: RICHARD TIMMS	**NAME: JIM TARZEY**
ON BEHALF OF: MAIDSTONE BOROUGH COUNCIL	**ON BEHALF OF: TAYTIME LIMITED**
DATE: 21/12/21	**DATE: 21/12/2021**

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APPENDICES:

FIGURES:

1. INTRODUCTION

1.1 This Statement of Common Ground (SoCG) has been prepared by Pegasus Group on behalf of Taytime Limited ("the Appellant").

1.2 It has been prepared in conjunction with Maidstone Borough Council (MBC), the Local Planning Authority (LPA) and relates to a Section 78 Appeal concerning Land at Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU ("the Appeal Site").

1.3 The purpose of the SoCG is to identify the areas where the principal parties (the Appellant and the LPA) are in agreement and to narrow down the issues that remain in dispute. This will allow the Appeal Hearing to focus on the most pertinent issues.

1.4 The application (ref. 11/1948) which is the subject of this appeal was considered by the Council's Planning Committee on 23rd January 2020 and then deferred to be re-considered at the Planning Committee meeting on 5th March 2020. The application was refused on 12th March 2020.

2. SITE DESCRIPTION

Location

2.1 The Appeal Site is situated within the administrative area of Maidstone Borough Council and is located on land at Monk Lakes, Staplehurst Road, approximately 8.9km south east of Maidstone Town Centre.

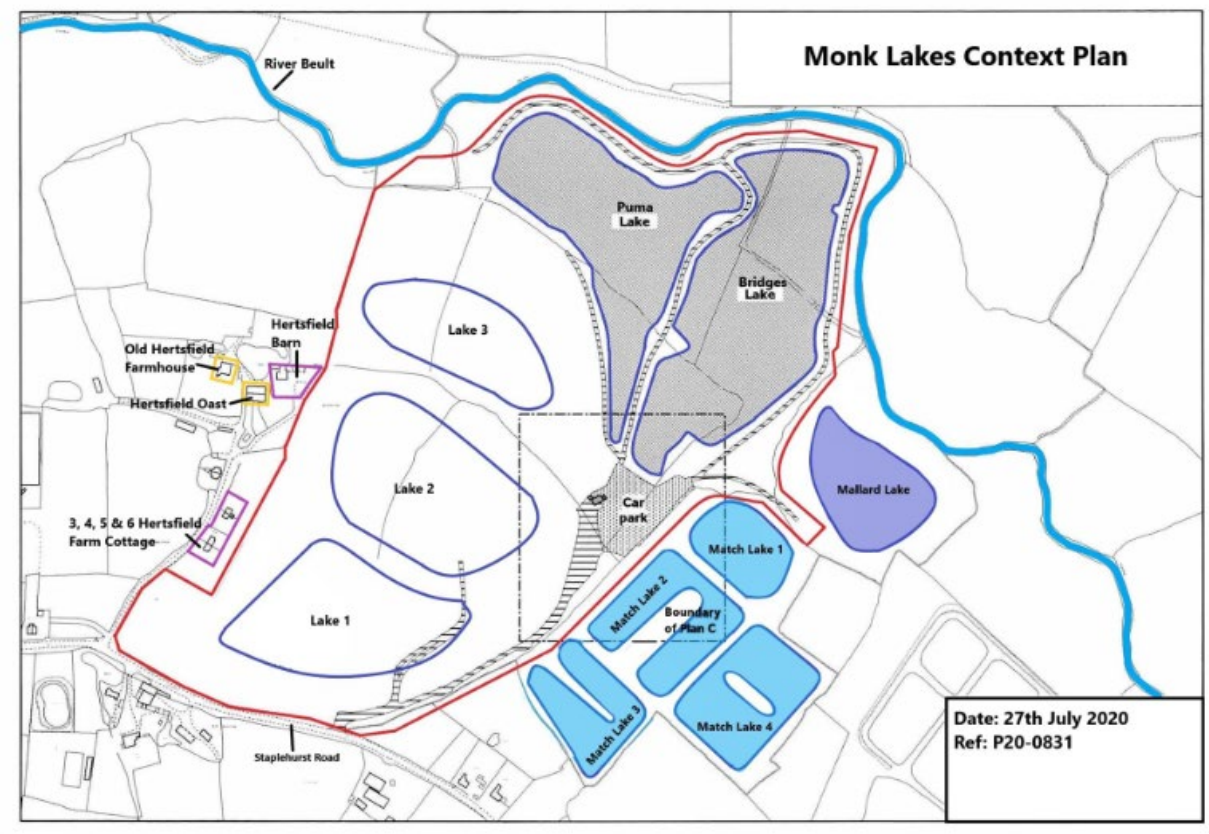
Appeal Site

2.2 The Appeal Site covers an area of approximately 35 hectares and comprises five recreational fishing lakes; two of which are ground level lakes known as 'Bridges' and 'Puma' and three of which are raised above ground level, known as Lakes 1, 2, and 3. Lakes 'Bridges', 'Puma' and Lakes 2 and 3 are complete, and excavation works for Lake 1 have also been completed. However further construction works are required to complete Lake 1. None of the lakes benefit from planning permission and are all the subject of this appeal.

2.3 The Appeal Site forms part of a wider recreational fishing site, known as 'Monk Lakes', which also includes Mallard Lake, and Match Lakes. These are located to the south-east of the Appeal Site. Match Lakes consists of four separate lakes which are raised higher than the original ground level; Mallard Lake is sited lower. All of these lakes benefit from planning permission under 09/1380.

2.4 Three of the four lakes comprising Match Lakes, as the name suggests, facilitate competition angling, whereas the fourth lake (identified in the context plan below as Match Lake 1) and all other lakes in the Monk Lakes complex (including the Appeal Site) are for recreational fishing at the anglers' leisure.

2.5 A Context Plan illustrating the Appeal Site (outlined in red) in context with the wider Monk Lakes facility is included below at **Figure 1**.



2.6 The Appeal Site lies to the north of the Staplehurst Road (A229), approximately 3.5km south of Linton Crossroads and approximately 3km northwest of Staplehurst which lies within Marden Parish. Vehicular access to the Site is provided via Staplehurst Road to the south, which leads to a car park area and building comprising a shop and serving refreshments to visiting anglers, with further internal tracks which provide access through the Site to the lakes. The shop and refreshment buildings were granted temporary permission (ref. 09/2027) on 4th January 2010; however, the temporary period has since expired.

2.7 The Appeal Site is predominantly bound by agricultural land, with several commercial uses in the wider surrounding area along Staplehurst Road. The nearest residential properties are located along Hertsfield Lane immediately to the west of the Site. These properties comprise Hertsfield Farm Cottages; Old Hertsfield Farmhouse (Grade II); Hertsfield Barn (Grade II) which is located approximately 50m east of Old Hertsfield Farmhouse; and Hertsfield Oast. The properties which are specifically referred to in the reasons for refusal (nos. 3, 4, 5 and 6 Hertsfield Farm Cottages and Hertsfield Barn) are outlined in purple in the Context Plan

included at **Figure 1**. There are also a number of residential properties to the south of the Appeal Site, on the opposite side of Staplehurst Road (A229).

2.8 There are a number of commercial premises within the wider surrounding area along Staplehurst Road, including Millbrook Garden Centre and Skinners Sheds, approximately 0.2 miles to the south-east, and Staplehurst Transits (a storage and distribution depot) less than 0.5 miles to the south-east.

2.9 To the south east of the Appeal Site, beyond Mallard and Match Lakes, lies the Riverfield Fish Farm. This facility is not owned by the Appellant and does not form part of the Appeal Site. Whilst the Appeal Site did historically form part of Riverfield Fish Farm, the Monks Lake fishing lakes complex is now entirely separate to it and operated under different ownership.

2.10 The Appeal Site is bound by the River Beult to the north which is a Site of Special Scientific Interest (SSSI).

2.11 There is a Public Right of Way (PROW) (footpath ref. KM129) located on the northern side of the River Beult which runs east to west.

Flood Zone

2.12 According to the Environment Agency's indicative flood maps, the northern part of the Appeal Site lies within Flood Zone 2 (between a 1 in 100 and 1 in 1,000 annual probability of flooding) and Flood Zone 3 (1 in 100 or greater annual probability of flooding). An extract of the Environment Agency's indicative flood map is included in **Figure 3** below.

Figure 2: Extract of Environment Agency's Flood Map

Ecological Designations

2.13 The River Beult forms the northern boundary to the Site which is a Site of Special Scientific Interest (SSSI).

Trees

2.14 There are no trees covered by Tree Preservation Orders within the Site.

Historic Environment

2.15 The Appeal Site is not located within a Conservation Area and does not include any Listed Buildings. There are two Listed Buildings within close proximity to the western boundary of the Appeal Site; Old Hertsfield Farmhouse (Grade II) and Barn about 50 metres east of Old Hertsfield Farmhouse (Grade II); however, the Reason for Refusal only makes reference to the Grade II Listed Hertsfield Barn.

3. SITE BACKGROUND AND PLANNING HISTORY

3.1 There is a lengthy planning history associated with the Site dating back across the last two decades, which is set out within this section.

3.2 A table summary of the main relevant planning and enforcement history associated with this site are set out in the table below:

Table 1 - Summary of main relevant planning and enforcement history

Application / Enforcement Notice Ref.	Description of Development	Decision	Date of Decision / Issue
00/1162	Change of use of land and engineering works to create an extension to the existing fish farm	Approved	2nd January 2001
03/0836	Change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing.	Approved	22nd September 2003
LDMB/LEG06/ 00504	Enforcement notice served	Subsequently appealed	12th September 2008
09/1380	Retrospective application for the change of use of existing lakes from fish farm to recreational angling and retention of ancillary car parking and access to site	Approved	26th November 2019
09/2027	Retrospective application for the retention of buildings and mobile facilities to serve recreational angling	Approved for temporary period of 3 years	4th January 2010
11/1948	Part retrospective planning application for the retention of two lakes known as 'Bridges' and 'Puma' and works to create 3 additional lakes all for recreational fishing, erection of clubhouse, building and associated works and landscaping	Approved	6th September 2012
		Permission quashed by the High Court	22nd January 2014
APP/U2235/C/ 08/2087987	Enforcement Appeal Decision	Allowed solely in relation to ground (g) of Section 174 of the Town and Country Planning Act (as amended), which relates to the time period for compliance with the Enforcement Notice)	18th May 2015

11/1948	Part retrospective planning application for the retention of two lakes known as 'Bridges' and 'Puma' and works to create 3 additional lakes all for recreational fishing, erection of clubhouse, building and associated works and landscaping	Supplementary Environmental Statement submitted to the Council	July 2015
		New Environmental Statement submitted to the Council	February 2019
		Subsequently refused by the Council at Planning Committee	12th March 2020

Site Background

3.3 An overview of the Site background is set out below to provide context to the lengthy planning history.

3.4 In January 2001, planning permission ref. 00/1162 was granted for change of use of land and engineering works as a westward extension to River Fish Farm to form new lakes for farming of coldwater fish. These lakes (Match and Mallard Lakes) lie to the east of the Appeal Site, outside of the site boundary. However, the planning permission also allowed for provision of a temporary works access to the lakes from Staplehurst Road, which is included within the Appeal Site.

3.5 Following this, in September 2003 planning permission ref. 03/0836 was granted for the change of use and physical works to the Appeal Site to facilitate an extension of the Riverfield Fish Farm complex for recreational fishing. This included the formation of numerous ponds and lakes (both at ground level and some raised above ground level), the erection of a clubhouse building and the formation of a car park. The permission also included extended access from Staplehurst Road into the Site.

3.6 MBC served an Enforcement Notice for the Site in September 2008 predominantly on the grounds that between 2003 and 2008 works were being carried out that were not in accordance with the permission granted under application reference 03/0836. The Enforcement Notice was subsequently appealed by the Appellant.

3.7 Following the Enforcement Notice being issued, in November 2009, the Appellant submitted an application for retrospective planning permission ref. 09/1380 which was granted for the change of use of Mallard Lake and Match Lakes, from a fish farm to recreational angling use, including retention of the car park and access to the site. This main access from Staplehurst Road into the Monk Lakes complex had originally been provided on a temporary basis under permission ref. 00/1162, however its permanent retention was secured through this permission.

3.8 Additionally, retrospective permission ref. 09/2027 was also granted in January 2010, for a temporary period of 3 years, for the retention of buildings and mobile facilities to serve recreational angling on the site.

3.9 Following this, a part retrospective application ref. 11/1948 (which forms the basis of the appeal scheme) was submitted in November 2011 for the retention of Lakes Bridges and Puma and works to create 3 additional lakes (known as Lakes 1, 2, and 3) for recreational fishing; together with erection of a clubhouse building and associated works, and landscaping. This application was granted by MBC on 6th September 2012. At this point, works to the Lakes continued, however these ceased following the filing of a Judicial Review by the adjoining neighbour to the Site.

3.10 The permission was quashed by the High Court in January 2014. The summarised grounds on which the High Court quashed the previous decision were:

1. *Failure by the Council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for Environmental Impact Assessment (EIA) development; and*

2. *Failure by the Council to adequately consider groundwater flooding within the EIA process.*

3.11 Following this, the Hearing for the appeal (ref. APP/U2235/C/08/2087987) against the Enforcement Notice was held on 28th April 2015.

3.12 The appeal decision was issued on 18th May 2015 and was allowed solely in relation to ground (g) of Section 174 of the Town and Country Planning Act (as amended), which relates to the time period for compliance with the Enforcement Notice. This applied to the works that required material to be removed or used to fill holes and depressions and restore the land to its previous condition, amending it to allow for a total of 22 months (to April 2017).

3.13 MBC's Enforcement team have held any action regarding the Enforcement Notice in abeyance pending the re-determination of the application.

3.14 The appellant submitted an updated Environmental Statement in July 2015. A summary of the history relating to the Environmental Statement element of the application is referenced below.

Table 2 - Summary of history of the Environmental Statement

Submission Date	Document	Status/Explanatory Notes
November 2011	Original ES	Accompanies original submission
July 2015	Supplementary ES	Provides further information to Nov 2011 (itself is included within the July 2015 submission) Provides baseline environmental information for the periods between 2003 and 2011; incorporates the findings and conclusions of the 2011 Environmental Statement in full and where necessary provides updated and amended as necessary information by up to date technical reports to the current day.
February 2019	New ES	Provided in response to formal Reg 22 request and collates all relevant information to assess the environmental effects and identify the key environmental impacts that could arise, including consideration of a pre-2003 baseline. This submission supersedes earlier ES submissions. Following disciplines addressed: - Flood Risk, Hydrology, Hydrogeology And Groundwater And Drainage (significant further work) - Ecological Assessment (updated surveys) - Landscape & Visual Impact - Conservation & Cultural Heritage - Cumulative Impact Assessment & Conclusion
October 2019	ES Addendum	Review of hydrological matters in relation to updated land survey on lakes 1-3; review of conclusions previously drawn and update of relevant plans seeking retrospective permission

3.15 Further details of the Environmental Statement are included later in this Statement.

3.16 In August 2019 the LPA commissioned its own topographical survey of the site to verify the accuracy of the appellant's plans. Following this, the appellant submitted amended plans relating to Lakes 1-3, and the proposed clubhouse, and an addendum to the Environmental Statement in October/November 2019.

3.17 The amended application with all the additional information was considered by MBC's Planning Committee for re-determination on 5th March 2020 with a recommendation for approval, where it was resolved to refuse the application.

3.18 Following the refusal of planning application on 12th March 2020, MBC's Enforcement team have held any actions in abeyance following the outcome of this current appeal.

4. THE APPEAL PROPOSAL

4.1 The Planning Application, now the subject of this Appeal, seeks planning permission for the following development:

> **"Part retrospective planning application for the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping."**

4.2 The application seeks retrospective permission for the retention of the 2 below ground lakes (Bridges and Puma) in their current form in the northeast corner of the site and raised Lakes 2 and 3 on the west side of the site, also in their current form. Permission is also sought for raised Lake 1 and this requires additional works to complete mainly involving raising the levels of the lake bed and reductions in the levels of the lake banks.

4.3 'Bridges' and 'Puma' lakes are excavated below ground with their water level just below ground level. Lakes 1, 2, and 3 are/would be between 5m to 6.2m above the previous ground level and have sloped sides which run down to the west boundary with some Hertsfield Road properties, to the south boundary with the A229, and within the site itself. The depth of water would be around 2m.

4.4 Landscaping is proposed largely in the form of woodland planting along the west and south site boundaries and on the lake slopes, and existing landscaping would be retained around Puma and Bridges lakes.

4.5 A new clubhouse is proposed to provide facilities for anglers which would be in a similar position as the temporary buildings adjacent to the car park which will be removed. The building would be single storey with hipped roofs and finished in timber boarding and clay roof tiles. It would have a floor area of 266m2 and provide toilets and showers, offices, shop, kitchen, and dining area. The existing car park would be formalised with new surfacing and marked spaces and lowered in the region of 1m from its present position to provide flood compensation. New landscaping would be introduced in and around the car park/clubhouse.

5. AMENDMENTS TO THE PREVIOUSLY QUASHED APPLICATION

5.1 The changes from the originally proposed development consist of lower sloped banks in places around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in places of no more than 1m. The western banks also begin to rise closer to the western boundary in some places. The corners of the lakes are also positioned at slightly different angles and the islands within the centre of the lakes are also a marginally different shape and in slightly different locations.

5.2 The orientation of the clubhouse was altered since the application was originally submitted, however is broadly in the same location, to the east of Lake 2. The roof pitch was made shallower, and the building raised around 2m above ground level.

5.3 An amended Proposed Landscaping Plan (ref. ref. P20-0831_02 Rev A) has been submitted as part of the appeal and this supersedes the Proposed Landscaping Plan (ref. 0183-04/03 Rev D) which was previously submitted to the Council. It is agreed that the changes are not material, and that the plan has been updated only to provide an accurate representation of the existing landscaping which is proposed to be retained as part of the scheme. Sectional drawings (ref. P20 0831-01 Sheets 1 to 4) have also been produced to demonstrate the distance between the lakes and Hertsfield Barn and the gradient of the lakes.

5.4 This updated Landscaping Plan does not seek to alter any new landscaping proposed but just to accurately reflect the existing landscaping on Site which is proposed to be retained. The key changes provide for the additional inclusion and retention of:

- Area of existing woodland scrub comprising self-grown willow and scrub land to the south east of Lake Puma;
- Existing tree planting and vegetation around boundaries of Lake Puma and Lake Bridges, and within the islands within both lakes;
- Existing trees along the southern boundary of the River Beult;
- Existing tree planting and vegetation around boundaries of Lakes 2 and 3, and within the islands within both lakes;
- Indicative wood chipping areas around Lakes Puma and Bridges; and
- Clarification of the proposed landscaping to the east of Lake 1 and between Lakes 1 and 2.

6. POLICY AND LEGISLATION

6.1 This section sets out the legislation and planning policy considerations and guidance contained within both national and local planning guidance which relate to the Appeal.

National Planning Policy

6.2 The National Planning Policy Framework (NPPF) was most recently published by the Government on 20th July 2021 and sets out the Government's national policy for planning and how these policies are to be applied.

6.3 The NPPF is a material consideration in the determination of the Appeal. Both the LPA and the Appellant have made reference to the NPPF in their Statements of Case.

6.4 The National Planning Practice Guidance (NPPG) provides further guidance and will be referred to by both parties.

The Development Plan

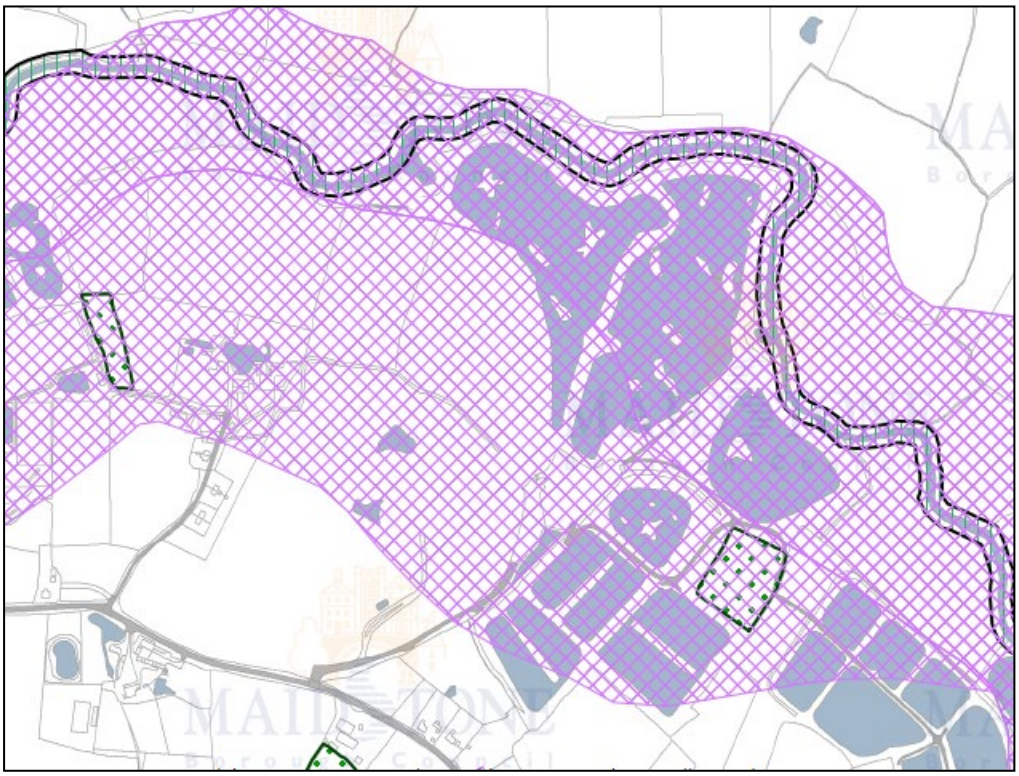
6.5 Both parties agree and accept that under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for Planning Permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

6.6 At the time of writing, the Statutory Development Plan covering the Appeal Site comprises:

- Maidstone Borough Local Plan 2011-2031 (adopted October 2017);
- Kent Minerals and Waste Local Plan 2013-2030 (adopted July 2016); and
- Marden Neighbourhood Plan 2017-2031 (adopted June 2020).

Proposals Map

6.7 The adopted Proposals Map, which accompanies the Maidstone Borough Local Plan (2017), confirms that the Appeal Site is partially within the KCC Minerals Safeguarding Areas as shown in **Figure 3** below.



KCC Minerals Safeguarding Areas Ancient Woodland

- SS1 – Maidstone borough spatial strategy
- SP17 – Countryside
- SP18 – Historic environment
- SP21 – Economic development
- DM1 – Principles of good design
- DM2 – Sustainable design
- DM3 – Natural Environment
- DM4 – Development affecting designated and non-designated heritage assets
- DM8 – External Lighting

- DM21- Assessing the transport impacts of development
- DM23 – Parking standards
- DM30 – Design principles in the countryside
- DM37 – Expansion of existing businesses in rural areas

Marden Neighbourhood Plan

6.9 The Site is located within the boundary of the Marden Neighbourhood Plan (adopted July 2020). The key Neighbourhood Plan policies of relevance to this Appeal are:

- Policy NE1 – Surface Water Management
- Policy NE2 – Water Quality
- Policy NE3 – Landscape Integration
- Policy NE4 – Biodiversity and Habitats
- Policy NE5 – Landscape Planting
- Policy NE6 – Soil Conservation
- Policy BE1 – Local Character
- Policy BE3 – Sustainable Construction
- Policy In3 – Traffic Generation
- Policy E1 – Business and Employment

Kent Waste and Minerals Plan

6.10 The Waste and Mineral Plan policies of relevance to this Appeal are:

- Policy DM7 – Safeguarding Mineral Resources

Legislation

6.11 Legislation relating to the Historic Environment is primarily set out within the Planning (Listed Buildings and Conservation Areas) Act 1990 which provides statutory protection for Listed Buildings and Conservation Areas.

6.12 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that:

> *"In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".*

6.13 The following are agreed as being relevant in terms of the Historic Environment by virtue of the presence of a nearby Listed Building and the potential for impact upon its setting:

- Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990; and
- The National Planning Policy Framework (2021) Chapter 16: Conserving and Enhancing the Historic Environment.

Emerging Local Plan Review

6.14 The Council undertook an Issues and Options consultation in July – September 2019. The latest Local Development Scheme (published July 2021) states that the Council aim to adopt the emerging Local Plan in January 2023. The Regulation 18 (Preferred Approaches Consultation) was carried out in December 2020 and the Regulation 19 consultation was completed between October and December 2021 and Submission for Examination is planned in March 2022.

7. MATTERS IN AGREEMENT

7.1 This section sets out the matters in agreement between the Appellant and the LPA.

Appeal Site

7.2 The site area which comprises the Appeal Site is agreed. This area includes the area covering Lakes Puma, Bridges, and Lakes 1, 2, and 3. It is agreed that the Appeal Site has an area of approximately 35 ha.

Format of the Planning Application

7.3 It is agreed that the Planning Application seeks full planning permission for recreational fishing lakes which is partly retrospective in relation to Lake Bridges and Puma, and Lakes 2 and 3. Permission is sought for works to complete Lake 1 and for the erection of a clubhouse building, formalisation of the existing car park with new surfacing and associated landscaping around the site.

Development Plan Designations

7.4 It is agreed that the Appeal Site is within open countryside and partially within the Kent County Council Minerals Safeguarding Area. It is agreed that the proposed development falls within the Safeguarding Area for 'alluvial river terrace deposits' and 'river terrace deposits' under the Kent Minerals and Waste Local Plan (KMWLP) (adopted July 2016). It is agreed that the site meets the requirements of policy DM7 on the basis that extraction would not be appropriate in this location due to the potential unacceptable impacts to the River Beult SSSI.

7.5 It is agreed that 'full weight' is to be afforded to the adopted policies of the Maidstone Borough Local Plan 2011-2031 (adopted October 2017), the Marden Neighbourhood Plan and the Kent Minerals and Waste Local Plan. Having passed Regulation 19 stage it is agreed that the emerging Local Plan Review is to be afforded some weight at the time of writing.

Flooding, Groundwater & Drainage

7.6 It is agreed that all groundwater, flooding, and drainage issues can be satisfactorily addressed and mitigated by the development subject to planning conditions and/or the legal agreement.

Landscape and Visual Impact Assessment

7.7 It is agreed that the proposed development is not considered to have an adverse impact with regards to Landscape and Visual Impacts, on the surrounding area subject to mitigation secured by planning conditions.

Ecology and Biodiversity

7.8 It is agreed that the proposed development will not have an adverse effect on the River Beult SSSI or other ecological designations or receptors subject to any necessary mitigation secured by planning conditions.

Highways

7.9 It is agreed that the proposed development is not considered to have any adverse impacts with regards to highway safety or capacity.

Impact on Heritage Assets

7.10 It is agreed that the impact on Heritage Assets relates solely to the setting of the Grade II listed Hertsfield Barn to the west of the Site.

Reasons for refusal relate solely to the impact arising from Lakes 1, 2, and 3 on Hertsfield Barn and 3, 4, 5, and 6 Hertsfield Farm Cottages

7.11 It is agreed that the reasons for refusal of application ref. 11/1948, which is subject to this appeal, relate solely to the impacts on heritage and amenity arising from Lakes 1, 2, and 3. It is agreed that the reasons for refusal do not relate to the impact arising from the other lakes for which planning permission is sought (Lakes Bridges and Puma).

Proposed Landscaping Plan

7.12 It is agreed that the updated Proposed Landscaping Plan (ref. P20-0831_02 Rev A) submitted as part of the appeal supersedes the Proposed Landscaping Plan (ref. 0183-04/03 Rev D) which was previously submitted to the Council and that this does not make a material change to the proposals.

Application / Appeal Plans

7.13 It is agreed that the Planning Application (forms, plans and supporting documents) fulfilled the requirements of the various regulations and national and local validation checklists. It is agreed that the plans that the appeal should be based on are as follows:

- PDA-MON-101 (Site Location Plan)
- 0183-04/02 Rev H (Proposed Site Layout)
- P20-0183-02 Rev A (Proposed Landscaping Plan)
- 0183-04/04 Rev B (Proposed Clubhouse and Car Park Layout)
- 0183-04/05 Rev B (Clubhouse - Proposed Floor Plans & Elevations)
- 0183-04/06 Rev A (Vehicular Access Point)
- 0183-04/07 (Flood Compensation Plan)
- 2675/ML/G Rev 1 (Flood Compensation Plan)
- 5881 3D-F Sections (Proposed Cross Sections Sheets 1 to 3)

Exceptional Circumstances

7.14 EIA case law has established that retrospective EIA development should only be granted in 'exceptional circumstances'. In considering the retrospective nature of the application, it is agreed that 'exceptional circumstances' exist. These relate primarily to the site's extensive and complex planning history and subsequent development that has occurred which represent a unique and unusual situation.

8. MATTERS IN DISPUTE

8.1 The issues that remain in dispute between the Appellant and MBC can be described as the following focused matters:

Issue 1 Whether there is any harm to the setting and significance of the Grade II listed Hertsfield Barn, based on the size, height, and proximity of the raised lakes, particularly the western bunding. The Appellant contends that there is no harm and the Council contends that there is less than substantial harm and this would not be outweighed by any public benefits from the development.

Issue 2 The impact of the development on the amenity of the occupants of Hertsfield Barn, and numbers 3, 4, 5, and 6 Hertsfied Farm Cottages, arising from loss of privacy and perceived overlooking from the anglers at an elevated position to these houses and gardens, based on the height and proximity of the raised lakes along the western boundary of the site.

8.2 Both parties will continue to work together before the start of the Appeal Hearing.

9. CONDITIONS

9.1 It is agreed that control over the form of the development can be achieved through the imposition of appropriate planning conditions. An agreed set of conditions is attached to this Statement at **Appendix 1**.

10. SECTION 106 AGREEMENT

10.1 The Section 106 Agreement secures the following:

1. To submit an Environmental Permit (EP) application within 6 months of permission being granted;

2. To submit an Amended Landscape Management Plan within 1 month of permission being granted;

3. To complete the landscaping along part of the western boundary with residential properties within 6 months of permission being granted;

4. To complete the surface water drainage works and groundwater mitigation works along the western boundary within 9 months of permission being granted;

5. To carry out an inspection within 3 months of completion of the Surface Water Drainage Works, with the Council and Kent County Council (LLFA), of the surface water drainage works to demonstrate that the works have been implemented in accordance with the approved details including a verification report;

6. To complete the flood compensation works within 12 months of permission being granted;

7. To start the soil importation within 6 months of the EP being granted;

8. To complete the soil importation within 3.5 years of the EP being issued;

9. To complete the development (excluding the clubhouse) in accordance with the approved details within 6 months of the completion of the soil importation;

10. To submit a land survey of the site to the Council to demonstrate that the development has been completed in accordance with the approved plans/details within 3 months of completion of the development; and

11. The sum of £1,500 to the Council in connection with the monitoring and administration of this Deed.

10.2 The legal agreement ensures that the appellant carries out various requirements to a timetable to ensure that the development is completed in a timely manner. It requires the appellant to verify that the development has been completed in accordance with the approved plans. In view of the scale, retrospective nature, and being EIA development, it is agreed that exceptionally, such measures are necessary and reasonable. It is agreed that the legal agreement is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

11. DECLARATION BY PARTIES TO THIS STATEMENT OF COMMON GROUND

11.1 This document is the Statement of Common Ground between Maidstone Borough Council and the Appellant and identifies matters that are both agreed and not agreed between these parties.

APPENDIX 1

AGREED DRAFT CONDITIONS

Agreed Conditions

If the Inspector is minded to allow the appeal, agreed conditions are set out below which are the same as were recommended in the LPAs committee report (with plans updated).

1. The development hereby permitted shall be carried out strictly in accordance with the following approved plans:

   PDA-MON-101 (Site Location Plan)
   0183-04/02 Rev H (Proposed Site Layout)
   0183-04/04 Rev B (Proposed Clubhouse and Car Park Layout)
   0183-04/05 Rev B (Clubhouse - Proposed Floor Plans & Elevations)
   0183-04/06 Rev A (Vehicular Access Point)
   0183-04/07 (Flood Compensation Plan)
   2675/ML/G Rev 1 (Flood Compensation Plan)
   5881 3D-F X Sections (Proposed Cross Sections Sheets 1 to 3)
   P20-0831-02 Rev A (Proposed Landscaping Plan)
   P20-0831-01 (Indicative Landscape Site Sections Sheets 1-4)

   Reason: For the purpose of clarity, and to ensure a satisfactory appearance to the development and impact upon residential amenity.

2. Prior to the importation of any material, a Construction Management Plan and Code of Construction Practice shall be submitted to and approved in writing by the local planning. The approved details shall be fully implemented. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority.

   The code shall include:
   a) An indicative programme for carrying out the works
   b) Measures to minimise the production of dust on the site(s)
   c) Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
   d) Measures to minimise light intrusion from the site(s)
   e) Management of traffic visiting the site(s) including temporary parking or holding areas
   f) Provision of off-road parking for all site operatives
   g) Measures to limit the transfer of mud and material onto the public highway
   h) The location and design of site office(s) and storage compounds

   Reason: In view of the scale and length of time to carry out the development and in the interests of highway safety and local amenity.

3. Prior to the importation of any material or the carrying out of any further development, the detailed design of the groundwater interceptor drain shall be submitted to and approved in writing by the Local Planning Authority. The detailed

design should be supported by site-specific data, calculations, and justified assumptions that fit with the established hydrogeological conceptual site model and shall include the following:

a) Detailed construction drawings showing all elements of the groundwater and surface water drainage system;
b) Calculations of the anticipated volume of groundwater to be intercepted by the system.
c) Sensitivity testing of the design to allow for uncertainties, including aquifer thickness and permeability, hydraulic gradient and future increases in groundwater level (e.g. due to climate change).
d) Confirmation (where possible) of the elevations of relevant off-site receptors.
e) A narrative explaining the operating assumptions behind the design, including how the groundwater drainage system would interact with the site surface water system and discharge to the river under a range of groundwater level and river stage conditions. This should be supported by hydrogeological cross-sections illustrating the conceptual site model.
f) A maintenance plan for the groundwater interceptor drain and surface drainage ditch, to ensure its long-term integrity and functionality. This should identify who is responsible for maintenance and a means of demonstrating that the plan is being adhered to.
g) Demonstration that the design will resist long-term threats to its integrity and effectiveness, such as climate change, settlement, further developments at the site, etc.

The scheme shall be completed in accordance with the approved details.

Reason: To protect neighbouring properties against potential groundwater level impacts.

4. Prior to the importation of any material or the carrying out of any further development, the following details shall be submitted to and approved in writing by the Local Planning Authority:

a) A site inspection and groundwater level monitoring plan, to be implemented during construction of the groundwater interceptor drain and associated works, to verify that site conditions are consistent with the established hydrogeological conceptual site model and design assumptions. This should include a protocol for responding to any deviations that would impact on the effectiveness of the approved design, and reporting these to the Local Planning Authority.

The groundwater level monitoring data shall be collated for submission to the Local Planning Authority in a verification report, upon completion of the groundwater interceptor drain works. The verification report shall also include the following information:

i) Photographs of the excavations before and after placement of the drainage system components;
ii) As-built drawings showing the surveyed elevations of installed drainage system components.

Should any deviations from the established hydrogeological conceptual site model or design assumptions be identified, the contractor shall cease works and agree any proposed alterations to the design with the Local Planning Authority in writing, prior to their implementation.

Reason: To protect neighbouring properties against potential groundwater level impacts.

5. Prior to the importation of any material or the carrying out of any further development, the detailed design of the surface water drainage system, which shall be based on the strategy presented in Drawing 29431/001/SK03 prepared by Peter Brett Associates (3 July 2015), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved details.

   Reason: To mitigate any flood risks associated with surface water.

6. Prior to the importation of any material, details of any boundary treatments and their implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

   Reason: In the interest of visual amenity.

7. Prior to the importation of any material or the carrying out of any further development, details of catch fences to prevent fish from entering the river system in times of flood shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

   Reason: To protect the River Beult SSSI.

8. Any surface water run-off during the construction phase shall be directed to Puma Lake and/or the proposed temporary settling pond as outlined in the 'Water Resources Management Strategy' (22/03/12).

   Reason: To ensure sediment does not flow into the River Beult SSSI.

9. All surplus water from the new lakes shall be directed to Puma Lake as outlined in the 'Water Resources Management Strategy' (22/03/12).

   Reason: To ensure sediment does not flow into the River Beult SSSI.

10. Prior to the importation of any material or the carrying out of any further development, a Construction Environmental Management Plan relating to biodiversity (CEMP Biodiversity), that shall follow the precautionary mitigation measures detailed in section 5.10 to 5.17 of the ecological report (Preliminary Ecological Appraisal (Phlorum Ltd, August 2017)), shall be submitted to and approved in writing by the local planning authority. The CEMP Biodiversity shall include the following:

    a) Risk assessment of potentially damaging construction activities.

b) Identification of "biodiversity protection zones".
c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
d) The location and timing of sensitive works to avoid harm to biodiversity features.
e) The times during construction when specialist ecologists need to be present on site to oversee works.
f) Responsible persons and lines of communication.
g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of protecting biodiversity.

11. The development of the clubhouse shall not commence above slab level until samples of the timber cladding and clay roof tiles to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials.

    Reason: To ensure a satisfactory appearance to the development.

12. In addition to the requirements of the Section 106 Agreement, all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in full in the first planting season following the completion of lakes 1, 2 and 3, and prior to any use of any part of lakes 1, 2 and 3. Any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

    Reason: To ensure a satisfactory setting and external appearance to the development.

13. The development shall be carried out in accordance with the River Beult Habitat Enhancement Scheme received on 10/11/11.

    Reason: To ensure appropriate biodiversity enhancements.

14. All vehicular access for the importation of material, vehicles for the re-profiling of the lakes and the embankments, and the implementation of the planting proposals, shall use the spur off the existing access directly off the A229 (Staplehurst Road), as shown on drawing number 0183-04/06 RevA (Vehicular Access Point).

    Reason: To protect the amenities of adjoining residents and in the interest of highway safety.

15. The clubhouse shall be constructed with its finished floor level no lower than 17.36m AOD and with access as shown on drawing no. 0183-04/05 RevB.

    Reason: To protect the building and occupants in the event of a flood.

16. Once the approved parking/turning areas have been implemented they shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re- enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

    Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

17. The development hereby permitted shall be used for recreational angling and purposes ancillary only.

    Reason: An unrestricted use could cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

18. No angling shall take place between the hours of 10pm and 8am within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

    Reason: To protect the nearby residents from noise and disturbance at such times.

19. No parking in connection with angling shall take place within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

    Reason: To protect the nearby residents from noise and disturbance.

20. All access will be via the existing consented access directly from the A229 and there shall be no vehicular or pedestrian access to the site from Hertsfield Lane.

    Reason: To protect the amenities of adjoining residents.

21. The clubhouse shall not be used for any overnight accommodation.

    Reason: To prevent danger to human life in the event of a flood and to prevent inappropriate residential accommodation.

22. The clubhouse hereby approved shall be used for purposes ancillary to the use of the site for recreational angling and for no other purpose.

    Reason: An unrestricted use could potentially cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

23. No lighting shall be installed on the site without prior written consent from the Local Planning Authority.

    Reason: To protect the character and appearance of the countryside.

24. Any foul water shall be passed through a Klargester system, which is to discharge to Puma Lake as set out in the 'Phlorum' letter dated 20th May 2019, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent harm to the River Beult SSSI.

Monk Lakes Limited

(In Creditors' **Voluntary Liquidation**)

("the Company")

THE JOINT LIQUIDATOR**S' PROGRESS REPORT**

8 September 2022

Duncan Beat and Andrew Watling of Quantuma Advisory Limited, Office D, Beresford House, Town Quay, Southampton, SO14 2AQ, were appointed Joint Liquidators of Monk Lakes Limited on 15 July 2021.

Duncan Beat and Andrew Watling are licensed to act as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales

This report has been prepared for circulation solely to comply with the Joint Liquidator**s'** statutory duty to report to Creditors under the provisions of The Insolvency (England and Wales) Rules 2016 and for no other purpose. This report is intended for the statutory recipients. The report cannot be used or relied upon by any party other than for its intended statutory purpose.

CONTENTS

APPENDICES

ABBREVIATIONS

For the purpose of this report the following abbreviations shall be used:

"the Act"	Insolvency Act 1986
"the Rules"	Insolvency (England and Wales) Rules 2016
"the Joint Liquidators"	Duncan Beat and Andrew Watling of Quantuma Advisory Limited
"the Company"	Monk Lakes Limited (in Liquidation)
"EOS"	Estimated Outcome Statement
"SIP"	Statement of Insolvency Practice (England & Wales)
"Review Period"	Period covered by the report from 15/07/2021 to 14/07/2022

1. INTRODUCTION

This report has been prepared to provide Members and Creditors with an update on the progress of the Liquidation of the Company since the Joint Liquidators' appointment on 15 July 2021.

A schedule of statutory information in respect of the Company is attached at Appendix 1.

Details of the appointment of the Joint Liquidators

Duncan Beat and Andrew Watling of Quantuma Advisory Limited were appointed Joint Liquidators of the Company on 15 July 2021.

The Joint Liquidators confirm that they are authorised to carry out all functions, duties and powers by either one or both of them.

2. THE PROGRESS OF THE LIQUIDATION

The Joint Liquidators' Receipts and Payments Account

Attached at Appendix 2 is a Receipts and Payments account covering the Review Period. In accordance with the requirements of SIP 7, the Joint Liquidators confirm that the account has been reconciled with that held at the bank.

The rest of this report describes the key developments in the Liquidation over the Review Period. A summary is provided of the main asset realisations during the Review Period and an estimation of those assets yet to be realised, together with details of costs incurred but as yet remaining unpaid.

Administrative, Statutory & Regulatory Tasks

The Joint Liquidators have met a considerable number of statutory and regulatory obligations. Whilst many of these tasks have not had a direct benefit in enhancing realisations for the insolvent estate, they have assisted in the efficient and compliant progressing of the Creditors' Voluntary Liquidation, which has ensured that the Joint Liquidators and their staff have carried out their work to high professional standards. Details of the tasks carried out during the Review Period are included in Appendix 4.

Realisation of assets

Sale of assets to a Connected Party

The Joint Liquidators instructed C&K Recoveries Ltd ("C&K"), who are professional independent agents with adequate professional indemnity insurance, to dispose of the Company's assets using the most advantageous method available.

Monk Lakes Fishery Limited ("the Purchaser") expressed an interest in purchasing the Company's unencumbered assets. The Purchaser is connected with the Company due to the common shareholding of Merrymove Ltd and also because its Director is the wife of Guy Harrison, the Director of the Company.

Therefore, the Purchaser was invited to contact C&K directly to progress the potential sale. C&K weighed up the advantages of a swift sale, which would avoid the ongoing costs of storing and marketing the assets, against the potential of attracting a better offer albeit that this would involve incurring more costs. The Agents concluded that the Purchaser's offer was very likely to represent the best net realisation for the assets and a provisional sale of the assets of £12,600 plus VAT was agreed.

Consequently, the Company's unencumbered assets being plant and machinery and fixtures and fittings were sold to the Purchaser on 27 July 2021 for £12,600 plus VAT. A payment on account of £6,000 was made by the Purchaser to the Company prior to the Joint Liquidators' appointment and was utilised to pay the fee in respect of convening the procedure to seek a decision from creditors on the nomination of a liquidator and for the preparation of the statement of affairs. The balance of the sale consideration was paid to the liquidation account and is reflected on the Receipts and Payments Account.

Leasehold Land

As reported at the outset, the Company's accounts showed leasehold land with a book value of £77,163. However, on further investigation it appeared that this related to improvements made by the Company. The land is owned by Taytime Ltd, and is subject to an ongoing legal case with the local Council who stated that significant remedial works were required. No realisations are therefore anticipated.

Stock

The Company's balance sheet at 5 March 2021 showed stock with a book value of £10,000. C&K confirmed that there was no realisable stock remaining at the date of liquidation and therefore there will be no realisations in this regard.

Fixtures and Fittings and Plant and Machinery

The Company's balance sheet at 5 March 2021 showed fixtures and fittings with a book value of £55,501 and Plant and Machinery with a book value of £12. The valuation prepared by C&K indicated that due to the age and condition of these items, a value of £400 could be expected to be achieved on a forced sale basis.

As mentioned above a sale of these assets was agreed with Monk Lakes Fishery Ltd for £12,600 plus VAT.

Cash at Bank

The sum of £49 was held in the Company's bank account and was transferred to the Liquidation account shortly after the Joint Liquidators' appointment.

Estimated Future Realisations

No further realisations are anticipated.

3. CREDITORS: CLAIMS AND DISTRIBUTIONS

Secured Creditors

The Company had not granted any charges over its assets.

Preferential Creditors

Preferential claims relating to unpaid pension contributions were estimated at £166 in the Director's Estimated Statement of Affairs.

The Joint Liquidators liaised with the pension scheme provider to enable a claim to be submitted to the Redundancy Payments Service for the unpaid contributions. Confirmation has been received that payment of the outstanding contributions has been sent to the pension scheme provider and the scheme has been wound up.

It is not anticipated that there will be sufficient realisations to pay a dividend to Preferential Creditors.

Secondary Preferential Creditors

In any insolvency process started from 1 December 2020, HM Revenue and Customs ('HMRC') is a Secondary Preferential Creditor for the following liabilities:

- VAT
- PAYE Income Tax
- Employees' NIC
- CIS deductions
- Student loan deductions

This will mean that, if there are sufficient funds available, any of the above amounts owed by the Company will be paid after the Preferential Creditors have been paid in full.

HMRC's secondary preferential claims relating to PAYE, NIC and VAT were estimated at £32,670 in the Director's Estimated Statement of Affairs. To date, HMRC have not submitted a proof of debt in respect of their secondary preferential claim.

Based on the information presently available, it is not anticipated that there will be sufficient realisations to pay a dividend to HMRC in respect of their secondary preferential claim.

Prescribed Part

Under Section 176A of the Insolvency Act 1986, where after 15 September 2003 a company has granted to a creditor a floating charge, a proportion of the net property of the company must be made available purely for the Unsecured Creditors. This equates to:

- 50% of net property up to £10,000;
- Plus, 20% of net property in excess of £10,000.
- Subject to a maximum of £600,000.

The Company has not granted a floating charge to any Creditor after 15 September 2003 and consequently there will be no prescribed part in this Creditors Voluntary Liquidation.

Unsecured Creditors

Unsecured claims were estimated at £88,483 in the Director's Estimated Statement of Affairs and, to date, four claims have been received totalling £149,956.

It is not anticipated that a dividend will be paid to Unsecured Creditors.

Notice of No Dividend

In accordance with Rule 14.36 and Rule 14.37 no dividend will be distributed as the funds realised have already been distributed or used or allocated for defraying the expenses of the Creditorss' Voluntary Liquidation.

4. OTHER MATTERS AND INFORMATION TO ASSIST CREDITORS

Investigations

During the Review Period, the Joint Liquidators carried out an initial review of the Company's affairs in the period prior to appointment. This included seeking information and explanations from the Director by means of a questionnaire; making enquiries of the Company's accountants; reviewing information received from Creditors; and collecting and examining the Company's bank statements, accounts and other records.

The Director provided the books and records and a completed questionnaire as well as a Statement of Affairs.

The information gleaned from this process enabled the Joint Liquidators to meet their statutory duty to submit a confidential report on the conduct of the Director to the Insolvency Service.

This work was also carried out with the objective of making an initial assessment of whether there were any matters that may lead to any recoveries for the benefit of Creditors. This would typically include any potential claims which may be brought against parties either connected to or who have past dealings with the Company.

This initial assessment revealed matters that the Joint Liquidators considered merited further investigation and Wedlake Bell Solicitors LLP were instructed to review these matters. The review and

been concluded and the Joint Liquidators confirm after considering the legal advice received, there are no further assets or actions which might lead to a recovery for Creditors.

Although this work did not generate any financial benefit to Creditors, it was necessary to meet the statutory duties as well as conduct appropriate enquiries and investigations into potential rights of actions to enhance realisations.

Further Information

To comply with the Provision of Services Regulations, some general information about Quantuma Advisory Limited, including the complaints policy and Professional Indemnity Insurance, can be found at http://www.quantuma.com/legal-information.

Information about this insolvency process may be found on the R3 website here http://www.creditorinsolvencyguide.co.uk>.

General Data Protection Regulation

In compliance with the General Data Protection Regulation, Creditors , Employees, Shareholders, Directors and any other Stakeholder who is an individual (i.e. not a corporate entity) in these insolvency proceedings is referred to the Privacy Notice in respect of Insolvency Appointments, which can be found at this link http://www.quantuma.com/legal-notices.

5. ETHICS

Please note that the Joint Liquidators are bound by the Insolvency Code of Ethics when carrying out all professional work relating to an insolvency appointment. Further information can be viewed at the following link https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics Additionally the Joint Liquidators are also bound by the regulations of their Licensing Bodies.

General Ethical Considerations

Prior to the Joint Liquidators' appointment, a review of ethical issues was undertaken and no ethical threats were identified.

A further review has been carried out and no threats have been identified in respect of the management of the insolvency appointment over the Review Period.

Specialist Advice and Services

When instructing third parties to provide specialist advice and services or having the specialist services provided by the firm, the Joint Liquidators are obligated to ensure that such advice or work is warranted and that the advice or work contracted reflects the best value and service for the work undertaken. The firm reviews annually the specialists available to provide services within each specialist area and the cost of those services to ensure best value. The specialists chosen usually have knowledge specific to the insolvency industry and, where relevant, to matters specific to this insolvency appointment. Details of the specialists specifically chosen in this matter are detailed below.

6. **THE JOINT LIQUIDATORS' FEES AND EXPENSES**

A copy of 'A Creditors Guide to Liquidators' Fees' effective from 1 April 2021 together with Quantuma Advisory Limited's current schedule of charge-out rates and chargeable expenses, which includes historical charging information, may be found at https://www.quantuma.com/guide/creditors-guide-fees/.

A hard copy of both the Creditors' Guide and Quantuma Advisory Limited's current and/or historic charge-out rate and expenses policies may be obtained on request at no cost.

Pre-Appointment Costs

Quantuma Advisory Limited's fee for assisting the Director in convening the procedure to seek a decision from Creditors on the nomination of a Liquidator and helping with the preparation of the statement of affairs was £5,000 plus expenses and VAT.

The fee was agreed and paid by the Company from the interim payment made from the purchaser of the Company's assets, prior to the Company being placed into Liquidation.

Joint Liquidators' Fees

The basis of the Joint Liquidators' fees was fixed on 27 August 2021 as follows:

- That the basis of the Joint Liquidators' fees be fixed by reference to the time properly given by the Joint Liquidators and their staff in attending to matters as set out in the fees estimate (£22,924), such time to be charged at the prevailing standard hourly charge out rates used by Quantuma Advisory Limited at the time when the work is performed (plus VAT).

Time Costs

In accordance with the above decision, the Joint Liquidators are permitted to draw fees to a limit of £22,924.

As reflected on the Receipts & Payments Account, fees of £3,200 have been drawn during the Review Period.

The Joint Liquidators believe this case generally to be of average complexity and no extraordinary responsibility has to date fallen upon them.

Comparison of Estimates

The Joint Liquidators' time costs incurred to date (whether or not they have been charged to the Liquidation estate) are compared with the original fees estimate and the actual time costs incurred to the end of the Review Period. The fees estimate covered the life of the case.

For a detailed schedule of work undertaken by the Joint Liquidators during the Review Period, see Appendix 3. A detailed narrative list of the work undertaken during the Review Period is provided at Appendix 4.

	Original fees estimate			Actual time costs incurred during the Review Period		
Work category	No. of hours	Blended hourly rate £	Total fees £	No. of hours	Average hourly rate £	Total time costs £
Administration Planning	30.20	242.19	7,314.00	23.10	262.94	6,074.00
Cashiering	2.70	183.70	496.00	7.70	167.40	1,289.00
Creditors	19.30	244.30	4,715.00	31.30	210.65	6,593.50
Investigations	29.30	271.13	7,944.00	18.40	272.45	5,013.00
Realisation of Assets	6.00	260.00	1,560.00	5.20	215.00	1,118.00
Closing Procedures	3.00	298.33	895.00	0.40	377.50	151.00
TOTAL	90.50	253.30	22,924.00	86.10	235.06	20,238.50

Joint Liquidators' Expenses

The expenses, which include disbursements that have been incurred and not yet paid during the Review Period are detailed below. This includes a comparison of the expenses likely to be incurred in the Liquidation as a whole with the original expenses estimate, together with reasons where any expenses are likely to exceed that estimate.

Expenses	Original expenses estimate £	Actual expenses incurred in the Review Period £	Reason for any excess (if the expenses are likely to, or have, exceeded the original estimate)
Category 1 expenses			
Professional Advice: Agent's & valuers fees	600.00	600.00	
Professional Advice: Legal Fees	-	2,000.00	Not anticipated at the outset
IT Agent Fee	-	250.00	Not anticipated at the outset
Statutory & other Advertising	176.00	176.00	
Indemnity Bond	135.00	135.00	
Printing & Postage costs of external provider.	60.00		
Category 2 expenses			
Photocopying, scanning & faxes (per side)	60.00	-	Please be advised that, whilst it was originally envisaged that these expenses would be charged to the estate as Category 2 disbursements, this has no longer been allowed since 1 April 2021
Anti-Money Laundering Searches	3.00	-	
Stationery (Per Report/letter per Member/Creditor)	50.00	-	
TOTAL	1,084.00	3,161.00	

Details of the expenses paid in the Review Period are shown in the Receipts and Payments account at Appendix 2.

No Category 2 expenses have been incurred or drawn in this matter.

Cost to Closure

Having regard for the costs that are likely to be incurred in bringing this Liquidation to a close, the Joint Liquidators consider that:

- the original fees estimate is unlikely to be exceeded; and
- the original expenses estimate has been exceeded for the reasons given above.

Other Professional Costs

Agents & Valuers

C&K were instructed as agents and valuers in relation to the sale of the Company's unencumbered assets. Their costs have been agreed on the basis of a fixed fee of £600 plus VAT which has been paid in full.

IT Assistance

AADD Ltd were instructed to assist with obtaining historical financial information from the Company's Quickbooks records. A fee of £250 plus VAT was charged for this which was paid in full during the Review Period.

Solicitors

Wedlake Bell LLP were instructed by the Joint Liquidators to review the matters identified during the course of the investigation into the Company's affairs and advise on whether any further action should be take. Their costs have been agreed on the basis of a fixed fee of £2,000 plus VAT which has been paid in full.

All professional costs are reviewed and analysed before payment is approved.

Creditors' right to request information

Any Secured Creditor, or Unsecured Creditor with the support of at least 5% in value of the Unsecured Creditors or with permission of the Court, may request in writing the Joint Liquidators to provide additional information regarding remuneration or expenses to that already supplied within this report. Such requests must be made within 21 days of receipt of this report.

Creditors' right to challenge remuneration and/or expenses

Any Secured Creditor, or Unsecured Creditor with the support of at least 10% in value of the Unsecured Creditors or with permission of the Court, may apply to the Court for one or more orders, reducing the amount or the basis of remuneration which the Joint Liquidators are entitled to charge or otherwise challenging some or all of the expenses incurred.

Such applications must be made within 8 weeks of receipt by the applicant(s) of the progress report detailing the remuneration and/or expenses being complained of.

Please note that such challenges may not disturb remuneration or expenses disclosed in prior progress reports.

Future of the Liquidation

There are no outstanding matters preventing the closure of the liquidation and therefore the Joint Liquidators will shortly seek their release from office by issuing their final account to Members and Creditors.

Should you have any queries in regard to any of the above please do not hesitate to contact Nicola Lyle on 023 8082 1864 or by e-mail at Nicola.Lyle@Quantuma.com.

Duncan Beat
Joint Liquidator

MONK LAKES LIMITED
(IN LIQUIDATION)

STATUTORY INFORMATION

Company Name	Monk Lakes Limited
Trading Address	Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN
Proceedings	In Liquidation
Date of Appointment	15 July 2021
Joint Liquidators	Duncan Beat and Andrew Watling Quantuma Advisory Limited Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Registered office Address	c/o Quantuma Advisory Limited Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Company Number	05234067
Incorporation Date	17 September 2004

MONK LAKES LIMITED
(IN LIQUIDATION)

THE JOINT LIQUIDATORS' RECEIPTS AND PAYMENTS ACCOUNT AS AT 14 JULY 2022

Statement of Affairs £		From 15/07/2021 To 14/07/2022 £	From 15/07/2021 To 14/07/2022 £
	ASSET REALISATIONS		
	Bank Interest Gross	0.16	0.16
	Cash at Bank	49.04	49.04
400.00	Fixtures & Fittings	6,600.00	6,600.00
NIL	Leasehold Property	NIL	NIL
NIL	Plant & Machinery	NIL	NIL
Uncertain	Stock	NIL	NIL
		6,649.20	6,649.20
	COST OF REALISATIONS		
	Agents/Valuers Fees	850.00	850.00
	Legal Fees	2,000.00	2,000.00
	Office Holders Fees	3,200.00	3,200.00
	Specific Bond	135.00	135.00
	Statutory Advertising	176.00	176.00
		(6,361.00)	(6,361.00)
	PREFERENTIAL CREDITORS		
(165.83)	Pension Schemes	NIL	NIL
		NIL	NIL
	SECONDARY PREFERENTIAL CREDITORS		
(31,062.33)	HMRC - VAT	NIL	NIL
(1,607.46)	HMRC PAYE/NIC (Employees)	NIL	NIL
		NIL	NIL
	UNSECURED CREDITORS		
(61,984.57)	Banks/Institutions	NIL	NIL
(8,547.44)	HM Revenue and Customs - CT	NIL	NIL
(2,771.10)	Intercompany	NIL	NIL
(15,180.35)	Trade & Expense Creditors	NIL	NIL
		NIL	NIL
	DISTRIBUTIONS		
(100.00)	Ordinary Shareholders	NIL	NIL
		NIL	NIL
(121,019.08)		288.20	288.20
	REPRESENTED BY		
	Bank 1 Current		1,536.00
	Vat Control Account		(1,247.80)
			288.20

VAT Basis

Receipts and payments are shown net of VAT, with any amount due from HM Revenue and Customs shown separately.

MONK LAKES LIMITED (IN LIQUIDATION)
SCHEDULE OF THE JOINT LIQUIDATORS' **TIME** COSTS DURING THE REVIEW PERIOD

Appendix 3

6008231 - Monk Lakes Limited
To: 14/07/2022
Project Code: POST

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
100 : Administration & Planning	0.20	0.00	0.00	0.00	0.20	106.00	530.00
100A : Initial Notification(s) & Filing	0.00	0.10	0.00	0.00	0.10	31.00	310.00
102A : Recover Schedules Books and Records	0.00	0.00	1.00	0.00	1.00	200.00	200.00
103 : IPS Case / File set up/ Filing	0.00	0.00	0.80	0.00	0.80	181.50	226.88
104 : General Administration	0.00	0.20	8.30	0.60	9.10	1,555.50	203.90
105 : Case strategy / Review	2.70	1.50	2.80	0.70	7.70	2,633.50	342.01
106 : VAT & CT matters and returns	0.00	0.50	3.70	0.00	4.20	1,066.50	253.93
Admin & Planning	**2.90**	**2.30**	**16.60**	**1.30**	**23.10**	**6,074.00**	**262.94**
600 : Cashiering	0.00	0.40	2.80	4.50	7.70	1,289.00	167.40
Cashiering	**0.00**	**0.40**	**2.80**	**4.50**	**7.70**	**1,289.00**	**167.40**
650 : Closing Procedures	0.10	0.30	0.00	0.00	0.40	151.00	377.50
Closing Procedures	**0.10**	**0.30**	**0.00**	**0.00**	**0.40**	**151.00**	**377.50**
201 : Creditors	0.00	0.00	3.30	0.00	3.30	660.00	200.00
203 : Creditor correspondence / Call	0.00	1.00	3.50	0.00	4.50	1,010.00	224.44
204A : Dealing with Pension Schemes	0.00	0.60	21.40	0.00	22.00	4,623.50	210.16
213 : Interim Fee Report to Creditors	0.00	0.00	1.50	0.00	1.50	300.00	200.00
Creditors	**0.00**	**1.60**	**29.70**	**0.00**	**31.30**	**6,593.50**	**210.65**
300 : Investigations	0.60	5.20	6.00	0.00	11.50	3,160.00	287.80
300A : SIP 2 Review	0.40	1.40	1.70	0.00	3.50	966.00	276.00
301 : CDDA Reports	0.60	0.90	1.60	0.00	3.10	887.00	286.13
Investigations	**1.60**	**7.50**	**9.30**	**0.00**	**18.40**	**5,013.00**	**272.45**
400 : Realisation of Assets	0.00	0.20	4.00	0.00	4.20	862.00	205.24
401 : Freehold / Leasehold Property	0.20	0.00	0.00	0.00	0.20	96.00	480.00
411 : Cash at Bank	0.00	0.00	0.80	0.00	0.80	160.00	200.00
Realisation of Assets	**0.20**	**0.20**	**4.80**	**0.00**	**5.20**	**1,118.00**	**215.00**
Total Hours	**4.80**	**12.30**	**63.20**	**5.80**	**86.10**	**20,238.50**	**235.06**
Total Fees Claimed						**3,200.00**	

MONK LAKES LIMITED
(IN LIQUIDATION)

DETAILED NARRATIVE LIST OF WORK UNDERTAKEN BY THE JOINT LIQUIDATORS DURING THE REVIEW PERIOD

Description of work undertaken	Includes
ADMINISTRATION & PLANNING	
Initial Statutory and General Notifications & Filing e.g. Advertising the appointment, undertaking statutory notifications to Companies House, HMRC , the Pension Protection Fund, preparing the documentation and dealing with other notification of appointment	Filing of documents to meet statutory requirements Advertising in accordance with statutory requirements
Obtaining a specific penalty bond.	
Recovering & Scheduling the company's books and records.	Collection and making an inventory of company books and records
Setting up electronic case files and electronic case details on IPS.	
General Administration - Dealing with all routine correspondence and emails relating to the case.	
Case strategy & completing file reviews at 1 month, 2 months & 6 months.	Discussions regarding strategies to be pursued Meetings with team members and independent advisers to consider practical, technical and legal aspects of the case Periodic file reviews Periodic reviews of the application of ethical, anti-money laundering and anti-bribery safeguards Maintenance of statutory and case progression task lists/diaries Updating checklists
VAT & Corporation Tax matters and returns.	Preparation and filing of VAT Returns Preparation and filing of Corporation Tax Returns
CREDITORS	
Dealing with creditor correspondence, emails and telephone conversations.	Receive and follow up creditor enquiries via telephone Review and prepare correspondence to creditors and their representatives via email and post
Dealing with Pension Schemes	Corresponding with the PPF and the Pensions Regulator
Interim Fee Report to Creditors	
INVESTIGATIONS	
Investigations	
SIP 2 Review - Conducting an initial investigation with a view to identifying potential asset recoveries by seeking and obtaining information from relevant third parties, such as the bank, accountants, solicitors, etc.	Correspondence to request information on the company's dealings, making further enquiries of third parties Reviewing questionnaires submitted by creditors and Directors Reconstruction of financial affairs of the company Reviewing company's books and records Preparation of deficiency statement Review of specific transactions and liaising with Directors regarding certain transactions

Description of work undertaken	Includes
CDDA Reports - Preparing a report or return on the conduct of the Directors as required by the Company Directors Disqualification Act.	Preparing statutory investigation reports Liaising with Insolvency Service Submission of report with the Insolvency Service Preparation and submission of supplementary report if required Assisting the Insolvency Service with its investigations
Investigating & Pursuing Antecedent Transactions	
REALISATION OF ASSETS	
Freehold/Leasehold Property	Liaising with valuers and agents, and Council Reviewing Land Registry documents
Plant & Machinery, Fixtures and Fittings	Liaising with valuers, auctioneers and interested parties Reviewing asset listings Liaising with secured creditors and landlords
Stock	Conducting stock takes Reviewing stock values Liaising with agents and potential purchasers Analysing the value in WIP Contracting with service-providers/suppliers to complete WIP
Cash at Bank	Contacting the bank to arrange closure of the account and payment of the funds to the estate
CASHIERING	
Opening, maintaining and managing the Office Holders' cashbook and bank account.	Preparing correspondence opening and closing accounts Requesting bank statements Correspondence with bank regarding specific transfers Maintenance of the estate cash book
Dealing with cheque requisitions	Issuing cheques/BACS payments
Dealing with deposit forms	Banking remittances
Bank Reconciliations	
Preparing & Filing statutory Receipts & Payments accounts	Preparing and filing statutory Receipts and Payments accounts at Companies House
CLOSING PROCEDURES	
Closure Review	

Current Charge-out Rates of the staff working on the case

Time charging policy

Support staff and executive assistants do not charge their time to each case except when the initial set up is being performed or when a sizeable administrative task or appropriate ad hoc duty is being undertaken
Support staff include secretarial and administrative support.
The minimum unit of time recorded is 6 minutes.
Rates are likely to be subject to periodic increase.

Grade of Staff	Rate from 23 June 2022
	Regional Offices
CEO/Managing Director	£495.00
Senior Manager	£345.00
Assistant Manager	£295.00
Senior Administrator	£250.00
Case Accountant	£110.00
Support Staff/Executive Assistant	£110.00

Our Ref: DW:100351.0001

22 September 2022

Mr Duncan Beat and Mr Andrew Watling
Quantuma Advisory Limited
Office D
Beresford House
Town Quay
Southampton
SO14 2AQ

By e-mail only

Dear Sirs

Monk Lakes Limited (In Creditors' Voluntary Liquidation)

We are writing to you in your capacity as joint liquidators of the above company, hereafter "MLL".

MLL is the appellant, under s. 78 of the Town and Country Planning Act 1990 in a planning appeal that is due to be heard next month. MLL was the applicant for planning permission and under planning legislation only the applicant may appeal.

We act for Mr David Padden who is also a third party objector in that appeal. He is a long standing objector to the development of the land at Monks Lakes and which is the subject of the appeal. He and his property have been adversely affected by the unauthorised development at the appeal site. He has previously successfully taken judicial review proceedings in respect of this matter.

We can see nothing in any Companies House documents sanctioning MLL's sole director, Mr Guy Richard Harrison, to continue making arrangements on MLL's behalf. This is something we understand he requires in order for any of his acts to be valid, pursuant to s. 103 Insolvency Act 1986 and ***Park Associated Developments Ltd v Kinnear*** [2013] EWHC 3617 (Ch). We therefore assume that the pursuit of this appeal is something you as liquidators have sanctioned.

At present, we do not understand why. The appeal site is, as we understand matters, owned not by MLL but by another company known as Taytime Limited. That is a company in which Mr Harrison is a person with significant control. Although MLL may have some sort of lease of the land, it appears from your most recent Progress Report (September 2022) that you anticipate no realisations are expected from MLL's leasehold interest in (what we understand to be) the appeal site (p. 8).

Moreover, MLL participating in the appeal comes with costs risk. As we have set out above, MLL has previously had costs awarded against it in respect of planning appeals in

relation to this matter and, if it behaves unreasonably, could well do so again. It is of course a matter for you what impact this will have on the ability of the liquidation to realise sums for MLL's creditors.

Given all the above we cannot see MLL's creditors have anything to gain from the appeal being pursued. We cannot understand at present on what basis you have, as liquidators, determined that MLL should be spending money to pursue the s. 78 appeal.

We would invite you to withdraw the appeal forthwith.

Yours Faithfully

RICHARD MAX & CO

Our Ref: DW:100351.0001

27 September 2022

Mr Duncan Beat and Mr Andrew Watling
Quantuma Advisory Limited
Office D
Beresford House
Town Quay
Southampton
SO14 2AQ

By e-mail only

Dear Sirs

Monk Lakes Limited ("MLL") (In Creditors' Voluntary Liquidation)
Appeal Reference: 3259300

Thank you for providing us with a copy of your letter to the Planning Inspectorate dated 22 September 2021. We were not provided with a copy of the letter at the time, and none of the subsequent correspondence from the Planning Inspectorate mentioned the "appointment" of Taytime Limited.

Under the Town and Country Planning Act 1990 only the applicant for planning permission may be the appellant under s. 78.

In this case the applicant was MLL and MLL is therefore the appellant. What may have been intended at the time is irrelevant. There is no ability under the Town and Country Planning Act 1990 to substitute the appellant. You state in your letter that you "appoint" Taytime Limited to take over full responsibility for this appeal. Please explain what you mean by this?

This appeal, if it is pursued at all, must be pursued by MLL. That is the only way it can be pursued. As such, any liabilities incurred as a result of the appeal fall on MLL not on Taytime Limited. MLL is in voluntary creditor liquidation. We do not understand how it can be right that MLL is therefore pursuing this appeal given that it has no interest in the outcome of this appeal.

You state that it was Taytime Limited that appointed Pegasus Planning and James Pereira KC. But Taytime Limited is not and cannot be the appellant. It appears as if contrary to what is allowed under the Town and Country Planning Act 1990, this appeal has been at all times pursued not by MLL but by Taytime. However, for the reasons set out above Taytime cannot be the appellant.

We will be raising this issue at the outset of the hearing next week. We do not believe that this appeal is being pursued lawfully under the planning legislation.

We have copied this letter to the Planning Inspectorate and therefore include a copy of our original letter to you of 22 September 2022.

We await your urgent response.

Yours Faithfully

RICHARD MAX & CO

IN THE MATTER OF

AN APPEAL BY MONK LAKES LIMITED
APP/U2235/W/20/3259300

PROCEDURAL APPLICATION IN RESPECT OF THE APPEAL

Introduction

1. This document deals with a procedural matter which it is intended will be raised by Mr David Padden ("**Mr Padden")** at the appeal hearing on Wednesday 5 October 2022.

2. The application invites the Inspector to rule that the appeal (ref. APP/U2235/W/20/3259300) ("**the appeal"**) which is now being pursued by a company called Taytime Ltd ("**Taytime"**) is invalid.

3. The planning application, the subject of this appeal, and the appeal itself were made not by Taytime but by another company namely Monk Lakes Limited (**"MLL"**). MLL is in liquidation.

4. This matter is being raised now because of two documents that have only recently been made available to Mr Padden:
    1) A letter sent to PINS by the liquidators of MLL on 22 September 2021. This letter was never copied to Mr Padden's representatives at the time. It was only obtained on 27 September 2022 from the liquidators direct.
    2) The liquidators have recently issued an LIQ03 Notice of progress report in voluntary winding up in relation to MLL ("**the liquidators' progress report**"). This report is dated 8 September 2022. On 13 September 2022 those representing Mr Padden received notice from Companies House that this document was being made available. The document was though not immediately available on the Companies House website. It was only obtained on 20 September 2022.

Background

5. MLL was the applicant for planning permission the subject of this appeal.

6. The application form states in section 1 that the applicant is "*Mr & Mrs Harrison*", and the company name is given as "*Monk Lakes Limited*". Under "*street address*" but just below where the form refers to Mr & Mrs Harrison of MLL it says, "*As agent*".

7. It has never been suggested that Mr & Mrs Harrison in their individual capacity were the applicants. It has always been understood that MLL was the applicant. So, in other words, the application was made by Mr & Mrs Harrison *on behalf* of MLL.

8. MLL was incorporated on 17 September 2004. Mr Harrison bought MLL from Mr Simon Hughes the previous owner of the appeal site. The only current director of MLL is Mr Guy Richard Harrison. Mrs Emily Harrison was previously a director of MLL.

9. This appeal was made to PINS by MLL under s. 78 of the Town and Country Planning Act 1990 ("**the TCPA 1990**"): see the appeal form and see also the Statement of Case – cover page and para 1.1. There can be no issue but that this appeal was made by MLL.

10. The land forming the appeal site is not owned by MLL but by Taytime Ltd ("**Taytime**").

11. Taytime is a company in respect of which Mr Harrison is a person with significant control. It is unclear what, if any, proprietary interest MLL has in the appeal site. In correspondence with PINS in late 2021 (see below) the liquidators said MLL had *"no interest whatsoever in this land"*. But in the more recent liquidators' progress report, it is suggested that it might have some kind of lease: see below.

12. MLL is in creditor voluntary liquidation and has been since 15 July 2021.

13. This matter was raised in correspondence with PINS by solicitors acting for Mr Padden on 12 October 2021:

> " … the Inspector should be made aware that the appellant, Monk Lakes Limited has now filed for voluntary liquidation. Notices were published in the Gazette on 21 July 2021 confirming the resolution to appoint liquidators, and notice of the proposed striking off of the company was filed at Companies House on 27 July. Section 78 of the Town and Country Planning Act 1990 is clear that only the applicant for planning permission may pursue an appeal. The original application was made in the name of Monk Lakes Limited. Given that that company is in the process of being dissolved pursuant to voluntary liquidation, we consider that the appeal should be automatically dismissed. Please would you confirm by return what action the Planning Inspectorate intends to take given the liquidation of the appellant."

14. PINS responded on 17 November 2021 by email saying, "*I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or*

PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal." In terms of what those acting for Mr Padden understood PINS to be saying it was as follows: (i) that the mere fact MLL was in the process of liquidation did not automatically prevent it continuing with the appeal; (ii) as MLL was in liquidation it would, in the ordinary way, be the liquidators and not Mr & Mrs Harrison, who would be directing the appeal; and (iii) if subsequently MLL was dissolved, however, the entity would cease to exist and a non-existent entity cannot, of course, appeal. This is why, it was understood, PINS referred to the "*second*" Gazette notice, (ordinarily issued on dissolution).

15. In making the response it did PINS made no reference to, nor did it provide a copy of, the letter dated 22 September 2021 from the liquidators to PINS. This letter which has, see above, only very recently been provided to Mr Padden's representatives says:

> "Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal.
> Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land."

16. It should be noted that this letter records that:
    1) the liquidators sought to "*appoint*" Taytime "*to take over full responsibility for the above-listed planning appeal*";
    2) MLL has no interest in the appeal site;
    3) the application "*should have*" been made in the name of Taytime "*in the first place*" not MLL; and
    4) it was Taytime not MLL "*that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal*".

17. So, and this is clear, this appeal is <u>not</u> being pursued by MLL. It is being pursued by Taytime.

18. Last week it came to the attention of those acting for Mr Padden that the liquidators' progress report was being made available (see above). When this was obtained on 20 September 2022 it was noticed that it was said:

> "Leasehold Land
> As reported at the outset, the Company's accounts showed leasehold land with a book value of £77,163. However, on further investigation it appeared that this related to improvements made by the Company. The land is owned by Taytime Ltd. And is subject to an ongoing legal case with the local Council who stated that significant remedial works were required. No realisations are therefore anticipated."

19. Having seen this the solicitors acting for Mr Padden wrote to the liquidators saying:

> "We can see nothing in any Companies House documents sanctioning MLL's sole director, Mr Guy Richard Harrison, to continue making arrangements on MLL's behalf. This is something we understand he requires in order for any of his acts to be valid, pursuant to s. 103 Insolvency Act 1986 and Park Associated Developments Ltd v Kinnear [2013] EWHC 3617 (Ch). We therefore assume that the pursuit of this appeal is something you as liquidators have sanctioned.
> At present, we do not understand why. The appeal site is, as we understand matters, owned not by MLL but by another company known as Taytime Limited. That is a company in which Mr Harrison is a person with significant control. Although MLL may have some sort of lease of the land, it appears from your most recent Progress Report (September 2022) that you anticipate no realisations are expected from MLL's leasehold interest in (what we understand to be) the appeal site (p. 8)"

20. In response the liquidators on 27 September 2022 forwarded their 22 September 2021 letter to PINS (see above) to Mr Padden's solicitors.

21. In response Mr Padden's solicitors wrote to the liquidators (copying in PINS) saying:

> "Thank you for providing us with a copy of your letter to the Planning Inspectorate dated 22 September 2021. We were not provided with a copy of the letter at the time, and none of the subsequent correspondence from the Planning Inspectorate mentioned the "appointment" of Taytime Limited.
> Under the Town and Country Planning Act 1990 only the applicant for planning permission may be the appellant under s. 78.
> In this case the applicant was MLL and MLL is therefore the appellant. What may have been intended at the time is irrelevant. There is no ability under the Town and Country Planning Act 1990 to substitute the appellant. You state in your letter that you "appoint" Taytime Limited to take over full responsibility for this appeal. Please explain what you mean by this?
> This appeal, if it is pursued at all, must be pursued by MLL. That is the only way it can be pursued. As such, any liabilities incurred as a result of the appeal fall on MLL not on Taytime Limited. MLL is in voluntary creditor liquidation. We do not understand how it can be right that MLL is therefore pursuing this appeal given that it has no interest in the outcome of this appeal.
> You state that it was Taytime Limited that appointed Pegasus Planning and James Pereira KC. But Taytime Limited is not and cannot be the appellant. It appears as if contrary to what is allowed under the Town and Country Planning Act 1990, this appeal has been at all times pursued not by MLL but by Taytime. However, for the reasons set out above Taytime cannot be the appellant.

> We will be raising this issue at the outset of the hearing next week. We do not believe that this appeal is being pursued lawfully under the planning legislation."

22. No response has been received to this latest letter.

The legal position

23. Once a company has commenced winding up, it shall cease to carry on business "*except so far as may be required for its beneficial winding up*" s. 87(1) Insolvency Act 1986 ("**the IA 1986"**).

24. Once a company enters Creditors Voluntary Liquidation, as MLL have, and when a liquidator is appointed, all the powers of the directors cease, save insofar as the company in general meeting, or the liquidator, sanctions their continuance: s. 103 IA 1986. Any act purportedly done in the company's name by the directors without such sanction is a nullity: ***Park Associated Developments Ltd v Kinnear*** [2013] EWHC 3617 (Ch).

25. It is clear from the terms of s. 78 of the TCPA 1990 that the only party that may appeal the refusal of planning permission is the applicant.

26. That is clear from the wording of s. 78(1) which says, "*[w]here a local planning authority – (a) refuse an application for planning permission or grant it subject to conditions … the applicant may by notice appeal to the Secretary of State*". This is affirmed by the PINS Procedural Guidance at para 2.3.1 which says, "*[o]nly the person who made the planning application can make an appeal*." There is no ability for a third party to pursue a s. 78 appeal. In the case of appeals against enforcement notices the rules are not so strict and s. 174 of the TCPA 1990 provides a right of appeal to those having an interest in the land or a relevant occupier.

27. Here the applicant was MLL. That has never been previously disputed. It is not understood that it is now disputed. That means only MLL may appeal under s. 78 of the TCPA 1990. The appeal form and the Statement of Case clearly and unequivocally named MLL as the appellant. The draft Statement of Common Ground ("**SoCG"**), submitted with the appeal, did the same.

28. So only MLL may appeal. MLL acts now only via its liquidators. They are not, it is clear, pursuing the appeal. Their letter to PINS in September 2021 makes clear that the appeal is instead being pursued by Taytime. Moreover, the final SoCG agreed with the Council is

dated 21 December 2021. This SoCG purports to be between the Council and Taytime; not the Council and MLL. It is stated at para 1.1 of the final SoCG that Taytime is the appellant. Taytime is this the party pursuing this appeal. But Taytime is not, and cannot in law be, the appellant. This appeal is thus being improperly pursued by a party that is not able to appeal.

29. PINS has power to reject an appeal where it is invalidly made see e.g., ***Gaell v SSETR*** (1999) 78 P. & C.R. 264. This appeal is invalid. It is being pursued by and on behalf of a company that has no ability to appeal under the TCPA 1990. The only company that can pursue the appeal is MLL. MLL is in liquidation. The appointed liquidators have made clear MLL is not pursuing the appeal. The liquidators refer to appointing Taytime to pursue this appeal. But there is no power under the Planning Acts for substitution of an appellant with another. In any event the Planning Acts are clear only an applicant can appeal.

30. Mr Padden therefore asks that the appeal be determined to be invalid. That brings this appeal process to an end.

JAMES MAURICI K.C.
LANDMARK CHAMBERS
180 FLEET STREET
LONDON
EC4A 2HG
Friday, 30 September 2022

DOCUMENTS ATTACHED (for ease of reference):

1. Extracts from the application form and appeal form (see App 3 to Mr Padden's response to the Environmental Statement by Rebecca Lord dated 26 April 2022);
2. Letter from liquidators to PINS dated 22 September 2021 (provided to Richard Max & Co on 27 September 2022)
3. Letter dated 12 October 2021 Richard Max & Co to PINS
4. PINS response to Richard Max & Co dated 17 November 2021
5. Liquidators notice of progress report in voluntary winding updated 8 September 2022.
6. Letter from Richard Max & Co to liquidators dated 22 September 2022

7. Letter from Richard Max & Co to liquidators dated 27 September 2022
8. S. 78 and 174 of the TCPA 1990
9. Ss. 87 and 103 of the IA 1986.
10. The ***Geall*** case.

From:	Rebecca Lord
To:	East3; Beth Lambourne; Richard Timms; planningappeals@midkent.gov.uk
Subject:	RE: APP/U2235/W/20/3259300 Monk Lakes, TN12 9BU Hearing
Date:	07 October 2022 10:37:20
Attachments:	~WRD0000.jpg image003.png image004.png image005.png 080328 MBC to Harrison.pdf 080228 MBC letter to Harrison.pdf 20141217 BC reply to harrisons.pdf 20141210 Harrisons to Bell Cornwell.pdf 20141128 to harrision.pdf 20140903 LD to Brachers re threats.pdf

Dear Milena, please find attached documents that the Inspector agreed could be submitted post inquiry:

(i) the access correspondence from 2014 including, and

(ii) the local planning authority warning letters to the Harrisons in 2008 prior to the issue of the TSN on the 20/4/2009.

The Inspector already has (i) in hard copy, for completeness I have also provided the attachment referred to in the letter dated 17/12/2014.

Kind regards

Rebecca Lord MSc MRTPI

07985 643708

http://www.rlplanning.co.uk/

44 Barton Drive, Hamble le Rice, Southampton, Hampshire, SO31 4RE

Note business days: Monday – Thursday

From: East3 <East3@planninginspectorate.gov.uk>
Sent: 27 September 2022 10:32
To: Rebecca Lord <rebecca@rlplanning.co.uk>; Beth Lambourne <Beth.Lambourne@pegasusgroup.co.uk>; Richard Timms <RichardTimms@maidstone.gov.uk>; planningappeals@midkent.gov.uk
Subject: APP/U2235/W/20/3259300 Monk Lakes, TN12 9BU Hearing Dates
Importance: High

Good morning,

Please find attached agenda. Please circulate this within your teams and anyone else who has registered to attend the Hearing.

Kind regards,

Milena Opolska

Milena Opolska | Case Officer
The Planning Inspectorate

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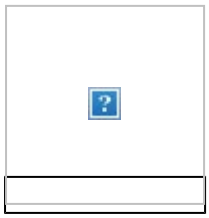
DPC:76616c646f72



[redacted]

Date: 28 February 2008
My ref: ENF/8320 MA/jl
Your ref:

Dear [redacted]

TOWN AND COUNTRY PLANNING ACT 1990

RIVERFIELD FISH FARM, STAPLEHURST ROAD, MARDEN – DEVELOPMENT UNDER CONSTRUCTION FOR EXTENSION TO FISH FARM FOLLOWING PLANNING PERMISSION REFERENCE MA/03/0836

I write in respect of the above development.

The Council has been made aware by the previous owner that you are the new owner of the above site.

I understand that you have been made aware by the past owner of the issues surrounding the development under construction. I would be grateful if you could please contact the writer on the below telephone number in order that a meeting can be arranged in respect of this development.

I must stress to you that any material variation carried out to this development from the drawings approved under planning permission reference MA/03/0836 would be/is development in breach of planning control, and therefore open to enforcement action by the local planning authority.

I look forward to hearing from you.

Yours sincerely,

JL

Jon Lawrence
Senior Planning Officer (Enforcement)

Contact: Jon Lawrence
t 01622 602261 **f** 01622 602392
e jonlawrence@maidstone.gov.uk

[redacted]

Date: 28 March 2008
My ref: ENF/8320 MA/jl
Your ref:

Dear [redacted]

TOWN AND COUNTRY PLANNING ACT 1990

RIVERFIELD FISH FARM, STAPLEHURST ROAD, MARDEN – DEVELOPMENT UNDER CONSTRUCTION FOR EXTENSION TO FISH FARM FOLLOWING PLANNING PERMISSION REFERENCE MA/03/0836

I write in respect of the above development.

I write in order to make you aware that the Council does have concerns that this development is not progressing in accordance with the approved plans. I would like to once again stress to you that any material variation carried out to this development from the drawings approved would be/is development in breach of planning control, and therefore open to enforcement action by the local planning authority.

I look forward to hearing your comments.

Yours sincerely,

JL

Jon Lawrence
Senior Planning Officer (Enforcement)

Contact: Jon Lawrence
t 01622 602261 **f** 01622 602392
e jonlawrence@maidstone.gov.uk

Leigh Day

Direct Dial: 020 7650 1191
Email: uhayter@leighday.co.uk
Your Ref:
Our Ref: RSS/NQE/00109881/1
Date: 3 September 2014

FAO Lee May
Brachers Law
Somerfield House
59 London Road
Maidstone
Kent ME16 8JH

VIA Post and Email: leemay@brachers.co.uk

Dear Sirs

Re: David Padden v Secretary of State for Communities and Local Government & Maidstone Borough Council, Mr Guy Harrison and Mrs Emily Harrison, Taytime Limited, CO/3926/2014

We act for the Claimant in the above matter. We understand that you represent the Second Interested Party, Guy Harrison.

We have been instructed by our client to contact you regarding intimidating communications he has recently received from your client, Guy Harrison.

The first of these communications was on 22 August 2014, to which our client provided a short and polite response, including a request that Mr Harrison send any future correspondence via their respective solicitors. Ignoring our client's reasonable request not to be contacted directly, our client received a second email from Mr Harrison on 27 August 2014. Our client again provided a short and polite response and requested future correspondence to be via respective solicitors. On 1 September 2014, our client received yet another email from Mr Harrison.

We have enclosed copies of the relevant correspondence for your reference. The tone of each email is at best unpleasant and each email has clearly been sent with the sole intention of intimidating our client.

Please confirm by return that your client will not make any attempts to make direct contact with our client in the future. In the event that you do not provide this assurance, or Mr Harrison again contacts our client directly, we put you on notice that this letter, including its enclosures, and details of any such future communications and

ill conduct on behalf of Mr Harrison, will immediately be brought to the attention of the Court.

Mr Harrison, in his email of 1 September 2014, made a number of spurious allegations against our client. For the benefit of the Court we will deal with these now in turn.

Mr Harrison states:

"It has been brought to my attention that you have again been trespassing onto our property and engaging with my staff and contractors in an offensive and dictatorial manner."

"My grass contractor confirmed that you accosted him yesterday, wrongly stating that it was illegal to cut the bank on Sunday and that he was ruining your day (despite you having been out all day and only returning 2 minutes before approaching him).

"I understand that you threatened to report him to his supervisor and then you both got into an abusive verbal exchange."

"I understand that you, John Edwards and Darryl Parker have collectively complained about the ditching but when we began the maintenance on that ditch (at the first available opportunity since your complaints) you complained about that!"

Our client confirms that he briefly spoke to Morgan Kinsey-Jones on Saturday 30 August 2014, from his own property, to request Mr Kinsey-Jones look at the water flowing in the ditch. Our client confirms that he simply wanted to bring to Mr Kinsey-Jones's attention that groundwater was seeping out of the ground, instead of flowing down to the river and away. He also wished to advise Mr Kinsey-Jones that it appeared to him that, from the way the ditch had been scraped and graded, there had formed a ridge making the seepage flow back towards the orchard away from the river, so creating sitting water which could only seep into the ground, thus making the ground water issue worse. Mr Kinsey-Jones refused to come and look and told our client to speak to Mr Harrison. Our client certainly did not engage in an offensive or dictatorial manner. He did not trespass on to any land within the ownership of your client.

Our client confirms that he did not speak to anyone on Monk Lakes on Sunday 31 August 2014 and he did not speak to the grass contractor as claimed. Again he did not trespass on to any land within the ownership of your client.

Our client confirms that he did not complain about the maintenance on the ditch. Our client's instructions are also that Mr Harrison's suggestion that the work was begun at

the 'first available opportunity' is simply not true. Indeed our client's instructions are that the Environment Agency had made Mr Harrison aware of the issue with the ditch many months before work was eventually commenced; in addition Kent County Council had also seen cause to comment to Mr Harrison on the ditch maintenance issue.

Mr Harrison's recent conduct is deeply concerning and wholly unacceptable. We look forward to receiving the requested confirmation so that this issue can be brought to an immediate close.

Yours faithfully

LEIGH DAY

Leigh Day

Ugo Hayter

Subject: FW: FW: Formal Warning

From: Guy Harrison [mailto:guy@sopersfarm.com]
Sent: 01 September 2014 10:48
To: David Padden
Subject: Formal Warning

David,

It has been brought to my attention that you have again been trespassing onto our property and engaging with my staff and contractors in an offensive and dictorial manner. I am sure it would horrify you if either my staff or a group of anglers came onto your property to complain to you!

My grass contractor confirmed that you accosted him yesterday, wrongly stating that it was illegal to cut the bank on Sunday and that he was ruining your day (despite you having been out all day and only returning 2 minutes before approaching him). I understand that you threatened to report him to his supervisor and then you both got into an abusive verbal exchange.

Combining your refusal to sit round a table with me, your rolling legal action and rentless unjustified complaints, you are proving to be the neighbour from hell!

With that in mind, this is a formal warning; **DO NOT ENGAGE WITH MY STAFF OR CONTRACTORS** and **DO NOT ENTER THE PROPERTY** without my express written permission. If you continue to do so or harrass or verbally abuse any of my employees, contractors, customers or anyone else associated with me or the fishery; **YOU WILL BE PROSECUTED**.

Whilst you continuously try to make matters worse, we endeavour to improve things and appease you. I understand that you, John Edwards and Darryl Parker have collectively complained about the ditching but when we began the maintenance on that ditch (at the first available opportunity since your complaints) you complained about that! Is there no pleasing you?

So, we are no longer interested in hearing about your petty gripes, and if you do not heed the formal warning above, we will act accordingly.

Guy

Ugo Hayter

Subject: FW: meeting

From: David Padden
Sent: 27 August 2014 17:23
To: 'Guy Harrison'
Cc: Richard Stein (rstein@leighday.co.uk)
Subject: RE: meeting

Dear Mr Harrison

Please refer to my previous email requesting all correspondence goes via our solicitors. As stated I see no point for a meeting at this time due to the current ongoing legal action. I do believe the residents have a right to be represented and I would insist that Mr Edwards be invited to any meeting.

Regards
David Padden

From: Guy Harrison [mailto:guy@sopersfarm.com]
Sent: 27 August 2014 11:14
To: David Padden
Subject: RE: meeting

David,

It is a shame that you continue to hide behind your legal professionals. I offered to come to your house to make meeting with me as convenient for you as possible. If your motivations are sincere, could you not have suggested that I came to your offices instead?

Equally, you are the driving & financial force behind this legal dispute and Hertsfield Road Association have nothing to do with this matter. As you said in your email you have served action on the Secretary of State, not Hertsfield Road Association. The said challenge also puts your concerns about Groundwater into a very questionable position, because it is those investigations that you are now trying to prevent from happening.

This in turn makes me then believe that this litigation is just a sporting matter for you. I understand that you had a huge issue with Simon Hughes during his ownership but I am perplexed as to why you would allow this to transfer over to me as well. I am open to working with you and I feel that we've done everything we can to address what we considered at that point, to be your genuine concerns; making dramatic improvements to the view that Simon Hughes had left for you, as a priority; regrading the land and using high quality seeding etc. If you work with us we would continue to make those improvements with planting & boundary treatments that you were in agreement with – and obviously any ground water controls that are deemed necessary. However, you appear to just want to damage to our progression as much possible. I have never met you; only seen you in the High Court and yet you antagonise us with false claims to the Environment Agency (regarding bank slippage and ditch positioning to name a few), deliberately start intrusive bonfires and relentless complaints. Would you like it if we start to have bonfires when the wind is headed in your direction? Would you like it if we complained to the authorities about everything that you and your companies (Denton Homes Ltd, Denton Group Ltd, Denton Homes Surrey Limited...and so on) do? Would you like it if were to revert the view back to how Simon Hughes left it; with large imposing machinery and aggressive notices? I really do not wish to reciprocate because I feel there's greater benefit to us both in finding a mutual solution, however without meeting with you, you will leave me no choice.

So, with this in mind I would again like to offer you the chance of a meeting (without the involvement of your solicitors or the Hertsfield Association). We can meet wherever you feel is appropriate. Perhaps you can come to the fishery and we can give you a proper tour? This can be out of office hours too.

Without this however, the matter is going to be even more protracted and expensive for both sides and the various outcomes are unattractive for everyone concerned. If the "Enforcement Notice" is upheld you will have decades of works taking place in front of your house; diggers, lorries, noise, pollution and absolutely no motivation from our side to make the area in front of your property any kind of priority – quite the opposite in fact. Do you really want to go down this route? Or would it not be better to sit round a table and find a solution?

I would like a response from you by the end of this week. May I suggest a meeting sometime tomorrow?

It's in your hands David.

Guy

From: David Padden [mailto:david@dentongroup.com]
Sent: 25 August 2014 13:59
To: guy@sopersfarm.com
Cc: Richard Stein (rstein@leighday.co.uk)
Subject: FW: meeting

Dear Mr Harrison,

Thank you for your email. For the next 3 weeks due to staff holidays it would be very difficult for me to meet with you. However you are probably aware by now that I have served action on The Secretary of State for Communities and Local Government. Therefore until a decision has been made I do not think it would serve any purpose to meet. I also think it would be relevant for the Hertsfield Residents Association Chairman to be present at any meeting that does take place in the future.

I am somewhat surprised by the tone of your email and therefore please send all future correspondence via our solicitors.

Yours faithfully,
David Padden

From: Guy Harrison [mailto:guy@sopersfarm.com]
Sent: 22 August 2014 11:39
To: David Padden
Subject: meeting

David,

Whilst I am acutely aware that you have refused to meet in the past, and that you feel more comfortable standing behind your legal professionals, I would like to arrange a face-to-face meeting with you. I think it would be beneficial for all parties concerned if we sat down and discussed the intentions and motives of both sides and analysed all possible outcomes of this protracted planning dispute in a frank and honest way. I hope that behind your litigious facade, that there is an element of reason or empathy.

As you know full well, we acquired the fishery at the final stages of its development and have therefore inherited the planning situation, yet you seem to treat me with the same level of contempt that you did Simon Hughes. I am taking your actions progressively more personally and we need to find a mutual solution before I retaliate accordingly.

In case you decide not to respond, I propose a specific meeting time (below), and you can suggest an alternative if it doesn't work for you.

Unless I hear from you, I will come to Hertsfield Barn on **Tuesday 26th August 2014 at 12pm.**

Guy

Bell Cornwell
CHARTERED TOWN PLANNERS

Bell Cornwell LLP
Oakview House, Station Road,
Hook, Hampshire RG27 9TP
T : 01256 766673 F : 01256 768490

Also at
Sowton Business Centre, Capital Court,
Bittern Road, Exeter, Devon EX2 7FW
T : 01392 357515 F : 01392 268167

St Mary's Court, The Broadway,
Amersham, Buckinghamshire HP7 0UT
T : 01494 618444 F : 01494 582020

bcp@bell-cornwell.co.uk
www.bell-cornwell.co.uk

Please reply to: Hook

Our ref: RL/5506

Mr and Mrs G Harrison
Monk Lakes Ltd
Sopers Farm
Peppers Lane,
Ashurst,
Steyning
BN44 3AX

28 November 2014

Dear Mr and Mrs Harrison

Monk Lakes, Staplehurst Road, Marden TN12 9BU

We write to you on behalf of our client Mr David Padden of Hertsfield Barn with regard to hydrogeological investigations at the above site that are necessary to assess the impact of the unauthorised development and proposed retention of development on local ground water flows and flooding.

In a statement submitted to the Courts by Mrs E Harrison on behalf of Taytime Ltd, dated 30th September 2014, it was suggested that our client refused access to your consultants BAM Nuttall. However we wish to clarify that he simply advised them that monitoring of water levels in the pond would be of little use as the pond is regularly pumped to prevent flooding of the house. Following which your consultants asked for figures in relation to the volume of water being pumped out. Our client had asked for details of the scope of works but this was not provided to him and communication ceased.

We also requested a copy of the scoping report and methodology that your consultants are apparently working from the Council, but to date they have declined to provide this. We note that a scoping report was submitted to the Council in August 2014 and they subsequently consulted with the Environment Agency (EA). The summary of the scope of investigations was set by Peter Hockney of the Council in an email to the EA as follows:

1) the sinking of a total of eight boreholes to depths of about 6m bgl, including permeability testing if appropriate, and recovery of soil samples of the soils encountered
2) depending on the findings of the boreholes, exaction of some shallow (<2m) trial holes to confirm the geological profile to prove absence or/depth of any permeable granular deposits
3) the installation of groundwater monitoring wells in each borehole to allow monitoring of groundwater levels and to facilitate sampling of groundwater for forensic chemical analysis on one round of sampling
4) Baseline monitoring - to also monitor the adjoining principle surface water features (the adjoining lakes and river)
5) Interpretative reporting - the production of a baseline monitoring report with outline recommendations for mitigation if required

However, we understand the EA declined to officially comment on the methodology and extent of the investigations proposed as this went beyond their remit.

We note the informal advice provided to your consultants in an email from Frank Heeley of the EA dated 25th September 2014, apparently after your investigations commenced, extract below:

> It is for you to set the number of boreholes and where they are located, however we do think that additional boreholes would help provide a clearer picture of groundwater flows. The data you collect and the analysis you provide should explain how the distribution of boreholes allows for the determination of groundwater flow gradients so that we have the appropriate assurance that the monitoring will capture the shallow sub-surface flows along the gradient of the development (particularly those that follow the ground surface gradient towards the west of the site).

Further we note that the Council have not sought independent expert advice on the scope and methodology of investigations.

In the interest of transparency in the planning process and in the spirit of cooperation it would be of assistance if you could provide us with a full copy of the scoping and methodology of the current investigations, including the plan of the locations of the bore holes.

Clearly it is in all parties' interests to investigate this matter thoroughly and in accordance with industry best practice. Our client therefore intends to instruct a specialist hydrogeological consultant to undertake an assessment of the baseline and detailed monitoring and assessment of the impacts of the unauthorised development.

In order to do this it would be of assistance if you would allow our clients hydrogeologist consultant access to the Monk Lakes site at prearranged times, initially for a scoping review to assess what is required, and then further access in accordance with a schedule of investigations. If you are agreeable to this perhaps it would be possible for the site inspections to be done in the company of your specialist consultants.

Although we have not seen the full scope of your consultants' investigations and methodology, so cannot provide a detailed assessment of the adequacy of this, it is possible from the little information we have that we would request further investigations on site including additional deeper bore holes to assess the geology and composition of the developed areas including Puma and Bridges lakes.

We hope you would allow our clients consultants access to your property to undertake the proposed investigation. If so in return our client would allow your consultant's access to his property at pre-arranged times for investigation works (schedule to be agreed) if they still considered that this was necessary. An alternative is that both consultants share information they collect.

We look forward to your consideration of this proposal and your decision.

Yours sincerely,
BELL CORNWELL LLP

REBECCA LORD MSc MRTPI
Associate

Direct Dial: 01256 382036
E-mail: Rlord@bell-cornwell.co.uk

Taytime Limited
C/O Monk Lakes
Staplehurst Road
Marden
Kent TN12 9BS

Rebecca Lord
Bell Cornwall LLP
Oakview House
Station Road
Hook
Hampshire RG27 9TP

9th December 2014

Dear Ms. Lord,

Monk Lakes, Staplehurst Road, Marden, Kent, TN12 9BS

Further to your letter dated 28th November 2014, I would like to review each matter raised in turn.

Access

BAM Nuttall made a request in writing to Mr. Padden to allow them access to his pond to assess the water levels. He did not grant them such access. They also requested to install a bore hole on Mr. Edwards land and he too denied such permission. Instead of allowing access to his pond, Mr. Padden made requests for information about the scope of works which BAM Nuttall had already made available to the Local Planning Authority (LPA), the Environment Agency (EA) and Kent County Council (KCC). We assume that he did so in order to search for errors. Said parties responded to the submission, before the works commenced, all confirming that it is for us, as the applicant, to ensure that the Environmental Consultants choose a strategy for the hydrological investigations that is suitable for the assessment of any hydrological impact caused as a result of the development. Peter Brett & Associates and BAM Nuttal, well-known and reputable firms, have concluded, even after seeing Frank Healy's "informal advice", that there are in fact a sufficient number of bore holes, dug to a suitable depth, to adequately assess the groundwater conditions. The LPA are not obliged to seek independent expert advice on the scope and methodology of investigations. It is down to an applicant to provide such information and for the LPA to assess it's validity at the time of determination.

Cooperation

We are all bemused by your reference to "transparency" and "the spirit of cooperation" in relation to this situation. We have made 3 attempts to meet with Mr. Padden (1 before the submission of MA/11/1948, and 2 since then) to discuss his concerns and to incorporate them into our submissions. He has refused to meet with us and insists on speaking only via his legal team. Equally, and despite evidence that this is a natural flooding problem that precedes the lake construction (attached), we have embraced the investigations and are committed to installing whatever groundwater controls are deemed necessary by the results of those investigations.

Mr. Padden has already stated that he will challenge any grant of planning permission – said even without seeing what additional information and research we intend on submitting. These are not

the words or intentions of a *cooperative* man. Mr. Padden is a litigious individual who has a personal vendetta against the development, which started long before our ownership. It is significant that he is trying to prevent us from addressing the elements highlighted by his High Court challenge. We are doing everything we can to appease him, and he is doing everything he can to stifle the progression of our business and damage our efforts to resolve this long-standing, expensive and destructive planning dispute. Mr. Padden, and to a lesser degree Mr. Edwards, are the only neighbours who continue to work against us. We are on better terms with all the other neighbours, all of whom have grown attractive boundary hedges. Mr. Padden's boundary is purposefully left bare; despite all other areas of his garden being manicured and managed by a regular gardener. Please see photographic evidence of this also attached. This is symbolic of his attitude towards us.

Severity

I understand that Mr. Padden uses a 2" pump to lower the levels of his pond on a very infrequent basis. We have a pond at home and we lower its levels much more regularly. If the problem was in any way threatening his home, he would have the need to pump on a regular basis and with a much larger pump. Equally, we question the effectiveness of his overflow system. We would like to take this opportunity to request that he allows BAM Nuttall to authorise an assessment of the overflow system to Mr. Padden's pond.

Objectivity

Mr. Padden has used a friend, Dr. Fox, to supply information to the Courts. These reports are being reviewed currently, but it is believed from initial assessment that they are simply tailored to suit Mr. Padden's needs. We believe the Mr. Padden is not acting in the interests of the genuine planning process but purely as a means to prevent us from gaining permission on the site.

BAM Nuttall would still like to have access to the pond, but it should not be in lieu of us allowing access to our site. Our site is already being assessed by capable, professional and independent consultants. If Mr. Padden considers that the problem is genuine or severe enough, he should grant access to BAM Nuttall.

Conclusion

To conclude, sadly we do not believe that Mr. Paddens intentions are motivated by the notion of transparency, but purely as a fault-finding exercise. If he demonstrates a willingness to work together to incorporate his concerns into our submissions for the redetermination by means of a meeting round the table (this can be with a mediator if he so wishes) – then we will be willing to share information.

Yours sincerely,

Mrs. Emily Harrison
For and of behalf of Taytime Limited

Bell Cornwell
CHARTERED TOWN PLANNERS

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Oakview House, Station Road,
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Amersham, Buckinghamshire HP7 0UT
T : 01494 618444 F : 01494 582020

bcp@bell-cornwell.co.uk
www.bell-cornwell.co.uk

Please reply to: Hook

Our ref: RL/5506

Mrs E Harrison
Taytime Ltd
Sopers Farm
Peppers Lane,
Ashurst,
Steyning
BN44 3AX

16 December 2014

Dear Mrs Harrison

Monk Lakes, Staplehurst Road, Marden, Kent TN12 9BS

Thank you for your letter dated 9th December 2014. Taking your points in turn our response is as follows:

Access

As your contractors requested access to our client property it was entirely reasonable for him (and/or his representatives) to ask for access to the scope of those investigations / works before agreeing to anything. If you and your advisers have confidence in the methodology as you suggest then surely there is no problem with sharing this information.

We agree with the local planning authority and other agencies that you may choose the strategy that you think is appropriate for assessment. We note that Maidstone Borough Council, Kent County Council and the Environment Agency have not though, as you have previously sought to suggest, endorsed the methodology you have adopted.

Once the findings and recommendations are published these will be subject to a robust review by our clients consultant Hydrogeologist [ESI, Environmental Specialist] to ensure the assessment is in accordance with industry best practice. As you are aware ESI reviewed the Hydrogeological Appraisal produced by PBA (dated July 2014) and your scoping document for supplementary documentation for the planning application and made recommendations for the required investigation. Contrary to the guidance given to you by PBA ESI concluded '*it is usual best practice to undertake baseline monitoring for a 1 or 2 year period to define seasonal variations in baseline conditions to inform a groundwater impact assessment of such a development*'. In the absence of full information about the investigation and monitoring methodology it is not possible to highlight any other areas of concern.

If the methodology employed in the investigation is found to be lacking, this will result in objections that are likely to result in further delays due to the need for additional investigation work or indeed a refusal of your application.

As such it must be in the interests of Taytime Ltd to have any additional issues or deficiencies in the methodology highlighted at an earlier stage so you can address them.

Cooperation

(i) We are asking for transparency in relation to planning processes so we can see the information that is being generated in response to the Court's criticisms of the Environmental Statement (made in judicial review proceedings brought by our client) and in respect of matters that directly affect our client. This is not unreasonable.

(ii) The recent requests for meetings made by Mr Harrison to our client were intimidating. This was the subject of a letter from Leigh Day Solicitors to Brachers Law on 3rd September 2014 (copy attached).

(iii) It is not accepted that there were pre-existing problems. No evidence of any substance has been produced by you to support this view, a view that is contrary to that of a number of experts, including the Environmental Agency (EA), and as recorded in the Judicial Review proceedings.

(iv) It is unfortunate that both you and Mr Harrison persist in making personal attacks on Mr Padden. We would ask you to desist from making any further personal, offensive or derogatory comments about our client. We refer you to the letter of 3rd September 2014 from Leigh Day Solicitors to your solicitors.

(v) We are not seeking to prevent Taytime Ltd from addressing the flaws in the Environmental Statement as identified in the Judgment. We are simply asking to be consulted on the methodology of the work to ensure it accords with industry best practice. This is not unreasonable.

(vi) Contrary to your suggestion, this environmental matter concerns the Hertsfield Residents Association, as a Rule 6 party in the appeal, and other objectors rather than just Mr Padden and Mr Edwards.

(vii) The Council has been put on notice of client's position that he will challenge any planning decision (other than a refusal) if we are not allowed to see the environmental information that informed the planning process and if the Council continues to adopt a flawed approach. This position is not unreasonable.

Severity

Evidence as to the regularity of pumping was given in witness statements to the High Court. It is unlikely that you would know the frequency or details of pumping at our clients' property with any accuracy.

As indicated in our letter of 28th November 2014 our client will allow your consultants / contractors to access his property at specified times for pre agreed investigations, if in return Taytime Ltd provide us with information on the scheme of investigation that we now understand is described as a *'groundwater monitoring plan and strategy document'* and allow our expert hydrogeologist access to Monk Lakes.

Objectivity

Your comments regarding the expert evidence of Dr Fox are refuted. The EA agreed with his views and the recommendations for further investigations, as found in the Judgment.

It is unfortunate that the local planning authority has not sought independent specialist advice.

In any event our client has instructed ESI, an independent specialist hydrogeological consultancy.

Again you suggest that our client should allow your consultants access to his land but deny his experts access to yours. We consider this is unreasonable.

Purpose

Our purpose is to ensure that planning application is properly assessed and lawfully determined in accordance with national and local planning policy and other material considerations. That is a legitimate aim and not a 'fault finding process' as you suggest.

The suggested round table meeting for agreeing mutual access seems excessive. At this point in time our client considers it may not be constructive to meet with you or Mr Harrison personally, particularly in view of the unfounded personal criticisms and derogatory comments both of have made about him in publicly available documents.

If however you wish to go forward with formal mediation we are prepared to consider this. However, you give no indication as to who would conduct this and the format or scope of any such meeting/s.

We would comment that to date rather than exploring or suggesting other more acceptable forms of development, such as lowering the above ground fishing lakes bases down to pre-existing ground level and a reduction in bund heights to around 2 metres or less, Taytime's position has always been the retention of all the unauthorised material, together with additional imported material to complete.

Please be clear that even if this goes forward our client would not agree to any such mediation process interfering with the planning enforcement appeal timetable.

Although you conclude that you will only share information with us on your terms there is a requirement in law for all environmental information that informs the planning decision making process to be made available, unless there are specific reasons for exempting it. We are not aware of any valid reason for exempting your report or any other environmental material.

Clearly your groundwater monitoring plan and strategy document is a completed document that is being put into practice as part of the process of gathering relevant environmental information. We therefore request a copy of this report from you in the interests of transparency in the planning process.

With regard to access, in summary our clients would allow your consultant's access to his land on the proviso that:

1. The groundwater monitoring plan and strategy document is provided to us.
2. The scope of any investigation on his land are agreed in advance.
3. The timetable is agreed.
4. His hydrogeologist consultants are allowed access to Monk Lakes.

We look forward to hearing from you.

Yours sincerely,
BELL CORNWELL LLP

REBECCA LORD MSc MRTPI
Associate

Direct Dial: 01256 382036
E-mail: Rlord@bell-cornwell.co.uk

From:	Jim Tarzey
To:	East3
Subject:	Final response comments in respect of App No APP/U2235/W/20/3259300 (Monk Lakes) (for Taytime Ltd)
Date:	13 October 2022 15:09:34
Attachments:	image707711.png Monk Lake 2,Section12AA(3)Certificate,gw,20220515.pdf Monk Lake 2,Section12AA(4)Certificate,gw,20220515.pdf Preliminary Certificate,20180317.pdf Annex to Prelim Cert,20180625.pdf Licence Document.pdf Issue Letter.pdf

Dear Sir/Madam

Final comments on submissions from 3rd party as follows:

1. **Water Strategy**

To confirm, it was not under our client's instruction to upload the Water Strategy published on 27th September 2022 to the Council's portal. However, in response made by Rebecca Lloyd in her email of 11 October 2022 (@ 15:49) to PINS, please note the following;

1. Information regarding the Water Balance was requested by MBC via email on 25/01/2019. A response to this request is provided in the Hafren Water Report (dated February 2019) page 17-20.
2. Monks Lakes are allowed to pump a certain amount, but it is highly regulated by the Licence, which is attached.
3. The Reservoirs Engineer (Neil Reilly) carried out breach modelling which forms part of the 2012 PBA FRA documentation, which was also appended to the Hafren 2019 document (pdf page 197). During the concept design process the Reservoir Engineer (Neil Reilly) has carried out calculations to check a number of factors, including:
    i. Flow against toe of north bank
    ii. Runoff from west embankment of Lakes 1,2,3
    iii. Runoff from whole site
    iv. Loss of flow cross section north of lake 3
    v. Consequences of reservoir breach

In accordance with the Reservoirs Act, 1975, the construction of the lake has been overseen by a Reservoirs Panel Engineer, to ensure the design specification, quality of construction, and suitable monitoring that should be implemented. The Reservoir Engineer also oversees the design process and regularly inspect the site works, once underway, to ensure the works are completed to the approved design. Panel Engineer Correspondence and certification attached.

2. **Access**

As stated during the Hearing, relations between the parties broke down and with very little trust remaining to enter into a reciprocal offer to access the Monks Lake site. During the Hearing, Mr. Maurici initially said that our client (the appellant) made no attempt to gain access. The evidence shows that this was not the case, but relationships subsequently eroded. Access was allowed to all parties to the fishery following the Enforcement Notice hearing in 2015 referred to in her email.

3. **Warning Letters**

As our evidence shows, there was confusion between what Mr. Goulette (The Head of Regulatory Control at MBC), Amanda Fearn & Robert Martingdale (EA) had agreed with our client (the appellant) and what the enforcement department (and their new consultant, Cliff Thurlow) understood.

The letters described came from officers that weren't present in the meeting of the 14th March 2008, and it was clear that there was a break down in communication between the two departments. In order to comply with Mr. Goulette's clear instructions to complete the development, in accordance with the plans they had already been discussing with Simon Hughes(former owner of the appeal site) , as quickly as possible, our client (the appellant in this appeal) accepted importation (with soil analysis undertaken) from a Tesco's development in Hastings. If our client had stopped the importation at that stage, that contract would have been lost, and they would have taken the inert material elsewhere, making it impossible to complete it in the timescales given by MBC. Our client tried to then make contact with Mr. Goulette in order for him to explain the situation to the Enforcement Department, but the meeting with MBC on the 14th March 2008 confirmed that MBC were happy for our client to continue on that basis.

Hope this helps

Yours sincerely

Jim Tarzey

Jim Tarzey
Executive Director

E jim.tarzey@pegasusgroup.co.uk
M 07767 686005|**DD** 020 3897 1111|**EXT** 9001|**T** 020 3897 1110
21 Ganton Street | London | W1F 9BN

Reservoirs Act 1975

Taytime Limited

Monk Lake 2
Annex to Preliminary Certificate

The following are conditions which apply to the Preliminary Certificate dated 25 June 2018:

1. A copy of the plan showing the results of the level survey undertaken by BAM in 2014 should be provided to the Construction Engineer to facilitate a check upon the As Constructed minimum crest level.
2. Confirmation of the As Constructed inlet level of the overflow pipe so that the adequacy of the freeboard can be checked.
3. The Supervising Engineer should visit the site at least once each year until the issue of the Final Certificate. He should report any changes in condition of the reservoir to the Construction Engineer.
4. Confirmation of the delivery pipe flow rate needs to be provided in writing.

Geoff Wilson
Construction Engineer under the Reservoirs Act 1975

25 June 2018

RESERVOIRS ACT 1975

MONK LAKE 2

Preliminary Certificate

I, Geoffrey Charles George Wilson of 3, The Osier Field, Ball Lane, Kennington, Ashford, Kent, TN25 4PL, being a member of the Non-impounding Reservoirs Panel, appointed by Taytime Limited to be responsible for the construction of a new large raised reservoir known as Monk Lake 2 situated at Staplehurst Road, Marden, Kent, TN12 9BU (National Grid Reference TQ768476), consider that the reservoir can properly be filled wholly with water up to a level of 21.60 m A.O.D., subject to the following conditions:

The conditions are set out in the attached Annex.

Signature of Engineer: 

Date of Certificate: 26 June 2018

Environment Agency

Guy Harrison
Monk Lakes
Staplehurst Road
Marden
Kent
TN12 9BS

Our reference: NPS/WR/024273

Date: 23 July 2018

Dear Mr Harrison,

Decision on your application to renew a licence
Application number: NPS/WR/024273
Licence number: 06/094/R01

We are writing to tell you that your application for a full abstraction licence has been determined. Please read your new licence carefully as it is a legal document and you will have to keep to the conditions shown on it and do any extra monitoring in line with the licence conditions.

Your new licence will end on 31 March 2024. This is the “date of expiry” shown on the licence.

Please read your new licence carefully as it is a legal document and you will have to keep to the conditions shown on it and do any extra monitoring in line with the licence conditions.

There is a time limit on your licence. The time limit, which we decided upon in line with our policy on setting time limits, is shown on the front cover of the licence. The time limit will be linked to the next appropriate review within the catchment. At the end of the time limit, we should be able to renew the licence if:

- there is no damage to the environment;
- the need for the abstraction can still be justified;
- water is being used efficiently; and
- you still meet the usual legal requirements for getting a licence.

We do not guarantee that we will renew the licence. We will contact you before your licence ends to tell you about the renewal process.

This licence has been granted in line with current legislative requirements and policy on water resource management. However, Government have consulted on reforms which may affect the duration, quantities and management of licences before your current licence expires. You may wish to take account of this in your business decisions. If you would like to find out more, please search for ‘abstraction reform’ on gov.uk.

We make water charges based on the yearly authorised amount shown on your licence and not on what you actually abstract. The charges will become due from the date your licence becomes effective and on 1 April each year after that. If you have applied to vary your licence, you may have to pay more abstraction charges. We will send you an account for water charges shortly, unless the authorised abstraction period has now passed – in this case, we will not send you an account for water charges until 1 April. To work out your charges, please refer to our

Scheme of Abstraction Charges, which is available on our website at www.gov.uk/environment-agency.

Your licence contains a condition that abstraction must end when river flows (as measured by one of our river-flow gauging stations) fall below a set limit. We will contact you again shortly with more details on how we will apply this condition. The purpose of this condition is to protect the water source and the interests of lawful users downstream.

If it's a condition of your licence to install and position a meter to measure the water you abstract, you'll need to do this in line with a written direction we give you. Please treat this letter as this written direction. When we acknowledged your application we sent you our water abstraction metering factsheet. If you haven't already done so and unless you have more complex metering requirements, please make sure you refer to this factsheet. This will help you to choose the right type of meter and to know how to install it correctly before you start abstracting water.

We will make routine visits to make sure that the terms of your licences are up to date and that any abstraction keeps to the licence conditions. If winter storage reservoirs are involved, we will normally need to inspect these before any abstraction takes place. We will usually inspect existing reservoirs during our first visit. One of our representatives will contact you before the first visit to discuss the terms of the licence. We may make future visits without giving you notice.

You are responsible for making sure that any water abstracted is suitable for the purpose it will be used for. You must continue to monitor the water to make sure you are using it efficiently. It is also your responsibility to make sure that you have any other permission (for example, planning permission) you need in connection with your proposed work.

If you are not satisfied with any decision relating to the licence, you can appeal to the Secretary of State for Environment, Food and Rural Affairs. You do this by filling in a 'notice of appeal', which you can get from the address below.

Environment Appeals
The Planning Inspectorate
3 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Phone: 0303 444 5584
Email: environment.appeals@pins.gsi.gov.uk

You must send written notice of the appeal and the documents listed below to the Secretary of State to the Planning Inspectorate address above. At the same time you must send us a copy of the notice and documents to:

Victoria Douglass
Appeals Coordinator
Environment Agency
National Permitting Service
Knutsford Road
Latchford
Warrington
WA4 1HG

Phone: 01925 542456
Email: victoria.douglass@environment-agency.gov.uk

You must send the notice to the Secretary of State (you must also send a copy to us), at the address above, **within 28 days** of the date of this letter (in exceptional circumstances, the Secretary of State can give you longer to make your appeal). In the notice you must give the reasons for the appeal, and you must also send:

- a copy of your application;
- copies of any information or reports you sent to us with the application;
- this letter; and
- any other relevant correspondence.

You can withdraw an appeal at any time before a decision has been made.

If you have any questions about your application, please contact the Water Resources team on 0208 474 8939.

Yours sincerely,

Joe Tidbury
Team Leader
Permitting Support Centre

Direct dial: 0208 474 8939
Direct fax: 0114 262 6697
Direct e-mail: PSC-WaterResources@environment-agency.gov.uk

Water Resources
LICENCE TO
ABSTRACT
WATER

Environment Act 1995
Water Resources Act 1991 as amended by the Water Act 2003
Water Resources (Abstraction and Impounding) Regulations 2006

IMPORTANT NOTES

Need for safekeeping

This licence is an important document. The permission or right to abstract water may be valuable to your landholding. So -

- **Keep the licence safe, preferably with your deeds etc.**
- **Take careful note of the comments below about "transfer and apportionment" and "death and bankruptcy".**

This is to ensure that the permission and any rights granted by the licence continue if you need to pass it on to someone else.

If you want to:

- **revoke (cancel) the licence;**
- **vary (change/amend) the licence in any way or**
- **change your contact address (but you continue to hold the licence).**

Please write to WR Permitting Support, PO Box 4209, Sheffield, S9 9BS

Details of this licence are placed on a register, kept by the Environment Agency and open for inspection by the public. The public may also obtain further details about it by virtue of the Environmental Information Regulations 2004 (see also Disclosure of Information) except in special cases (for advice please contact us at the address shown on the front page of the licence).

Transfer and apportionment

If you need to pass this licence or any part of it to someone else, you must contact the Environment Agency and obtain the appropriate application forms. Temporary licences cannot be transferred or apportioned. The licence holder remains responsible for compliance with the terms of the licence and any charges payable until the licence has been transferred or apportioned.

Death or bankruptcy of the licence holder

If a licence has been **'vested'** in you, as a result of the death or bankruptcy of the licence holder, please contact the Environment Agency in writing, telling us the licence number(s) and the date that the licence vested in you as a personal representative or trustee of the licence holder. This is necessary in order to enable you to subsequently transfer the licence.

'Vesting' is the transfer of responsibility and ownership of a licence when an existing licence holder is no longer able to hold the licence either through death or bankruptcy.

You do not have to complete a form, but you must notify us in writing within 15 months of the date of vesting, giving the full names of all personal representatives or trustees and a contact address.

Time limits

Your licence may be subject to a time limit (stated on the front of your licence). All new abstraction licences are legally required to include a time limit. For variations to licences, time limits are added in accordance with our policy.

The duration of a time limit is determined in accordance with our time limiting policy. The time limit is linked to the next or subsequent review of water resources within a Catchment Abstraction Management Strategy (CAMS).

There will be a presumption of renewal providing three tests are met: environmental sustainability is not in question; there is continued justification of need; and water is being used efficiently. Any application for renewal will still be subject to the normal statutory considerations.

If your licence is time limited and you wish to renew it when it expires, you will need to apply for a new licence to replace the existing one. You are advised to submit this application at least three months before it expires. To allow you to give early consideration to this, we will send you a reminder approximately 18 months before the expiry date.

If your licence cannot be renewed, we will endeavour to give at least six years notice. We will also endeavour to give at least six years notice where the licence is likely to be renewed on different terms and will significantly impact upon the use of the licence.

In exceptional circumstances, for example where there are other overriding statutory duties such as the Habitats Regulations, it may not be possible to provide six years notice.

Charges

Unless specifically exempted, we may levy an annual CHARGE for water AUTHORISED to be abstracted by this licence, in accordance with our abstraction charges scheme in force at the time.

The licence may be revoked if charges are not paid.

Quantity and quality of water

You must not abstract more than the quantity specified in the licence.

The Environment Agency does not, by issue of this licence or otherwise, in any way guarantee that the source of supply will produce the quantity of water authorised to be abstracted by this licence, nor that the water is fit for its intended use.

The quantity of water authorised for abstraction is given in cubic metres. One cubic metre is approximately 220 gallons.

(The precise conversion is 1 cubic metres = 219.969 gallons).

Source of supply and authorised point of abstraction

You may abstract from the point(s) specified in the licence and from no other points. If you want to add or change the authorised point(s) of abstraction, you must apply to us to vary the licence.

Land on which water is authorised to be used

Where this condition applies, you may only use the water you abstract on the area specified in the licence. You must apply to us to vary the licence if you wish to extend or alter this area or remove it.

Purpose for which water is authorised to be used

You may only use the water for the purpose(s) specified in the licence. You must apply to us to vary the licence if you wish to add to or change the purpose(s).

Offences

Under the Water Resources Act 1991 it is an offence:-

- to abstract water, or cause or permit any other person to abstract water, unless the abstraction is authorised by and in accordance with an abstraction licence, or is subject to an exemption;
- to do anything to enable abstraction, or to increase abstraction, except in accordance with an abstraction licence or exemption;
- to fail to comply with the conditions of an abstraction licence. **Note in particular that it may be a condition of the licence to maintain the meter or other measuring device etc. and failure to do so will be an offence;**
- to interfere with a meter or other device which measures quantities of water abstracted so as to prevent it from measuring correctly;
- to fail to provide information which we have reasonably required for the purpose of carrying out any of the Environment Agency's water resources functions;
- to knowingly make false statements for the purpose of obtaining a licence or consent or in giving required information.

The requirement for a licence is subject to some exemptions, set out in the Water Resources Act 1991 as amended. If in any doubt as to whether you need a licence, contact us at the address shown at the bottom of the front page of the licence.

Right of appeal

If you are dissatisfied with our decision on your licence application, you may appeal.

If you are in England, you should write to the Secretary of State for the Environment, Food and Rural Affairs, care of The Planning Inspectorate at:
Room 4/19 Eagle Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol,
BS1 6PN.

If you are in Wales, you should write to The National Assembly for Wales care of The Planning Inspectorate at:
Crown Buildings,
Cathays Park,
Cardiff,
CF10 3NQ.

You must serve notice of appeal within 28 days of the date of receipt of this licence (although the Secretary of State and The National Assembly have power to allow a longer period for serving notice of appeal). See Water Resources Act 1991, section 43.

Disclosure of information

Information about this licence is available in the public Register held by the Environment Agency. Members of the public are also entitled to ask us for other "environmental information" it holds, including any activities likely to affect "the state of any water" or any "activities or other measures designed to protect it". That would include the information additional to the licence document e.g. any related agreement or abstraction returns. In certain restricted circumstances it is possible to claim that information should be kept confidential. If you require more information about keeping this information off the public register because it is confidential, please contact us by writing to the address shown on the front page of the licence within 28 days of receiving this licence.

Licence Serial No:	06/094/R01

Please quote the serial number in all correspondence about this licence

FULL LICENCE TO ABSTRACT WATER

The Environment Agency ("the Agency") grants this licence to:-

Guy Harrison ("the Licence Holder")
Monk Lakes
Staplehurst Road
Marden
Kent
TN12 9BS

This licence authorises the Licence Holder to abstract water from the source of supply described in the Schedule of Conditions to this licence and subject to the provisions of that Schedule. The licence commences from the effective date shown below and shall remain in force until the date of expiry shown below.

Signed Rob McHale

Permitting Team Leader

Environment Agency
Permitting and Support Centre
Water Resources Team
Quadrant 2
99 Parkway Avenue
Parkway Business Park
Sheffield
S9 4WF

Date of issue ..... 23 July 2018

Date effective ..... 23 July 2018

Date of expiry ..... 31 March 2024

The licence should be kept safe and its existence disclosed on any sale of the property to which it relates. Please read the 'important notes' on the cover to this licence.

Note: References to "the map" are to the map which forms part of this licence.
References to "the Agency" are to the Environment Agency or any successor body.

Licence Serial No:	06/094/R01

SCHEDULE OF CONDITIONS

1. SOURCE OF SUPPLY

1.1 Inland water known as River Beult in the parish of Marden, Kent.

2. POINTS OF ABSTRACTION

2.1 Between National Grid References TQ 77367 47631 and TQ 76709 47966 marked ‘A’ and ‘B’ on the map.

3. MEANS OF ABSTRACTION

3.1 A pump.

4. PURPOSE OF ABSTRACTION

4.1 Topping up of lakes to maintain water level.

5. PERIOD OF ABSTRACTION

5.1 From November to March inclusive.

6. MAXIMUM QUANTITY OF WATER TO BE ABSTRACTED

6.1 114 cubic metres per hour
2,275 cubic metres per day
113,750 cubic metres per year

Note: an hour means any period of 60 consecutive minutes, a day means any period of 24 consecutive hours and a year means the 12 month period beginning on 01 April and ending on 31 March.

7. MEANS OF MEASUREMENT OF WATER ABSTRACTED

7.1 (i) No abstraction shall take place unless the Licence Holder has installed a meter to measure quantities of water abstracted.

(ii) The Licence Holder shall position and install the meter in accordance with any written directions given by the Agency.

(iii) The Licence Holder shall calibrate, maintain, repair or replace the meter to ensure that accurate measurements are recorded at all times.

(iv) The Licence Holder shall keep all records of meter repair or replacement including evidence of current certification for a period of 6 years.

SCHEDULE OF CONDITIONS

8. RECORDS

8.1 The Licence Holder shall take and record readings of the meter specified in condition 7.1 at the same time each month during the whole of the period during which abstraction is authorised or as otherwise approved in writing by the Agency.

8.2 The Licence Holder shall send a copy of the record or summary data from it to the Agency within 28 calendar days of 31 March in each year or within 28 calendar days of being so directed in writing by the Agency.

8.3 Each record shall be kept and be made available during all reasonable hours for inspection by the Agency for at least 6 years.

9. FURTHER CONDITIONS

9.1 No abstraction shall take place when the flow in the River Medway as gauged by the Agency at its flow gauging station at Teston at National Grid Reference TQ 70877 53023 is equal to or less than 890 megalitres per day as may be notified by the Agency. The Agency's said gauging of the flow shall be conclusive.

9.2 No abstraction shall take place when the flow in the River Beult as gauged by the Agency at its flow gauging station at Stilebridge at National Grid Reference TQ 75810 47768 is equal to or less than 33 megalitres per day as may be notified by the Agency. The Agency's said gauging of the flow shall be conclusive.

9.3 Water abstracted under this licence shall only be used on the land as shown outlined in red on the map.

ADDITIONAL INFORMATION

Note: the following is provided for information only. It does not form part of the licence.

REASONS FOR CONDITIONS

The abstraction is required to be metered to demonstrate compliance with the terms of the licence and to provide information on actual water usage for water planning purposes.

The licence is time-limited to a date to reflect the timing of a future review of the catchment resources availability.

The licence includes hands-off flow conditions to protect the environment and the interests of existing downstream lawful users of water.

IMPORTANT NOTES

Abstraction Reform

We have granted this licence in line with current legal requirements and policies on managing water resources. However, Government have consulted on reforms which may affect the duration, quantities and management of licences before your current licence expires (ends). You should take account of this when making business decisions. If you would like to find out more, please search for 'abstraction reform' on gov.uk.

Hands-off Flow Notification

The Environment Agency's Area Groundwater Hydrology team will contact you by letter or electronically to inform you when to stop abstraction and when abstraction can re-commence

Water efficiency note

The Licence Holder should use water abstracted under the terms of this licence in an efficient manner. The Agency may refer to its guidance on water efficiency (or equivalent guidance) in determining whether water is being used efficiently and may offer advice on any measures considered necessary to meet particular recommendations.

Metering

The Agency will have regard to its Abstraction Metering Good Practice Manual (or equivalent guidance) in directing any of the following: where the meter should be located or how it should be installed; whether the meter measures accurately, and/or is properly maintained; whether it is necessary to require repair or replacement of the meter.

Licence History

Licence serial number	Issue date	Expiry date	Summary of changes
06/094	16/09/2008	31/03/2018	Original licence issued (result of an apportionment of licence 06/092).
06/094/R01	23/07/2018	31/03/2024	Renewal of licence on different terms to change the purpose of abstraction.

Environment Agency

MAP ACCOMPANYING LICENCE NUMBER 06/094/R01

Scale: 1:10,000

N

Would you like to find out more about us, or about your environment?

Then call us on
03708 506 506 (Mon-Fri 8-6)

email
enquiries@environment-agency.gov.uk

or visit us at
www.gov.uk/environment-agency

incident hotline 0800 80 70 60 (24hrs)
floodline 0345 988 1188

Environment first: This publication is printed on paper made from 100 per cent previously used waste. By-products from making the pulp and paper are used for composting and fertiliser, for making cement and for generating energy.

Monk Lake 2

RESERVOIRS ACT 1975 (as amended)

Certificate Under Section 12AA(3), as to the requirements of a direction under Section 12A(2)(a) and (b) being satisfied

I, Geoffrey Wilson of 3 The Osier Field Ball Lane Kennington Ashford Kent TN25 4PL being a member of the Non-Impounding Reservoirs Panel of Engineers, appointed by Taytime Limited to consult on the flood plan under Section 12A for the reservoir known as Monk Lake 2 situated at OS grid ref. TQ768476 am satisfied that the requirements of a direction under Section 12A(2)(a) and (b) are satisfied.

Signature of Engineer

Member of the Non-Impounding Reservoirs Panel of England and Wales
(*Current appointment expires 23 August 2023*)

Date of certificate: 15 May 2022

Monk Lake 2

RESERVOIRS ACT 1975 (as amended)

Direction under Section 12AA(4), by the appointed engineer as to the testing of a flood plan.

I, Geoffrey Wilson of 3 The Osier Field Ball Lane Kennington Ashford Kent TN25 4PL being a member of the Non-Impounding Reservoirs Panel of Engineers, appointed by Taytime Limited to consult on the flood plan under section 12A for the reservoir known as Monk Lake 2 situated at OS grid ref. TQ768476 direct that the flood plan be tested as specified below, the interval commencing on 22 April 2023. A report of the test shall be provided to assess the need for revision of the plan.

Element of flood plan	**Manner of testing**	**Interval between tests**
On-site flood plan	Desk based study, run through and site walk-over	Annual
Off-site flood plan	Full incident simulation, Liaise with Police and Local Resilience Forum	10 years

Signature of Engineer:

Member of the Non-Impounding Reservoirs Panel of England and Wales
(*Current appointment expires 23 August 2023*)

Date of certificate: 15 May 2022

From: Rebecca Lord
To: East3
Subject: RE: APP/U2235/W/20/3259300: Monk Lakes, TN12 9BU Appeal by Monk Lakes Ltd
Date: 13 October 2022 16:06:38
Attachments: image001.png

Dear Milena, in response to the additional material submitted by the Appellant's agent on the matter of the warning letters we produced, we would comment as follows:

(i) The Harrisons communications with the Council commenced on 28/02/2008 with a warning letter to them from the Planning Enforcement Officer, in which it is said that the Council understood the previous owner had told the new owners that there were issues with the development.

(ii) The email Mrs Harrison sent on the 29/02/2008 was to the Environment Agency not the Local Planning Authority.

(iii) It is clear that the Harrisons knew there were issues with the development and that the plans as confirmed in this extract of Emily Harrison's email to the planning enforcement officer on the 01/03/2008. '*Yes, we are aware of the issues with the development and the plans..*'

(iv) Notwithstanding this, and a second warning letter from the Council on the 28/03/2008, the Harrisons continued to import vast amounts of waste material to site, and to undertake works o create reservoirs in the absence of any approved plans or a Panel Engineer.

(v) It was only after the TSN was issued that importation of waste material ceased.

(vi) Emily Harrison's confirms in her email of 18/04/2008 that there was no Panel Engineer or accurate working plans available. By this time of course the TSN was in effect and all the material that is on site now had been imported to site and the 4m high plateaus, the base of the reservoirs, had been formed.

(vii) Reference is made in the communications from Emily Harrison to meetings with Council Officers and it is suggested that 'agreements' were made on various matters. However, there are no meeting notes from the Council or written confirmation in any form to verify that these 'agreements' are an accurate record of discussions in such meetings.

(viii) The only written records in the relevant period from the Council are the two warning letters from the Planning Enforcement Officer, followed by a TSN to require the cessation of the importation of soil and rubble, the movement of soil and rubble, and any associated activities, and then the Planning Enforcement Notice requiring the removal of the unauthorised imported waste material.

(ix) These letters and notices issued by the LPA are at odds with Mrs Harrisons interpretation in the communications she has produced which suggest that there were 'minor deviations' from the 2003 planning permission.

(x) It is not really understood why these matters are being put in issue by Mrs Harrison. An enforcement notice was served in respect of the works on the appeal site. This alleged, as Ms Thomas for the Council put it at the recent hearing, that what was done on the site had no relationship whatsoever to the 2003 planning permission and so all the works were unauthorised. That position was upheld in the course of the enforcement notice appeal: see RL8. The enforcement appeal was pursued initially on a number of grounds including grounds (c) and (d). But these grounds lacked any merit (see the decision letter paras 14 and 16 in RL8) and so were all withdrawn by the Harrisons. None of this can now be disputed in

this appeal.

(xi) The correspondence from 2008 only goes to show that the Harrisons were not, as they would like to make out, innocent parties. The correspondence shows that they knew all along that the works they adopted, carried on and intensified were unauthorised. Despite that they carried on until the TSN was served. How material any of this is to the planning decision in issue is perhaps questionable.

That concludes our comments on this matter.

In addition to the above material we have received a separate email from Jim Tarzey on behalf of the Appellant that was sent Friday to the Inspectorate on 07/10/2022 at 15:21 making further submissions on proposed condition 3.

The Inspector's ruling was clear that the only matters to be canvassed post-hearing were in relation to the correspondence submitted on behalf of Mr Padden (so the 2008 warning letters and the 2014 access requests) and any further 2008 correspondence submitted last Friday by the Appellants. This email seeks to open other matters beyond these. That is not appropriate.

We would reiterate that:

(i) the further 2008 correspondence provided by the Appellant was not copied to those acting for Mr Padden as it should have been, so necessitating this further submission; and

(ii) the Inspector was clear that all further submissions on any and all further matters were supposed to be submitted by close on Tuesday.

We did that on the basis that we understood the Appellant had not submitted further documents. That turned out not to be so. The Appellant did not make any submission by the deadline despite having all the correspondence last week. No explanation has been proffered for this default.

Ground Water & Proposed Condition 3

Notwithstanding the procedural point above, Dr Paul Ellis has provided the following response to the additional submissions with regard to proposed Condition 3.

The Local Planning Authority LPA and the Appellant consider that any further issues relating to groundwater can be left as the subject of a planning condition. We disagree that the work undertaken by either party is sufficient to justify this approach.

The majority of the development is already in place and impacting the adjacent properties. Given the very high likelihood that these impacts will continue unless mitigated effectively, there needs to be a high level of confidence that the proposed mitigation measures will work before planning permission is granted. The current ES does not contain an adequate assessment of the proposed mitigation measures.

We have identified deficiencies in the appellants site conceptual model and identification of the risks posed by the development. Indeed, the appellant does not consider the development poses a risk of groundwater flooding.

The appellants site conceptual model has not been extended beyond the boundary of the site, which would provide the basis for a good understanding of the risk posed by the development and the mitigation measures required.

Reference was made to the Hafren ES pdf page 47 Sketch "Cross Section 2" reference 2675/MBCR2/03, which does not extend the conceptual model of the hydrogeology (aquifers and groundwater levels) beyond the site boundary.

A good understanding of both the risk beyond the site boundary and the potential mitigation measures is required to be sure that the proposed conditions would in principle enable an acceptable reduction of risk.

Draft conditions are proposed (eg Conditions 3 & 4) which state the design should be based

upon ‘The established hydrogeological conceptual site model’. However, a major part of our previous objections has been that the appellant has not provided a suitable conceptual model of the site or accepted the link between the development and the potential impact on Hertsfield Barn and so the conceptual model has not been established to a sufficient degree to support the use of planning conditions. Key information provided by Mr Padden, including trial pit data and groundwater levels, has not been incorporated neither has offsite monitoring been undertaken to help establish the conceptual model.

The email dated 7/10/22 from Jim Tarzey on behalf of the appellant proposes ‘ the condition will require a full review of the Mott McDonald and Hafren conceptual model with a view to producing a definitive conceptual ground model that can be signed off by MBC. The appellants engineers, SLR see the conceptual model being reviewed at the time of detailed design by the appointed designers, in association with the Reservoirs Panel Engineer.’

We note that the condition relies on an established conceptual model, whereas the appellant is proposing to establish the model as part of meeting the condition. We also note that the appellant is proposing to review the MM and Hafren Conceptual Model rather than providing additional offsite assessment or incorporating the data available from Mr Padden.

Without an agreed established conceptual model for the site at this late stage in the application process, we consider there is too much latitude for effective design of the groundwater mitigation measures and it is difficult to see how a deviation from the model can be easily identified if impacts are occurring. For example there have been no proposed trigger levels suggested to judge whether an impact had occurred.

Draft Condition 3 (d) requests confirmation of the elevation of offsite receptors, ‘if possible’. The establishment of the elevation of potential receptors is key to determining the potential impacts of the development and therefore making this optional appears to undermine the basis for the design of the groundwater mitigation scheme.

Condition 4 (a) requires a groundwater monitoring plan but does not provide any details on the extent of coverage, the number, location and depth of boreholes or the frequency of monitoring necessary to identify the impacts reported by Mr Padden. There is no clear indication of what will represent an adequate monitoring plan or what the recourse will be if it is deemed to be insufficient. We have previously stated that the monitoring to date undertaken by the appellant is insufficient to identify the impacts on Mr Padden’s property or the rapid nature of the potential infiltration from the western perimeter ditch following a rainfall event.

Please note I have not copied this to other parties as I would not wish to give them the opportunity to make further comments on this material before close of business today.

Kind regards

Rebecca Lord MSc MRTPI

07985 643708

http://www.rlplanning.co.uk/

44 Barton Drive, Hamble le Rice, Southampton, Hampshire, SO31 4RE

Note business days: Monday – Thursday

Our Ref: DW:100351.0001

26 January 2023

Mr Duncan Beat and Mr Andrew Watling
Quantuma Advisory Limited
Office D
Beresford House
Town Quay
Southampton
SO14 2AQ

URGENT: By e-mail only

Dear Sirs

Monk Lakes Limited ("MLL") (In Creditors' Voluntary Liquidation)
Taytime Limited (on behalf of MLL) v Secretary of State for Levelling Up, Communities and Housing CO/4860/2022
Planning Appeal Reference: 3259300

We write further to our correspondence of 22 and 27 September 2022.

MLL was an appellant under Section 78 of the Town and Country Planning Act in a planning appeal relating to land at. Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("the Appeal Site").

You will recall that we act for Mr David Padden, who was a third part objector to that appeal and whose property has been adversely affected by the unauthorised development at the Appeal Site.

Following our correspondence last year, the planning appeal was considered at a hearing on 5 October 2022 before an appointed Planning Inspector. On 21 November 2022, the Planning Inspector dismissed the planning appeal.

On 28 December 2022, Taytime Limited filed a claim in the High Court pursuant to Section 288 of the Town and Country Planning Act 1990 seeking to challenge the Inspector's decision. The claim has been attributed reference number CO/4860/2022 ("the High Court Claim")

The filed Claim Form and accompanying Statement of Facts and Grounds forming part of the High Court Claim record that the claimant is Taytime Limited "as the appointed agent for and on behalf of Monk Lakes Limited".

You have previously informed the Planning Inspectorate that MLL has "no interest whatsoever" in the Appeal Site. It follows that neither the High Court Claim nor the underlying planning appeal (both of which entail potential costs and costs risk to MLL) can be in the interests of MLL's creditors. Given the terms of s.87(1) of the Insolvency Act

1986 and your professional obligations as liquidators, we consider that it would be unlawful and improper for you to authorise Taytime to issue these proceedings on behalf of MLL.

Our client has applied to become a party to the proceedings and intends to raise these points with the High Court.

If the High Court Claim is successful, the planning appeal will be remitted to the Planning Inspector for re-determination. Should that occur, MLL would be the only entity which could pursue the appeal, meaning that it, rather than Taytime Limited, will be liable for any costs awarded in those proceedings.

Against this background:

i. Please confirm whether you, as liquidators, have granted Taytime Limited authority to bring the High Court Claim "as the appointed agent for and on behalf of Monk Lakes Limited"? Please provide evidence that this authority was provided prior to the filing of the High Court Claim on 28 December 2022;

ii. If this authority has been granted please explain on what basis this has been deemed to be in the interests of MLL's creditors; and

iii. In the event that the High Court Claim is successful please confirm whether MLL would wish to continue to pursue the remitted planning appeal as the appellant?

We await your urgent response.

Yours Faithfully

RICHARD MAX & CO

Our Ref: DW:100351.0001

7 March 2023

Mr Andrew Watling
Quantuma Advisory Limited
Office D
Beresford House
Town Quay
Southampton
SO14 2AQ

URGENT: By e-mail only

Dear Sirs

Monk Lakes Limited ("MLL") (In Creditors' Voluntary Liquidation)
Taytime Limited (on behalf of MLL) v Secretary of State for Levelling Up, Communities and Housing CO/4860/2022
Planning Appeal Reference: 3259300

We write further to our letter of 26 January 2006.

In our letter of 26 January 2023 we requested a response to the following matters:

i. Please confirm whether you, as liquidators, have granted Taytime Limited authority to bring the High Court Claim "as the appointed agent for and on behalf of Monk Lakes Limited"? Please provide evidence that this authority was provided prior to the filing of the High Court Claim on 28 December 2022;

ii. If this authority has been granted please explain on what basis this has been deemed to be in the interests of MLL's creditors; and

iii. In the event that the High Court Claim is successful please confirm whether MLL would wish to continue to pursue the remitted planning appeal as the appellant?

We are concerned by the fact that we have not received a response to our letter and would repeat our request for a response to these matters as a matter of urgency.

In respect of item ii, please also confirm that you have give detailed consideration of the merits of the claim and provide evidence of this assessment. We refer you to your duties in this regard (e.g. *LF2 Ltd v Supperstone* [2018] EWHC 1776 (Ch), [65]-[68]).

We note that whilst Mr Beat has now resigned as a joint liquidator he was previously the appointed liquidator in respect of three insolvent companies, with which Mr Guy Harrison

was a majority shareholder. We are concerned that Mr Beat's established relationship with Mr Harrison has unduly influenced the liquidators' decisions taken in respect of MLL.

We would remind you, that as liquidators you are acting as officers of the Court and, amongst other matters, therefore subject to the duty to act by the same standards of conduct which apply to the Court itself (see *Bros Australia Ltd v MacNamara* [2021] Ch 1 (CA), particularly [35]-[36] and [68]).

We can confirm that a copy of this letter and any response will be filed at Court.

Yours Faithfully

RICHARD MAX & CO

Our Ref: DW:100351.0001

7 March 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail and by post

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

As you are aware we act for Mr David Padden in respect of the above proceedings. On 24 January our client filed an application at Court seeking to join the proceedings. That application is awaiting determination by the Court.

In Section F of our client's Summary Grounds of Resistance, we requested that you provide certain documents and information no later than 7 February 2023. You have not responded to that request.

We therefore repeat our request for the following:

a. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents related to the appeal between 11.09.20 and 05.10.22;

b. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents in relation to MLL, the liquidators' and/or the Claimant Company's authority to issue these proceedings; and

c. Confirmation that the Claimant Company is in fact authorised to act as agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered.

As set out in our client's Summary Grounds of Resistance, the Claimant Company is purporting to act as agent for and on behalf of Monk Lakes Limited. In these circumstances, you ought to be able to supply the above information with little difficulty, and indeed, we

consider that you are obliged to provide it in accordance with the Claimant Company's Duty of Candour.

Please therefore provide the requested information within 7 days of this letter.

We are copying this letter to the Court for its information.

Yours Faithfully

RICHARD MAX & CO

From: David Warman <David@RichardMax.co.uk>
Sent: Tuesday, March 21, 2023 9:10 AM
To: James Kon <James.Kon@asserson.co.uk>
Cc: Administrative Court Office, General Office <generaloffice@administrativecourtoffice.justice.gov.uk>
Subject: RE: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear James

I write further to your e-mail below. I am likewise copying this response to Court.

There is no basis on which it can properly be argued that it would be "inappropriate" to respond to our request for clarification on the points made, given the clear scope of the Claimant's Duty of Candour in judicial review proceedings.

Most importantly, your client (Taytime Limited) purports to have brought the claim expressly "on behalf of and as agent for" Monk Lakes Limited – a company in liquidation. Yet there is no evidence before the Court to substantiate the assertion that your client has been appointed to act on behalf of Monk Lakes Limited in this claim, whether as agent or otherwise. Without this information the Court cannot be satisfied that the claim has been properly initiated.

We would therefore repeat our request that your client respond to our request for information as a matter of urgency.

Whilst writing, we also enclose a Schedule of Costs on behalf of Mr Padden, in the event that his application to join the proceedings is granted and permission is refused to bring the claim.

Kind regards

David

RICHARDMAX&CO SOLICITORS

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

From: James Kon <James.Kon@asserson.co.uk>
Sent: 07 March 2023 10:52
To: David Warman <David@RichardMax.co.uk>
Cc: Administrative Court Office, General Office

<generaloffice@administrativecourtoffice.justice.gov.uk>
Subject: Re: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear David

Thank you for your email and your letter.

Whilst we acknowledge the request for further information on behalf of your client in its summary grounds of resistance, it would be inappropriate to consider disclosing any further documentation until and unless the Court joins your client as a party to the claim, and indeed therefore whether there is a claim at all following that Order (as if the Court confirms the draft order agreed by the Claimant, Council and GLD the decision will be quashed by consent).

I have copied the Court into this response by way of information.

Kind regards

James

James Kon

Senior Associate

ASSERSON

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Office | +44 (0)203 691 4797

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From: David Warman <David@RichardMax.co.uk>
Sent: 07 March 2023 10:33
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear James

Further to our previous correspondence in this matter please find attached a copy of our letter of today's date. A hard copy will be sent in the post.

Please kindly confirm safe receipt.

Kind regards

David

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

www.richardmax.co.uk

Our Ref: DW:100351.0001

30 March 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

As you are aware on 24 March Ms Justice Lang granted our client's application to be joined as a party to the above proceedings and ordered an oral permission hearing to be listed.

Therefore, pursuant to your client's duty of candour please provided copies of the information requested in Section F of our client's Summary Grounds of Resistance (and repeated in our letter of 7 March 2023).

In addition, please provide full details of all and any pre-existing links between Mr Guy Harrison and the liquidators appointed in respect of Monk Lakes Limited.

In the event that we do not receive a full substantive response to this request within 7 days of this letter, we will make an application to the Court for specific disclosure and seek the costs of making that application from your client.

Please therefore provide the requested information within 7 days of this letter.

Yours Faithfully

RICHARD MAX & CO

Our Ref: DW:100351.0001

28 April 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail only

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

We write further to our previous correspondence and in particular our letters of 7 and 30 March 2023, which repeated our client's request for disclosure of certain documents and information originally requested in our client's Summary Grounds of Resistance. In our letter of 30 March, we requested a response within 7 days – by 6 April 2023.

We have yet to receive a substantive response to those letters.

In your e-mail of 31 March, you confirmed that you hoped to be able to provide the requested information by 6 April but that there may be some slippage due to the April holidays.

On 13 April your client e-mailed this firm and advised that she would "endeavour to have everything you asked for by Friday 21st".

On 24 April you advised that the documents "should be ready in the next few days"

On 27 April you advised that "Counsel is reviewing the documents now, but I am not sure of the precise timescales for this. I suspect it will be early next week".

Our client is very concerned at the time it continues to take your client to provide the requested information.

One of the matters requested relates to the authority given by the Monk Lakes Limited liquidators to commence the current proceedings. If such authority was in place, we can see no plausible reason why the information could not have been provided by now. We

reserve our position to seek further documentation regarding the relationship between Taytime Limited and the Monk Lakes Limited liquidators once the information is provided.

Given the repeated indications provided by you and your client that the information was being compiled and would be provided, our client has not yet made an application to Court for disclosure.

However, in light of the listing of the oral hearing on 21 June and the continuing delay we write to confirm that unless the requested information is provided in full by close of business on Tuesday 2 May, we will make a formal application for disclosure on behalf of our client on Wednesday 3 May and seek the costs of making that application from your client.

Yours Faithfully

RICHARD MAX & CO

Dear David

Apologies for the repeated emails on this.

I may have misspoken in my earlier email - I am now instructed that specialist advice has recently been sought with regard to your request, and that the information which needs to be disclosed is being finalised. The information will be with you in the next seven days.

Given that the 21 June hearing has now been vacated, and that we have made it clear that your request for disclosure is being taken very seriously, we do not consider that an application to the Court is necessary (especially as it is likely that the Court would in any event allow more than seven days from the date of the application). Please note that we will resist any formal application and seek our costs of doing so.

Separately, I believe that the clerks are discussing dates for the hearing – am I correct in saying that your client is represented by Landmark Chambers?

Kind regards

James

James Kon
Senior Associate

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Office | +44 (0)203 691 4797

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The LEGAL 500 UNITED KINGDOM RECOMMENDED LAWYER 2023

From: James Kon <James.Kon@asserson.co.uk>
Sent: Friday, April 28, 2023 6:43 PM
To: David Warman <David@RichardMax.co.uk>
Subject: Re: Taytime v Secretary of State for Levelling Up Housing and Communities and others

Thanks David

I am instructed that the documents will be available by COP Wednesday so I would be grateful if you could wait until Thursday before submitting your application for disclosure.

Kind regards

James

Sent from Outlook for Android

From: David Warman <David@RichardMax.co.uk>
Sent: Friday, April 28, 2023 1:36:33 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: Taytime v Secretary of State for Levelling Up Housing and Communities and others

Dear James

Further to our previous correspondence please find attached our letter of today's date.

Kind regards

David

RICHARDMAX&CO SOLICITORS

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Mob: 07729113312

www.richardmax.co.uk

Our Ref: DW:100351.0001

24 May 2023

Mr James Kon
Asserson
Suite 50 Churchill House
London
NW4 4DJ

By e-mail only

Dear Sir

Your client: Taytime Limited CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

We write in response to your e-mail to the Court of 10 May 2023 attaching the Witness Statement of Emily Harrison and the accompanying Exhibit. Mrs Harrison's Witness Statement and Exhibit were lodged in response to our client's request for disclosure first set out in his Summary Grounds of Resistance and subsequently repeated a number of times in correspondence.

We confirm that our client is proceeding on the assumption that the information and documents provided is all the information and documentation in the possession of your client falling within all three categories of information requested by our client.

We will therefore proceed on the assumption that there is no further documentation or information of any sort which falls within the scope of our requests and which has not been disclosed, given the Duty of Candour that applies to your client in these proceedings. We will make submissions in respect of the information provided.

We will also be applying to adduce a further witness statement in support of the application for Security for Costs and in response to Mrs Harrison's Witness Statement. This will be filed and served prior to your client's skeleton argument for the Oral Permission Hearing being due.

As you will be aware the Oral Permission Hearing has now been listed for 13 June 2023. Please confirm that in the normal way you will be preparing a bundle for the Hearing and will provide a draft index for our review and comments.

Yours Faithfully

RICHARD MAX & CO

From: James Kon
Sent: Thursday, May 25, 2023 4:25 PM
To: David Warman <David@RichardMax.co.uk>
Subject: RE: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear David

Thank you for your email and letter.

Please note that we have complied with the duty of candour, which involves conducting a proportionate search and providing full and frank disclosure and exhibiting important documents. We have not however provided every document which we have (which we are not required to do under the duty of candour).

In terms of the bundle, currently I think it will comprise our SFG, the AoS from D1 and D2, the SGD and security for costs application from your client, the draft consent order (including correspondence with the Court), the order from Lang J, our witness statement and supporting documents, any witness statement which you serve in response and the skeleton arguments – do you have any additions at this stage? Also, I note that Lang J directed that you provide the authorities bundle.

Kind regards

James

James Kon
Senior Associate

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Office | +44 (0)203 691 4797

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The LEGAL 500 UNITED KINGDOM LEADING FIRM 2023

The LEGAL 500 UNITED KINGDOM RECOMMENDED LAWYER 2023

From: David Warman <David@RichardMax.co.uk>
Sent: Wednesday, May 24, 2023 4:14 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear James

Further to our previous correspondence, please find attached our letter of today's date.

Kind regards

David

RICHARDMAX&CO SOLICITORS

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

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From: David Warman <David@RichardMax.co.uk>
Sent: Tuesday, May 30, 2023 12:35 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear James

Thank you for your e-mail of 25 May (timed at 16.25). We respond to the points raised in your e-mail as follows:

1. To be clear the duty of full and frank disclosure on claimants is well-established to be a duty to disclose "*all material facts known to a claimant in judicial review proceedings including those which are or appear to be adverse to his case"* (see ***R (Khan) v SSHD*** [2016] EWCA Civ 416 at para 35, emphasis added). The obligation is to make "full disclosure of all material available" (see ***R v Leeds CC, ex p Hendry*** (1994) 6 Admin LR 439, 44D, emphasis added). The position is also clearly recorded in the Administrative Court Guide (2022) at para 7.5.1 "*There is a special duty – the duty of candour and cooperation with the Court – which applies to all parties to judicial review claims. Parties are obliged to ensure that all relevant information and all material facts are put before the Court. This means that disclose parties must relevant information or material facts which either support or undermine their case. The duty of candour may require a party to disclose a document rather than simply summarising it*" (emphasis added). As you will know any failure to comply with these duties may result in indemnity costs against the party in default and/or a wasted costs order against their legal advisers: see e.g., ***R (F) v Head Teacher of Addington High School*** [2003] EWHC 228 (Admin).
2. As you know the requests that we have repeatedly made are as follows:
   "a. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents related to the appeal between 11.09.20 and 05.10.22;
   b. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents in relation to MLL, the liquidators' and/or the Claimant Company's authority to issue these proceedings;
   c. Confirmation that the Claimant Company is in fact authorised to act as agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered."
3. You have not contended (and rightly so) that any of these requests is for material that is not relevant to the claim.
4. If there is, as your email suggests, other documentation that falls within the scope of these requests then it should be provided forthwith.
5. If nothing else is provided we will, as we have previously advised, be proceeding on the basis "that the information and documents provided is all the information and documentation in the possession of your client falling within all three categories of information requested by our client." If this turns out not to be so, then we reserve our position to seek indemnity costs and/or a wasted costs order.

Please would you kindly provide a Bundle Index for our review and comment. Likewise, please ensure that this e-mail and our previous correspondence regarding disclosure matters is included in the hearing bundle.

We are finalising our client's witness statement which will be filed (with accompanying application) as soon as possible and in any event before the end of this week.

Kind regards

David

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

www.richardmax.co.uk

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MERRYMOVE LIMITED

Company number **07062080**

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- Persons with significant control (/company/07062080/persons-with-significant-control)

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2 officers / 1 resignation

HARRISON, Emily Theresa

Correspondence address
Camburgh House, 27 New Dover Road, Canterbury, Kent, United Kingdom, CT1 3DN

Role Active **Director**

Date of birth **April 1978**

Appointed on **4 November 2009**

Nationality **British**

Country of residence **England**

Occupation **Director**

DAVIS, Andrew Simon

Correspondence address **41 Chalton Street, London, London, United Kingdom, NW1 1JD**

Role Resigned **Director**

Date of birth **July 1963**

Appointed on **30 October 2009**

Resigned on **4 November 2009**

Nationality **British**

Country of residence **England**

Occupation **Director**

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MERRYMOVE LIMITED

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— More (https://beta.companieshouse.gov.uk/company/07062080/more)

- Officers (/company/07062080/officers)
- Persons with significant control

1 active person with significant control / 0 active statements

Guy Richard Harrison Active

Correspondence address
Sopers Farm, Peppers Lane, Ashurst, West Sussex, United Kingdom, BN44 3AX

Notified on **30 October 2016**

Date of birth **September 1967**

Nationality **British**

Country of residence **United Kingdom**

Nature of control **Ownership of shares – 75% or more** **Ownership of voting rights - 75% or more** **Right to appoint and remove directors**

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Find and update company information

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TAYTIME LIMITED

Company number **07062161**

Follow this company

File for this company
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- Officers (/company/07062161/officers)
- Persons with significant control

1 active person with significant control / 0 active statements

Guy Richard Harrison Active

Correspondence address
Sopers Farm, Peppers Lane, Ashurst, West Sussex, United Kingdom, BN44 3AX

Notified on **30 October 2016**

Date of birth **September 1967**

Nationality **British**

Country of residence **United Kingdom**

Nature of control **Ownership of shares – 75% or more** **Ownership of voting rights - 75% or more** **Right to appoint and remove directors**

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

CO/4860/2022

B E T W E E N :

TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)

Claimant

-and-

(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN

Defendants

FIRST WITNESS STATEMENT OF EMILY HARRISON

I, Emily Harrison, of Sopers Farm, Peppers Lane, Ashurst, Steyning, West Sussex BN44 3AX, SAY AS FOLLOWS:

1. I make this statement in response to the Third Defendant's:

    a. Requests for disclosure of information relating to the relationship between Taytime Limited, Monk Lakes Limited and Quantuma (as liquidator of Monk Lakes Limited); and

    b. Application for Security for Costs dated 21 April 2023.

2. I was a director of Monk Lakes Limited ("MLL") from 2008 to 2009 and am the sole director of MLL's parent company, Merrymove Limited.

3. I also handle Taytime Limited's ("Taytime") business administration and finance, and have also been dealing with all planning issues.

4. At all relevant times I have conducted the planning process on behalf of MLL and Taytime.

5. I have produced copies of relevant correspondence at pages 2 - 34 of Exhibit EH1.

Planning Application

6. On 9 December 2011 the Second Defendant validated a planning application made by MLL in relation to the Land, seeking part retrospective and part prospective permission for recreational fishing related development at a site known as Monks Lakes in Staplehurst, Kent (the "Property"). This followed a 2003 consent granted to the previous owner of the Property for recreational fishing related development which was held to be breached due to the failure to formally discharge relevant planning conditions.

7. The Property was owned by Taytime, who held an Asset Purchase Agreement for the rights to any planning permission, application or appeal associated with the Property.

8. The planning application form listed Mr and Mrs Harrison as applicant, and gave MLL as the company name. It had been intended that the application would be submitted on behalf of Taytime (which was the owner the Property), but this was not what happened and MLL was the company name used in the application form. Where documents refer to the application being made in the name of MLL "in error" (or otherwise use words to that effect) it is to this that they are referring.

9. The application was granted consent, and the works were largely completed, but the permission was subsequently quashed following an application for judicial review by the Third Defendant.

10. The application was remitted back to the Second Defendant for redetermination.

11. As part of the redetermination, the Claimant sought to address the matters raised in the High Court proceedings, and in particular undertook a lengthy ground and surface water study. In addition, due to the length of time the Second Defendant took to determine the application, many of the existing reports had to be updated and/or redrafted. The Third Defendant made detailed comments and submissions throughout the redetermination process.

12. On redetermination, despite a recommendation for approval by the Council's officers, and no objections from any of the statutory consultees, the planning application was refused by Council's planning committee, and an appeal submitted to the Planning Inspectorate in September 2020 (the "Appeal").

13. The Appeal form was completed by Pegasus Planning Group Limited ("Pegasus") who I had appointed to act in relation to the planning appeal. Because MLL appeared on the application form, MLL was listed on the appeal form.

14. Planning appeal forms are completed online. Once an appeal form has been created, the first question asked is "are you the appellant?". If the answer is no, then there is a drop-down menu by which the appellant's details are provided. You then click "save and continue" and the next page is headed "agent details". This page contains a form which enables the details of one agent to be entered. The form does not enable multiple agents to be identified. I have reproduced screenshots of this process at pages 35 - 37 of Exhibit EH1. In this case, in accordance with common practice, Pegasus completed the appeal form and

entered their own details. This did not mean that they were MLL's sole agent, but rather were the planning consultant dealing with the appeal.

Liquidation

15. The Appeal was not heard until October 2022. In the intervening period, MLL entered voluntary liquidation proceedings (in July 2021) as a result of COVID and the ongoing legal proceedings, and appointed liquidators to oversee the winding up of the company. For the avoidance of doubt, MLL remains extant.

16. I approached the liquidators in July and August 2021 to discuss whether Taytime could take over conduct of the ongoing Appeal. Following discussions the liquidators agreed, subject to Taytime Limited and its director (William Kinsey-Jones, who manages the fishery business at the Property) indemnifying them.

17. The indemnity agreement was signed in September 2021 (EH1 pages –38 - 41) The agreement provided in essence that:

    a. The liquidators consent to Taytime having conduct of the Appeal at its own expense, and will sign, do and permit all documents and things reasonably necessary for that purpose; and

    b. In consideration of that consent, Taytime and Mr Kinsey-Jones jointly and severally covenant with the liquidators that, so long as the Appeal is on foot, and after that period shall have expired, they will pay and discharge all the costs and expenses of and occasioned by the Appeal or any damages arising therefrom and will keep the Liquidators and their personal representatives indemnified against all such costs and expenses and damages and against all claims, proceedings, costs, demands and expenses in respect of them.

18. As part of the discussions with the liquidators, they provided a letter to the Planning Inspectorate dated 22 September 2021 (EH1 page 42) setting out the nature of Taytime's involvement in the planning appeal. The letter confirmed

that further to the liquidation of Monk Lakes Limited on 15th July 2021, the liquidators, operating in their capacity under the Insolvency Act 1986, appointed Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the planning appeal.

19. Taytime is, and has at all material times therefore been, acting as agent for MLL in relation to the planning appeal.

Costs

20. The Third Defendant has requested security for costs in the amount of £100,000.

21. If the Third Defendant's application is successful, Taytime would be unable to continue with the Claim.

22. MLL is in liquidation, and has been indemnified by Taytime and its director.

23. According to Taytime's last published accounts, it holds net assets totalling £15,020 (pages 43 - 50 of EH1).

24. Mr Kinsey-Jones has limited assets – he is paid £275 per week by Taytime and rents a home with his partner for £895 per month.

25. MLL's parent company, Merrymove Limited, holds assets of £12,118 (pages 51 - 57).

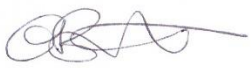
26. Following MLL's liquidation, the business is now being run by Monk Lakes Fishery Limited (another group company). According to its 2022 accounts this company has assets of £65,504 (pages 58 - 65), but owing to the seasonal nature of the business the assets will have been reduced over the winter period.

27. Having to pay security or costs in the sum of £100,000 would make both Taytime's and Monk Lakes Fishery Limited's operations entirely unsustainable.

Continuing with the proceedings would become impossible and the Claim would be stifled.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Date: 10/05/2023

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

CO/4860/2022

B E T W E E N :

TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)

Claimant

-and-

(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN

Defendants

EXHIBIT EH1

From: Melanie Croucher <Melanie.Croucher@Quantuma.com>
Sent: Thursday, January 26, 2023 11:49 AM
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Cc: Duncan Beat <duncan.beat@quantuma.com>; Andrew Watling <Andrew.Watling@Quantuma.com>; Amanda Karkocki <Amanda.Karkocki@quantuma.com>; Nicola Lyle <Nicola.Lyle@Quantuma.com>
Subject: RE: Monk Lakes Limited (in Liquidation) - Letter ref appeal

[External Email]

Dear Andrew

Further to the emails below, please can you confirm timescales for the appeal.

Thanks & regards

Melanie Croucher
Senior Manager - Insolvency
Quantuma Advisory Limited

Direct: +44 (0)2380 821870
Office: +44 (0)2380 336464
Mobile: +44 (0)7741 667631

Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
melanie.croucher@quantuma.com
www.quantuma.com

From: Melanie Croucher
Sent: 08 December 2022 11:37
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Cc: Duncan Beat <duncan.beat@quantuma.com>; Andrew Watling <Andrew.Watling@Quantuma.com>; Amanda Karkocki <Amanda.Karkocki@quantuma.com>; Nicola Lyle <Nicola.Lyle@Quantuma.com>
Subject: RE: Monk Lakes Limited (in Liquidation) - Letter ref appeal

Dear Andrew

Thank you for your email and apologies for the delay in my response.

Do you have an idea of timescales? It is difficult for us to confirm cost implications without this information.

Thanks & regards

Melanie Croucher
Senior Manager - Insolvency
Quantuma Advisory Limited

Direct: +44 (0)2380 821870
Office: +44 (0)2380 336464
Mobile: +44 (0)7741 667631

Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
melanie.croucher@quantuma.com
www.quantuma.com

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: 29 November 2022 17:57
To: Melanie Croucher <Melanie.Croucher@Quantuma.com>
Cc: Duncan Beat <duncan.beat@quantuma.com>; Andrew Watling <Andrew.Watling@Quantuma.com>; Amanda Karkocki <Amanda.Karkocki@quantuma.com>; Nicola

Lyle <Nicola.Lyle@Quantuma.com>
Subject: RE: Monk Lakes Limited (in Liquidation) - Letter ref appeal

Melanie

Just as an update, believe the appeal was adjourned until the judge can get an opinion on the assignment. Emily Harrison is currently looking to instruct a specialist insolvency barrister to deal with the queries.

In the meantime it is important the liquidation remains open and wonder if this can be done until the outcome of the appeal is finalised. They understand this may have cost implications depending on the length of time and they will obviously cover these.

For info, have asked Edward Judge if he can recommend a specialist barrister but if Quantuma have a connection Emily can make contact with would be appreciated.

Kind regards

Andrew
Partner

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Chartered Accountants
Burgess Hodgson LLP
Forward thinking business advice
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www.burgesshodgson.co.uk
DX 5348 CANTERBURY 1

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Wednesday, September 22, 2021 11:08 AM
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Subject: RE: Monk Lakes

Hi Andrew

I am happy with all of this, apart from (as you pointed out) putting money on account.

There is no risk to Quantuma anyway because the applicant has no obligations whatsoever, it is always the landowner.

Please could you ask them to issue the letter today, and we will make that payment today too. And if you could ask that the letter "appoints" Taytime Limited rather than "authorises" Taytime, that would be great.

Many thanks

Emily

EMILY HARRISON

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: 21 September 2021 19:27
To: Emily Harrison <emily@sopersfarm.com>
Subject: Fwd: Monk Lakes

Just received. This is the indemnity. Will read and come back

Andrew

Sent from my mobile so sorry if any errors!

Begin forwarded message:

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Burgess Hodgson LLP
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From: Amanda Karkocki <Amanda.Karkocki@quantuma.com>
Date: 21 September 2021 at 18:38:58 BST
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Subject: Monk Lakes

Hi Andrew,

Draft wording for the indemnities attached. There is an area highlighted in yellow which I'd appreciate your/Emily views on (Duncan is relaxed). Let me know and I will re-format and then issue the final version for signature.

I will also tidy up the other letter and insert Duncan's signature for tomorrow AM.

Many thanks,

Amanda Karkocki
Operations Director
Quantuma Advisory Limited

Direct: +44 (0)2380 336464
Mobile: +44 (0)7725 685170

Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Amanda.Karkocki@quantuma.com
www.quantuma.com

From: Emily Harrison <emilytharrison@icloud.com>
Sent: Tuesday, September 27, 2022 8:28 PM
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Subject: Re: Monk Lakes

That is his intention, yes. Hopefully it means that he is panicking slightly.

When you say they are not wishing to comment, does that mean they are happy to leave it as it is? They won't withdraw the appeal will they?

This is never ending…

Many thanks Andrew,

Emily

Sent from my iPhone

On 27 Sep 2022, at 15:51, Andrew Miles <ARM@burgesshodgson.co.uk> wrote:

Hi Emily

By chance, after speaking to Guy who informed me the appeal was next week, have received a copy of the attached letter received by Quantuma in relation to Monk lakes and the appeal. Quantuma do not intend to comment any further but have sent me a copy of the letter they sent to Planning re Taytime taking on the appeal.

If you or your legal team feel a further response is needed let me know otherwise will leave all to you. Does feel like he intends to try and throw out your appeal on grounds not allowed as should be Monk lakes who do this?

Kind regards

Andrew
Partner

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From: Emily Harrison <emilytharrison@icloud.com>
Sent: Tuesday, September 27, 2022 11:01 PM
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Subject: Re: Monk Lakes

I will check with them tomorrow but ultimately I think that they should respond (if they need to respond at all) saying that they have already responded directly to The planning Inspectorate on this matter and have no further comments to add.

Thx

E

Sent from my iPhone

On 27 Sep 2022, at 21:11, Andrew Miles <ARM@burgesshodgson.co.uk> wrote:

Think they are asking if you want them to reply at all so may want to check with your lawyers. Ideally it would be good to just let them not respond till after the appeal which understand is next week?

Andrew

Sent from my phone so sorry if any errors!

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On 27 Sep 2022, at 20:30, Emily Harrison <emilytharrison@icloud.com> wrote:

That is his intention, yes. Hopefully it means that he is panicking slightly.

When you say they are not wishing to comment, does that mean they are happy to leave it as it is? They won't withdraw the appeal will they?

This is never ending…

Many thanks Andrew,

Emily

Sent from my iPhone

On 27 Sep 2022, at 15:51, Andrew Miles <ARM@burgesshodgson.co.uk> wrote:

Hi Emily

By chance, after speaking to Guy who informed me the appeal was next week, have received a copy of the attached letter received by Quantuma in relation to Monk lakes and the appeal. Quantuma do not intend to comment any further but have sent me a copy of the letter they sent to Planning re Taytime taking on the appeal.

If you or your legal team feel a further response is needed let me know otherwise will leave all to you. Does feel like he intends to try and throw out your appeal on grounds not allowed as should be Monk lakes who do this?

Kind regards

Andrew
Partner

Burgess Hodgson LLP
Forward thinking business advice
Tel: 01227 454627

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From: Amanda Karkocki <Amanda.Karkocki@quantuma.com>
Sent: Thursday, October 6, 2022 4:39 PM
To: Andrew Miles <ARM@burgesshodgson.co.uk>
Subject: RE: Monk Lakes

Hi Andrew

We've only had two letters (have just checked) dated 22 and 29 September?

Many thanks,

Amanda Karkocki
Operations Director
Quantuma Advisory Limited

Direct: +44 (0)2380 336464
Mobile: +44 (0)7725 685170

Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Amanda.Karkocki@quantuma.com
www.quantuma.com

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: 06 October 2022 16:34
To: Amanda Karkocki <Amanda.Karkocki@quantuma.com>
Subject: Monk Lakes

Amanda understand Padden solicitor putting pressure on you re the appeal on Monk Lakes. I received 2 letters but Duncan mentioned may be a third. Are you ok for me to have a copy to send to Emily for her to get a response from her barrister on this ?

Andrew

Sent from my phone so sorry if any errors!

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From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Monday, September 6, 2021 11:02 AM
To: emily@sopersfarm.com
Subject: Re: Monk Lakes Limited - planning appeal

Emily have a call with Duncan at 3 today to discuss. If anything can give him you want him to sign as a draft let me have and will try and go through it with him.

Am sure he will have to get legal advice so answer won't be immediate am afraid.

Andrew

Sent from my phone so sorry if any errors!

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Friday, September 3, 2021 1:39 PM
To: 'duncan.beat@quantuma.com' <duncan.beat@quantuma.com>
Cc: arm@burgesshodgson.co.uk
Subject: Monk Lakes Limited - planning appeal

Hi Duncan,

I was wondering if I could pick your brains on something?

At the fishery, we submitted a planning application to the Local Planning Authority which was recommended for approval by the Case Officer and had no objections from any of the statutory consultees, but, frustratingly, the application was refused by the Councillors at Planning Committee. We have submitted an appeal, which our planners say has a very good chance of being approved, and we're waiting for that appeal to be heard.

The land for which the application is made is owned by a company called Taytime Limited, but annoyingly (mistakenly) the appeal was submitted in the name of Monk Lakes Limited which only operated on the land, and didn't own it. Our planners advised us that this shouldn't cause a problem with the appeal when Monk Lakes Limited goes into liquidation, but it appears that it is now causing problems, and the Planning Inspectorate are suggesting that you, as the liquidator would need to in some way give authorisation for Taytime Limited to continue with the claim.

Have you had experience of anything like this before, and how would you say is the best way to approach this?

Many thanks

Emily
Taytime Limited
07748983676

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Tuesday, August 17, 2021 12:40 PM
To: 'Andrew Miles' <ARM@burgesshodgson.co.uk>
Subject: FW: Appeal 3259300 - Monks Lakes

Hi Andew

Our barrister says we're going to need to speak to the liquidator about this…. I have tried and tried to steer off this.

What are your thoughts?

Our Section 106 agreement signed with the LPA is in Taytime's name…

Many thanks

Emily

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Monday, August 16, 2021 11:40 AM
To: 'Andrew Miles' <ARM@burgesshodgson.co.uk>
Subject: FW: Appeal 3259300 - Monks Lakes

Hi Andrew

The planning inspectorate are suggesting that the Appeal continues in the name of the liquidators. Have you had experience of this before and what are your thoughts?

Many thanks!

Emily

EMILY HARRISON

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Monday, August 16, 2021 11:46 AM
To: emily@sopersfarm.com
Subject: Re: Appeal 3259300 - Monks Lakes

Emily the appeal in the name of the liquidator will be very difficult. A number of reasons but mainly

The costs for the liquidator to be part of appeal will be expensive. Their usual rates are £550 per hour and they would employ specialists to represent them so will be very costly.
The liquidator will not want to be exposed to any costs as he has no funds and the risk of any loss and costs awarded would mean he will unlikely take this forward

Is there no alternative?

Andrew

Sent from my phone so sorry if any errors!

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Thursday, September 9, 2021 3:16 PM
To: arm@burgesshodgson.co.uk
Subject: FW: Monk Lakes Limited - planning appeal - docs attached.

Hi A

This is what I sent through to Duncan. Let me know if there is anything else that he might need.

Many thanks

Emily

EMILY HARRISON

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Tuesday, September 7, 2021 3:16 PM
To: 'Duncan Beat' <duncan.beat@quantuma.com>
Subject: RE: Monk Lakes Limited - planning appeal - docs attached.

Hi Duncan

Andrew has said to send over the Decision Notice and planning application. The application itself is vast, so I thought I'd send over the Committee Reports (1st and 2nd) as they give the full details in summary. Plus the Decision Notice.

Would it be helpful to see our appeal? Or the relevant parts perhaps? It has all been put together under the watchful eye of a barrister and well known planning consultancy; all of whom think the appeal will be successful.

Many thanks

Emily

EMILY HARRISON

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Tuesday, September 7, 2021 9:20 AM
To: 'Duncan Beat' <duncan.beat@quantuma.com>
Subject: RE: Monk Lakes Limited - planning appeal

Morning Duncan

What are your thoughts on this situation, after your chat with Andrew? And did he show you the draft letter for PINS?

Many thanks

Emily

EMILY HARRISON
07748983676

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Monday, September 6, 2021 2:07 PM
To: 'Andrew Miles' <ARM@burgesshodgson.co.uk>
Subject: RE: Monk Lakes Limited - planning appeal

Have a look at the draft letter attached and let me know what you / Duncan think.

Many thanks

Emily

EMILY HARRISON

From: Duncan Beat <duncan.beat@quantuma.com>
Sent: Monday, September 6, 2021 11:36 AM
To: emily@sopersfarm.com
Subject: RE: Monk Lakes Limited - planning appeal

Hi Emily

I'm due to catch up with Andrew Miles this afternoon and will come back to you after the call.

Thanks.

Kind regards

Duncan Beat
Managing Director
Quantuma Advisory Limited

Office: +44 (0)20 3856 6720
Mobile: +44 (0)7741 665639

High Holborn House, 52-54 High Holborn, London, WC1V 6RL
duncan.beat@quantuma.com
www.quantuma.com

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Tuesday, September 28, 2021 2:18 PM
To: emilytharrison@icloud.com; 'Tokara Hampshire Limited (emily@sopersfarm.com)' <emily@sopersfarm.com>
Subject: Letter of Appointment

Emily

Attached the final letter of appointment. Please don't say the planners need anything else!!!

Can you let me know when the Quantuma fee has been paid so can let the agent know and he will stop chasing me.

Fingers crossed the appeal successful now.

Kind regards

Andrew
Partner

BURGESS HODGSON
Chartered Accountants
Burgess Hodgson LLP
Forward thinking business advice
Tel: 01227 454627
www.burgesshodgson.co.uk
DX 5348 CANTERBURY 1

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Friday, September 24, 2021 4:06 PM
To: 'Tokara Hampshire Limited (emily@sopersfarm.com)' <emily@sopersfarm.com>; Monk Lakes Limited <office@monklakes.co.uk>
Subject: FW: Indemnity - Taytime/William Morgan Kinsey-Jones

All

Attached is the final version of the indemnity for signature. Both signatures need to be witnessed and signing on own behalf and also on behalf of Taytime.

Hopefully nearly there.

Kind regards

Andrew
Partner

BURGESS HODGSON
Chartered Accountants

Burgess Hodgson LLP
Forward thinking business advice
Tel: 01227 454627
www.burgesshodgson.co.uk
DX 5348 CANTERBURY 1

From: emily@sopersfarm.com <emily@sopersfarm.com>
Sent: Friday, September 24, 2021 11:51 AM
To: arm@burgesshodgson.co.uk
Subject: FW: Appeal 3259300 - Monks Lakes

Hi Andrew

Guy said you might want to see the comms with our planners about the effect liquidating MLL. Please see below, and attached.

Thanks

Emily

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Thursday, September 23, 2021 3:36 PM
To: 'Tokara Hampshire Limited (emily@sopersfarm.com)' <emily@sopersfarm.com>; emilytharrison@icloud.com
Subject: FW: Indemnity - Monk Lakes

Emily

Attached the final version of the indemnity for signing and witnessing. This incorporates Taytime and Guy indemnifying Quantuma if any costs should arise.

If we can get signed then the full letter will come out.

Don't forget the fee for the equipment purchase to be paid.

Kind regards

Andrew
Partner

BURGESS HODGSON
Chartered Accountants
Burgess Hodgson LLP
Forward thinking business advice
Tel: 01227 454627
www.burgesshodgson.co.uk
DX 5348 CANTERBURY 1

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Wednesday, September 22, 2021 6:53 PM
To: 'Tokara Hampshire Limited (emily@sopersfarm.com)' <emily@sopersfarm.com>
Cc: emilytharrison@iplan.com
Subject: FW: Monk Lakes PINS Letter

Emily

This is the proposed letter however we do have an issue on the escrow or indemnity before can release this.

Solicitors view is if no chance of any costs then why an issue indemnifying Duncan. Bear in mind if for whatever reason there is any cost the liquidator can be forced to be personally liable so they would never run that risk.
The escrow option is not a runner as solicitor is saying £25k into escrow until case completed. Indemnity is therefore only other option.

I know not what wanted to hear but did warn on this and hope you can see liquidator would never take a personal risk in this situation.

Can we discuss tomorrow.

Andrew

Sent from my phone so sorry if any errors!

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Tuesday, September 21, 2021 7:27 PM
To: Emily Harrison <emily@sopersfarm.com>
Subject: Fwd: Monk Lakes

Just received. This is the indemnity. Will read and come back

Andrew

Sent from my mobile so sorry if any errors!

From: Andrew Miles <ARM@burgesshodgson.co.uk>
Sent: Thursday, September 9, 2021 3:38 PM
To: emily@sopersfarm.com
Subject: RE: Monk Lakes Limited - planning appeal - docs attached.

Just checked and he is chasing the solicitor for the advice.

Kind regards

Andrew
Partner

BURGESS HODGSON
Chartered Accountants
Burgess Hodgson LLP
Forward thinking business advice
Tel: 01227 454627
www.burgesshodgson.co.uk
DX 5348 CANTERBURY 1

Appeals Casework Portal

Planning appeal form

Sections: Appellant Details Help?

How to complete your appeal form

Appellant Details

Are you the appellant? *

- ○ Yes
- ○ No

Save and Continue

Appeals Casework Portal

Planning appeal form

Sections: Appellant Details Help?

How to complete your appeal form

Appellant Details

Are you the appellant? *

- ○ Yes
- ◉ No

Please enter the details of the appellant below

Title *	
First Name *	
Surname *	
Company/group	
Email Address	
Telephone Number	
Fax No	

Use our address finder to complete your details quickly or, if you do not have a postcode, you can enter your details manually.

Property Name or Number	
Postcode	

Find Address

Appeals Casework Portal

Planning appeal form

Sections: Agent Details Help?

How to complete your appeal form

Agent Details

Title *	Mr
First Name *	James
Surname *	Kon
Company/group	Asserson Law Offices
Email Address	james.kon@asserson.co.uk
Telephone Number	+442036914797
Fax No	
Address 1 *	Central Court
Address 2	25 Southampton Buildings
PO Box	
Town/City *	London
County	Greater London
Postcode *	WC2A 1AL
Your reference	

Preferred contact method *

THIS INDEMNITY AGREEMENT is made on 27th September 2021

PARTIES

Of the first part

(1) Duncan Beat and Andrew Watling (as Liquidators of Monk Lakes Limited without personal liability), whose address is Quantuma Advisory Limited, High Holborn House, 52-54 High Holborn, London WC1V 6RL ("the Liquidators"); and

Of the second part

(2) Taytime Limited ("Taytime") of Camburgh House 27 New Dover Road, Canterbury, Kent, CT1 3DN; and

(3) William Morgan Edward Kinsey-Jones ("Mr Kinsey-Jones") of Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU

BACKGROUND

(A) Monk Lakes Limited operated a fishery business at Monk Lakes, Staplehurst Road, Marden, Maidstone Kent TN12 9BU ("the Property").

(B) The Property was at all material times owned by Taytime.

(C) Taytime hold an Asset Purchase Agreement for the rights to any planning permission, application or appeal associated with the Property.

(D) A planning application was submitted in the name of Monk Lakes Limited rather than that of Taytime (in error) and was refused by Maidstone Council decision 11/1948.

(E) On the basis the planning application should have been in the name of Taytime and that Monk Lakes Limited had (and has never had) any interest therein, the Liquidators have agreed to permit Taytime to adopt the planning appeal against the decision 11/1948, provided that they are indemnified as to any costs expenses damages and adverse costs arising therefrom.

(F) Mr Kinsey-Jones is the sole director in Taytime and has agreed to provide a personal indemnity to the Liquidators jointly and severally with that given by Taytime to facilitate the appeal.

THE PARTIES AGREE:

1 **Definitions and interpretation**

1.1 **Definitions**

In this Agreement:

Planning Appeal or Appeal	means an appeal against decision 11/1948 by Maidstone Council;

Decision	means the decision 11/1948 referred to.
Liquidators	means Duncan Beat and Andrew Watling of Quantuma Advisory Limited and includes their successors
Taytime	means Taytime Limited of Camburgh House 27 New Dover Road, Canterbury, Kent, CT1 3DN
Mr Kinsey-Jones	means William Morgan Edward Kinsey-Jones of Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent TN12 9BU, including his heirs successors or assigns.

1.2 **Interpretation**

1.2.1 Words denoting the singular number only include the plural and vice versa.

1.2.2 Words denoting any gender include all genders and words denoting persons include firms and corporations and vice versa.

1.2.3 Unless the context otherwise requires, reference to any clause, sub-clause, paragraph or schedule is to a clause, sub-clause, paragraph or schedule (as the case may be) of or to this Agreement.

1.2.4 Any covenant or stipulation entered into by more than one party shall be deemed to be entered into jointly and severally.

1.2.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2. The Liquidators consent (insofar as it is needed) to Taytime having conduct of the Appeal at its own expense and will sign, do and permit all documents and things reasonably necessary for that purpose.

3 **Indemnity**

3.1 In consideration of that consent, Taytime and Mr Kinsey-Jones jointly and severally covenant with the Liquidators that, so long as the Appeal is on foot, and after that period shall have expired, they will pay and discharge all the costs and expenses of and occasioned by the Appeal or any damages arising therefrom and will keep the Liquidators and their personal representatives indemnified against all such costs and expenses and damages and against all claims, proceedings, costs, demands and expenses in respect of them.

3.2 Taytime and Mr Kinsey-Jones further jointly and severally covenant with the Liquidators that, so long as the Appeal or any costs decision in relation thereto remains live, they will retain the Property in the ownership of Taytime.

4. **Further assurance**

The Director of Taytime for the time being shall do all such acts and things and execute such deeds and documents as may be necessary fully and effectively to give effect to this Agreement.

5. **Counterparts**

This Deed may be entered into in any number of counterparts, and by the parties on separate counterparts, all of which when duly executed will together constitute one and the same instrument.

6. **Governing law and jurisdiction**

6.1 This Deed and any non-contractual rights and obligations arising out of or in connection with it will be governed by and construed in accordance with English Law.

6.2 Each of the parties irrevocably:

6.2.1 agrees that the English courts will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed (including any non-contractual rights and obligations) and the documents to be entered into pursuant to it and. Accordingly, that proceedings arising out of or in connection with this Deed will be brought in such courts; and

6.2.2 submits to the jurisdiction of such courts and waives any objection to proceedings being brought in any such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

This Deed is executed as a deed and delivered on the date first stated above.

Signed by Duncan Beat for and on behalf of himself and
Andrew Watling
And Monk Lakes Limited (In Liquidation)

Witness Name NICOLA LADLOW
Address 1 BRITANNIA CLOSE, BILLERICAY, ESSEX, CM11 1AQ
Occupation PERSONAL ASSISTANT

Signed as a DEED by

Name W. Kinsey-Jones

Director duly authorised for

Taytime Limited

Signed C. Williams

Witness Name C. WILLIAMS

Address MONK LAKES STAPLEHURST RD
MARDEN KENT TN12 9BS

Occupation SECRETARY

Signed as a DEED by

Name WILLIAM MORGAN EDWARD KINSEY-JONES

On his own behalf

Signed C. Williams

Witness Name C. WILLIAMS

Address MONK LAKES STAPLEHURST RD
MARDEN KENT TN12 9BS

Occupation SECRETARY

22 September 2021

Ms Joanne Hodgson
Room 3/P Temple Quay House
2 The Square
Bristol
BS1 6PN

By email: JOANNE.HODGSON@planninginspectorate.gov.uk

Dear Ms Hodgson

RE: Appeal 3259300 – Monk Lakes

Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal.

Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land.

Should you have any queries in this regard then please do not hesitate to contact me.

Yours faithfully

Duncan Beat
Managing Director
Quantuma Advisory Limited
duncan.beat@quantuma.com

TAYTIME LIMITED
Unaudited Financial Statements
For the financial year ended 31 May 2021
Pages for filing with the registrar

TAYTIME LIMITED
UNAUDITED FINANCIAL STATEMENTS
For the financial year ended 31 May 2021

Contents

TAYTIME LIMITED
COMPANY INFORMATION
For the financial year ended 31 May 2021

DIRECTOR	Mr W M E Kinsey-Jones
REGISTERED OFFICE	Camburgh House 27 New Dover Road Canterbury Kent CT1 3DN United Kingdom
COMPANY NUMBER	07062161 (England and Wales)
CHARTERED ACCOUNTANTS	Burgess Hodgson LLP Camburgh House 27 New Dover Road Canterbury CT1 3DN United Kingdom

TAYTIME LIMITED
BALANCE SHEET
As at 31 May 2021

	Note	2021	2020
		£	£
Fixed assets			
Tangible assets	4	150,000	150,000
		150,000	**150,000**
Current assets			
Debtors	5	8,303	5,265
Cash at bank and in hand		21,932	1,915
		30,235	**7,180**
Creditors			
Amounts falling due within one year	6	(163,865)	(7,576)
Net current liabilities		**(133,630)**	**(396)**
Total assets less current liabilities		**16,370**	**149,604**
Creditors			
Amounts falling due after more than one year	7	(1,350)	(150,000)
Net assets/(liabilities)		**15,020**	**(396)**
Capital and reserves			
Called-up share capital		1	1
Profit and loss account		15,019	(397)
Total shareholder's funds/(deficit)		**15,020**	**(396)**

For the financial year ending 31 May 2021 the Company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Director's responsibilities:

- The member has not required the Company to obtain an audit of its financial statements for the financial year in accordance with section 476;
- The director acknowledges their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of financial statements; and
- These financial statements have been prepared and delivered in accordance with the provisions applicable to companies subject to the small companies regime and a copy of the Profit and Loss Account has not been delivered.

The financial statements of Taytime Limited (registered number: 07062161) were approved and authorised for issue by the Director on 27 May 2022. They were signed on its behalf by:

Mr W M E Kinsey-Jones
Director

1. Accounting policies

The principal accounting policies are summarised below. They have all been applied consistently throughout the financial year and to the preceding financial year.

General information and basis of accounting

Taytime Limited (the Company) is a private company, limited by shares, incorporated in the United Kingdom under the Companies Act 2006 and is registered in England and Wales. The address of the Company's registered office is Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN, United Kingdom.

The financial statements have been prepared under the historical cost convention, modified to include certain items at fair value, and in accordance with Section 1A of Financial Reporting Standard 102 (FRS 102) 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' issued by the Financial Reporting Council.

The functional currency of Taytime Limited is considered to be pounds sterling because that is the currency of the primary economic environment in which the Company operates.

Turnover

Turnover is stated net of VAT and trade discounts and is recognised when the significant risks and rewards are considered to have been transferred to the buyer. Turnover from the sale of goods is recognised when the goods are physically delivered to the customer.

Taxation

Income Tax

The taxation expense represents the aggregate amount of current and deferred tax recognised in the reporting period. Tax is recognised in profit or loss, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, tax is recognised in other comprehensive income or directly in equity, respectively.

Current tax is recognised on taxable profit for the current and past periods. Current tax is measured at the amounts of tax expected to pay or recover using the tax rates and laws that have been enacted or substantively enacted at the reporting date.

Tangible fixed assets

Tangible assets are initially recorded at cost, and subsequently stated at cost less any accumulated depreciation and impairment losses.

Land held in Land and Buildings has not depreciated.

Impairment of assets

A review for indicators of impairment is carried out at each reporting date, with the recoverable amount being estimated where such indicators exist. Where the carrying value exceeds the recoverable amount, the asset is impaired accordingly. Prior impairments are also reviewed for possible reversal at each reporting date.

Government grants

Government grants are recognised based on the accrual model and are measured at the fair value of the asset received or receivable. Grants are classified as relating either to revenue or to assets. Grants relating to revenue are recognised in income over the period in which the related costs are recognised. Grants relating to assets are recognised over the expected useful life of the asset. Where part of a grant relating to an asset is deferred, it is recognised as deferred income.

Financial Instruments

Financial liabilities and equity instruments are classified according to the substance of the contractual arrangements entered into.

Debtors and creditors with no stated interest rate and receivable or payable within one year are recorded at transaction price. Any losses arising from impairment are recognised in the profit and loss account in other administrative expenses.

Loans and borrowings are initially recognised at the transaction price including transaction costs. Subsequently, they are measured at amortised cost using the effective interest rate method, less impairment. If an arrangement constitutes a finance transaction it is measured at present value.

2. Critical accounting judgements and key sources of estimation uncertainty

In the application of the Company's accounting policies, the director is required to make judgements that have a significant impact on the amounts recognised. The following are the critical judgements that the director has made in the process of applying the Company's accounting policies and that have the most significant effect on the amounts recognised in the financial statements.

3. Employees

	2021	2020
	Number	Number
The average number of persons employed by the company during the year amounted to:	1	1

4. Tangible assets

	Land and buildings	Total
	£	£
Cost		
At 01 June 2020	150,000	150,000
At 31 May 2021	**150,000**	**150,000**
Accumulated depreciation		
At 01 June 2020	0	0
At 31 May 2021	**0**	**0**
Net book value		
At 31 May 2021	**150,000**	**150,000**
At 31 May 2020	150,000	150,000

5. Debtors

	2021	2020
	£	£
Trade debtors	4,086	0
Other debtors	4,217	5,265
	8,303	**5,265**

6. Creditors: amounts falling due within one year

	2021	2020
	£	£
Trade creditors	3,706	4,906
Other creditors	155,693	1,943
Corporation tax	4,354	727
Other taxation and social security	112	0
	163,865	**7,576**

7. Creditors: amounts falling due after more than one year

	2021	2020
	£	£
Other creditors	1,350	150,000

Other creditors of £1,350 (2020: £150,000) are secured on the company's assets by way of a fixed charge over the company's land and buildings.

8. Related party transactions

Transactions with owners holding a participating interest in the entity

	2021	2020
	£	£
Amounts owed to controlling party	1,350	150,000

Transactions with entities in which the entity itself has a participating interest

	2021	2020
	£	£
Amounts owed by/(owed to) a company related by common control	(7,115)	4,780
Amounts owed by/(owed to) a company related by common control	(127,000)	0

This document was delivered using electronic communications and authenticated in accordance with the registrar's rules relating to electronic form, authentication and manner of delivery under section 1072 of the Companies Act 2006.

MERRYMOVE LIMITED
Unaudited Financial Statements
For the financial year ended 31 May 2021
Pages for filing with the registrar

MERRYMOVE LIMITED
UNAUDITED FINANCIAL STATEMENTS
For the financial year ended 31 May 2021

Contents

MERRYMOVE LIMITED
COMPANY INFORMATION
For the financial year ended 31 May 2021

DIRECTOR	Mrs E T Harrison
REGISTERED OFFICE	Camburgh House 27 New Dover Road Canterbury Kent CT1 3DN United Kingdom
COMPANY NUMBER	07062080 (England and Wales)
CHARTERED ACCOUNTANTS	Burgess Hodgson LLP Camburgh House 27 New Dover Road Canterbury CT1 3DN United Kingdom

MERRYMOVE LIMITED
BALANCE SHEET
As at 31 May 2021

	Note	2021	2020
		£	£
Fixed assets			
Investments	4	1,413,496	1,443,495
		1,413,496	**1,443,495**
Current assets			
Debtors	5	128,192	167,369
Cash at bank and in hand		0	1
		128,192	**167,370**
Creditors			
Amounts falling due within one year	6	(1,529,570)	(1,596,998)
Net current liabilities		**(1,401,378)**	**(1,429,628)**
Total assets less current liabilities		**12,118**	**13,867**
Net assets		**12,118**	**13,867**
Capital and reserves			
Called-up share capital		1	1
Profit and loss account		12,117	13,866
Total shareholder's funds		**12,118**	**13,867**

For the financial year ending 31 May 2021 the Company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Director's responsibilities:

- The member has not required the Company to obtain an audit of its financial statements for the financial year in accordance with section 476;
- The director acknowledges their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of financial statements; and
- These financial statements have been prepared and delivered in accordance with the provisions applicable to companies subject to the small companies regime and a copy of the Profit and Loss Account has not been delivered.

The financial statements of Merrymove Limited (registered number: 07062080) were approved and authorised for issue by the Director on 27 May 2022. They were signed on its behalf by:

Mrs E T Harrison
Director

1. Accounting policies

The principal accounting policies are summarised below. They have all been applied consistently throughout the financial year and to the preceding financial year.

General information and basis of accounting

Merrymove Limited (the Company) is a private company, limited by shares, incorporated in the United Kingdom under the Companies Act 2006 and is registered in England and Wales. The address of the Company's registered office is Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN, United Kingdom.

The financial statements have been prepared under the historical cost convention, modified to include certain items at fair value, and in accordance with Section 1A of Financial Reporting Standard 102 (FRS 102) 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' issued by the Financial Reporting Council.

The functional currency of Merrymove Limited is considered to be pounds sterling because that is the currency of the primary economic environment in which the Company operates.

Basis of consolidation

The company has taken advantage of the option not to prepare consolidated financial statements contained in Section 399 of the Companies Act 2006 on the basis that the company and its subsidiary undertakings comprise a small group.

Taxation

Income tax

The taxation expense represents the aggregate amount of current and deferred tax recognised in the reporting period. Tax is recognised in profit or loss, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, tax is recognised in other comprehensive income or directly in equity, respectively.

Current tax is recognised on taxable profit for the current and past periods. Current tax is measured at the amounts of tax expected to pay or recover using the tax rates and laws that have been enacted or substantively enacted at the reporting date.

Impairment of assets

A review for indicators of impairment is carried out at each reporting date, with the recoverable amount being estimated where such indicators exist. Where the carrying value exceeds the recoverable amount, the asset is impaired accordingly. Prior impairments are also reviewed for possible reversal at each reporting date.

Financial instruments

Financial liabilities and equity instruments are classified according to the substance of the contractual arrangements entered into.

Debtors and creditors with no stated interest rate and receivable or payable within one year are recorded at transaction price. Any losses arising from impairment are recognised in the profit and loss account in other administrative expenses.

Loans and borrowings are initially recognised at the transaction price including transaction costs. Subsequently, they are measured at amortised cost using the effective interest rate method, less impairment. If an arrangement constitutes a finance transaction it is measured at present value.

Investments
Fixed asset investments are initially recorded at cost, and subsequently stated at cost less any accumulated impairment losses.

2. Critical accounting judgements and key sources of estimation uncertainty

In the application of the Company's accounting policies, the director is required to make judgements that have a significant impact on the amounts recognised. The following are the critical judgements that the director has made in the process of applying the Company's accounting policies and that have the most significant effect on the amounts recognised in the financial statements.

3. Employees

	2021	2020
	Number	Number
Monthly average number of persons employed by the Company during the year, including the director	1	1

4. Fixed asset investments

Investments in subsidiaries

	2021
	£
Cost	
At 01 June 2020	1,884,380
Additions	1
At 31 May 2021	**1,884,381**
Provisions for impairment	
At 01 June 2020	440,885
Impairment	30,000
At 31 May 2021	**470,885**
Carrying value at 31 May 2021	**1,413,496**
Carrying value at 31 May 2020	1,443,495

At the year end, the company held 100% of the ordinary share capital in Monk Lakes Limited and Monk Lake Fishery Limited.

5. Debtors

	2021	2020
	£	£
Amounts owed by own subsidiaries	354	167,094
Amounts owed by associates	127,000	0
Other debtors	838	275
	128,192	**167,369**

6. Creditors: amounts falling due within one year

	2021	2020
	£	£
Trade creditors	0	3,276
Other creditors	1,528,724	1,592,935
Corporation tax	846	787
	1,529,570	**1,596,998**

7. Related party transactions

Transactions with owners holding a participating interest in the entity

	2021	2020
	£	£
At the year end amounts owed by the company to a controlling party were:	1,526,269	1,590,479

Transactions with entities in which the entity itself has a participating interest

	2021	2020
	£	£
At the year end group companies owed the company:	354	167,094
At the year end the company was owed by a company related by common control:	127,000	0

This document was delivered using electronic communications and authenticated in accordance with the registrar's rules relating to electronic form, authentication and manner of delivery under section 1072 of the Companies Act 2006.

MONK LAKES FISHERY LIMITED
Unaudited Financial Statements
For the financial year ended 31 January 2022
Pages for filing with the registrar

MONK LAKES FISHERY LIMITED
UNAUDITED FINANCIAL STATEMENTS
For the financial year ended 31 January 2022

Contents

MONK LAKES FISHERY LIMITED
COMPANY INFORMATION
For the financial year ended 31 January 2022

DIRECTOR	Mrs E T Harrison
REGISTERED OFFICE	Camburgh House 27 New Dover Road Canterbury CT1 3DN United Kingdom
COMPANY NUMBER	12722939 (England and Wales)
CHARTERED ACCOUNTANTS	Burgess Hodgson LLP Camburgh House 27 New Dover Road Canterbury CT1 3DN

MONK LAKES FISHERY LIMITED
STATEMENT OF FINANCIAL POSITION
As at 31 January 2022

	Note	31.01.2022	31.01.2021
		£	£
Fixed assets			
Tangible assets	4	11,482	0
		11,482	**0**
Current assets			
Debtors	5	43,803	0
Cash at bank and in hand		113,649	8,113
		157,452	**8,113**
Creditors			
Amounts falling due within one year	6	(101,249)	(8,362)
Net current assets/(liabilities)		**56,203**	**(249)**
Total assets less current liabilities		**67,685**	**(249)**
Creditors			
Amounts falling due after more than one year		(2,181)	0
Net assets/(liabilities)		**65,504**	**(249)**
Capital and reserves			
Called-up share capital		1	1
Profit and loss account		65,503	(250)
Total shareholder's funds/(deficit)		**65,504**	**(249)**

For the financial year ending 31 January 2022 the Company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Director's responsibilities:

- The member has not required the Company to obtain an audit of its financial statements for the financial year in accordance with section 476;
- The director acknowledges their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of financial statements; and
- These financial statements have been prepared and delivered in accordance with the provisions applicable to companies subject to the small companies regime and a copy of the Statement of Income and Retained Earnings has not been delivered.

The financial statements of Monk Lakes Fishery Limited (registered number: 12722939) were approved and authorised for issue by the Director on 31 January 2023. They were signed on its behalf by:

Mrs E T Harrison
Director

1. Accounting policies

The principal accounting policies are summarised below. They have all been applied consistently throughout the financial year and to the preceding financial period, unless otherwise stated.

General information and basis of accounting

Monk Lakes Fishery Limited (the Company) is a private company, limited by shares, incorporated in the United Kingdom under the Companies Act 2006 and is registered in England and Wales. The address of the Company's registered office is Camburgh House, 27 New Dover Road, Canterbury, CT1 3DN, United Kingdom.

The financial statements have been prepared under the historical cost convention, modified to include certain items at fair value, and in accordance with Section 1A of Financial Reporting Standard 102 (FRS 102) 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' issued by the Financial Reporting Council and the requirements of the Companies Act 2006 as applicable to companies subject to the small companies regime.

The financial statements are presented in pounds sterling which is the functional currency of the company and rounded to the nearest £.

Turnover

Turnover is measured at the fair value of the consideration received or receivable and represents amounts receivable for goods supplied and services rendered, stated net of discounts and of Value Added Tax.

Revenue from the sale of goods is recognised when the significant risks and rewards of ownership have transferred to the buyer (usually on despatch of the goods); the amount of revenue can be measured reliably; it is probable that the associated economic benefits will flow to the entity; and the costs incurred or to be incurred in respect of the transactions can be measured reliably.

Taxation

Current tax
The taxation expense represents the aggregate amount of current and deferred tax recognised in the reporting period. Tax is recognised in profit or loss, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, tax is recognised in other comprehensive income or directly in equity, respectively.

Current tax is recognised on taxable profit for the current and past periods. Current tax is measured at the amounts of tax expected to pay or recover using the tax rates and laws that have been enacted or substantively enacted at the reporting date.

Deferred tax
Deferred tax is recognised in respect of all timing differences at the reporting date. Unrelieved tax losses and other deferred tax assets are recognised to the extent that it is probable that they will be recovered against the reversal of deferred tax liabilities or other future taxable profits. Deferred tax is measured using the tax rates and laws that have been enacted or substantively enacted by the reporting date that are expected to apply to the reversal of the timing difference.

Tangible fixed assets

Tangible fixed assets are stated at cost or valuation, net of depreciation and any provision for impairment. Depreciation is provided on all tangible fixed assets, other than investment property and freehold land, at rates calculated to write off the cost or valuation, less estimated residual value, of each asset over its expected useful life, as follows:

Plant and machinery	5 years straight line

Residual value represents the estimated amount which would currently be obtained from disposal of an asset, after deducting estimated costs of disposal, if the asset were already of the age and in the condition expected at the end of its useful life.

The gain or loss arising on the disposal of an asset is determined as the difference between the sale proceeds and the carrying value of the asset, and is credited or charged to profit or loss.

Impairment of assets

A review for indicators of impairment is carried out at each reporting date, with the recoverable amount being estimated where such indicators exist. Where the carrying value exceeds the recoverable amount, the asset is impaired accordingly. Prior impairments are also reviewed for possible reversal at each reporting date.

Financial instruments

Financial liabilities and equity instruments are classified according to the substance of the contractual arrangements entered into.

Debtors and creditors with no stated interest rate and receivable or payable within one year are recorded at transaction price. Any losses arising from impairment are recognised in the profit and loss account in other administrative expenses.

Loans and borrowings are initially recognised at the transaction price including transaction costs. Subsequently, they are measured at amortised cost using the effective interest rate method, less impairment. If an arrangement constitutes a finance transaction it is measured at present value.

2. Critical accounting judgements and key sources of estimation uncertainty

In the application of the Company's accounting policies, the director is required to make judgements that have a significant impact on the amounts recognised. Accounting estimates and assumptions are made concerning the future and, by their nature, will rarely equal the related actual outcome. These estimates and judgements are continually reviewed and are based on experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

3. Employees

	Year ended 31.01.2022	Period from 06.07.2020 to 31.01.2021
	Number	Number
Monthly average number of persons employed by the Company during the year, including the director	4	1

4. Tangible assets

	Plant and machinery	Total
	£	£
Cost		
At 01 February 2021	0	0
Additions	12,763	12,763
At 31 January 2022	**12,763**	**12,763**
Accumulated depreciation		
At 01 February 2021	0	0
Charge for the financial year	1,281	1,281
At 31 January 2022	**1,281**	**1,281**
Net book value		
At 31 January 2022	**11,482**	**11,482**
At 31 January 2021	0	0

5. Debtors

	31.01.2022	31.01.2021
	£	£
Amounts owed by Group undertakings	22,072	0
Other debtors	21,731	0
	43,803	**0**

6. Creditors: amounts falling due within one year

	31.01.2022	31.01.2021
	£	£
Trade creditors	3,473	0
Corporation tax	13,332	0
Other taxation and social security	5,376	0
Other creditors	79,068	8,362
	101,249	**8,362**

7. Related party transactions

Transactions with the entity's director

	31.01.2022	31.01.2021
	£	£
At the year end the company owed the Director:	5,559	8,112

Other related party transactions

	31.01.2022	31.01.2021
	£	£
At the year end the company was owed the following amount by the parent company:	22,072	0

8. Ultimate controlling party

The company's ultimate parent company is Merrymove Limited, a company incorporated in England and Wales. Merrymove Limited's registered address is Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN.

This document was delivered using electronic communications and authenticated in accordance with the registrar's rules relating to electronic form, authentication and manner of delivery under section 1072 of the Companies Act 2006.

In accordance with Rule 18.7 of the Insolvency (England & Wales) Rules 2016 and Sections 92A, 104A and 192 of the Insolvency Act 1986.

LIQ03

Notice of progress report in voluntary winding up

Companies House

For further information, please refer to our guidance at www.gov.uk/companieshouse

1 Company details

Company number	0 5 2 3 4 0 6 7
Company name in full	Monk Lakes Limited

→ **Filling in this form**
Please complete in typescript or in bold black capitals.

2 Liquidator's name

Full forename(s)	Duncan
Surname	Beat

3 Liquidator's address

Building name/number	Office D
Street	Beresford House
Post town	Town Quay
County/Region	Southampton
Postcode	S O 1 4 2 A Q
Country	

4 Liquidator's name ❶

Full forename(s)	Andrew
Surname	Watling

❶ **Other liquidator**
Use this section to tell us about another liquidator.

5 Liquidator's address ❷

Building name/number	Office D
Street	Beresford House
Post town	Town Quay
County/Region	Southampton
Postcode	S O 1 4 2 A Q
Country	

❷ **Other liquidator**
Use this section to tell us about another liquidator.

LIQ03
Notice of progress report in voluntary winding up

6 Period of progress report

From date	d 1 5 m 0 7 y 2 0 2 1
To date	d 1 4 m 0 7 y 2 0 2 2

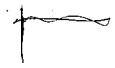
7 Progress report

☑ The progress report is attached

8 Sign and date

Liquidator's signature

Signature

X  X

Signature date d 0 8 m 0 9 y 2 0 2 2

LIQ03
Notice of progress report in voluntary winding up

Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name: Nicola Lyle

Company name: Quantuma Advisory Limited

Address: Office D

Beresford House

Post town: Town Quay

County/Region: Southampton

Postcode: S O 1 4 2 A Q

Country:

DX: info@quantuma.com

Telephone: 02380336464

Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.

Important information

All information on this form will appear on the public record.

Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

Further information

For further information please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse

Monk Lakes Limited
(In Liquidation)
Joint Liquidators' Summary of Receipts & Payments

Statement of Affairs £		From 15/07/2021 To 14/07/2022 £	From 15/07/2021 To 14/07/2022 £
	ASSET REALISATIONS		
	Bank Interest Gross	0.16	0.16
	Cash at Bank	49.04	49.04
400.00	Fixtures & Fittings	6,600.00	6,600.00
NIL	Leasehold Property	NIL	NIL
NIL	Plant & Machinery	NIL	NIL
Uncertain	Stock	NIL	NIL
		6,649.20	6,649.20
	COST OF REALISATIONS		
	Agents/Valuers Fees (1)	850.00	850.00
	Legal Fees (1)	2,000.00	2,000.00
	Office Holders Fees	3,200.00	3,200.00
	Specific Bond	135.00	135.00
	Statutory Advertising	176.00	176.00
		(6,361.00)	(6,361.00)
	PREFERENTIAL CREDITORS		
(165.83)	Pension Schemes	NIL	NIL
		NIL	NIL
	SECONDARY PREFERENTIAL CREDITORS		
(31,062.33)	HMRC - VAT	NIL	NIL
(1,607.46)	HMRC PAYE/NIC (Employees)	NIL	NIL
		NIL	NIL
	UNSECURED CREDITORS		
(61,984.57)	Banks/Institutions	NIL	NIL
(8,547.44)	HM Revenue and Customs - Corporati	NIL	NIL
(2,771.10)	Intercompany	NIL	NIL
(15,180.35)	Trade & Expense Creditors	NIL	NIL
		NIL	NIL
	DISTRIBUTIONS		
(100.00)	Ordinary Shareholders	NIL	NIL
		NIL	NIL
(121,019.08)		**288.20**	**288.20**
	REPRESENTED BY		
	Bank 1 Current		1,536.00
	Vat Control Account		(1,247.80)
			288.20

Monk Lakes Limited

(In Creditors' **Voluntary Liquidation**)

("the Company")

THE JOINT LIQUIDATOR**S' PROGRESS REPORT**

8 September 2022

Duncan Beat and Andrew Watling of Quantuma Advisory Limited, Office D, Beresford House, Town Quay, Southampton, SO14 2AQ, were appointed Joint Liquidators of Monk Lakes Limited on 15 July 2021.

Duncan Beat and Andrew Watling are licensed to act as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales

This report has been prepared for circulation solely to comply with the Joint Liquidator**s'** statutory duty to report to Creditors under the provisions of The Insolvency (England and Wales) Rules 2016 and for no other purpose. This report is intended for the statutory recipients. The report cannot be used or relied upon by any party other than for its intended statutory purpose.

CONTENTS

APPENDICES

ABBREVIATIONS

For the purpose of this report the following abbreviations shall be used:

"the Act"	Insolvency Act 1986
"the Rules"	Insolvency (England and Wales) Rules 2016
"the Joint Liquidators"	Duncan Beat and Andrew Watling of Quantuma Advisory Limited
"the Company"	Monk Lakes Limited (in Liquidation)
"EOS"	Estimated Outcome Statement
"SIP"	Statement of Insolvency Practice (England & Wales)
"Review Period"	Period covered by the report from 15/07/2021 to 14/07/2022

1. INTRODUCTION

This report has been prepared to provide Members and Creditors with an update on the progress of the Liquidation of the Company since the Joint Liquidators' appointment on 15 July 2021.

A schedule of statutory information in respect of the Company is attached at Appendix 1.

Details of the appointment of the Joint Liquidators

Duncan Beat and Andrew Watling of Quantuma Advisory Limited were appointed Joint Liquidators of the Company on 15 July 2021.

The Joint Liquidators confirm that they are authorised to carry out all functions, duties and powers by either one or both of them.

2. THE PROGRESS OF THE LIQUIDATION

The Joint Liquidators' Receipts and Payments Account

Attached at Appendix 2 is a Receipts and Payments account covering the Review Period. In accordance with the requirements of SIP 7, the Joint Liquidators confirm that the account has been reconciled with that held at the bank.

The rest of this report describes the key developments in the Liquidation over the Review Period. A summary is provided of the main asset realisations during the Review Period and an estimation of those assets yet to be realised, together with details of costs incurred but as yet remaining unpaid.

Administrative, Statutory & Regulatory Tasks

The Joint Liquidators have met a considerable number of statutory and regulatory obligations. Whilst many of these tasks have not had a direct benefit in enhancing realisations for the insolvent estate, they have assisted in the efficient and compliant progressing of the Creditors' Voluntary Liquidation, which has ensured that the Joint Liquidators and their staff have carried out their work to high professional standards. Details of the tasks carried out during the Review Period are included in Appendix 4.

Realisation of assets

Sale of assets to a Connected Party

The Joint Liquidators instructed C&K Recoveries Ltd ("C&K"), who are professional independent agents with adequate professional indemnity insurance, to dispose of the Company's assets using the most advantageous method available.

Monk Lakes Fishery Limited ("the Purchaser") expressed an interest in purchasing the Company's unencumbered assets. The Purchaser is connected with the Company due to the common shareholding of Merrymove Ltd and also because its Director is the wife of Guy Harrison, the Director of the Company.

Therefore, the Purchaser was invited to contact C&K directly to progress the potential sale. C&K weighed up the advantages of a swift sale, which would avoid the ongoing costs of storing and marketing the assets, against the potential of attracting a better offer albeit that this would involve incurring more costs. The Agents concluded that the Purchaser's offer was very likely to represent the best net realisation for the assets and a provisional sale of the assets of £12,600 plus VAT was agreed.

Consequently, the Company's unencumbered assets being plant and machinery and fixtures and fittings were sold to the Purchaser on 27 July 2021 for £12,600 plus VAT. A payment on account of £6,000 was made by the Purchaser to the Company prior to the Joint Liquidators' appointment and was utilised to pay the fee in respect of convening the procedure to seek a decision from creditors on the nomination of a liquidator and for the preparation of the statement of affairs. The balance of the sale consideration was paid to the liquidation account and is reflected on the Receipts and Payments Account.

Leasehold Land

As reported at the outset, the Company's accounts showed leasehold land with a book value of £77,163. However, on further investigation it appeared that this related to improvements made by the Company. The land is owned by Taytime Ltd, and is subject to an ongoing legal case with the local Council who stated that significant remedial works were required. No realisations are therefore anticipated.

Stock

The Company's balance sheet at 5 March 2021 showed stock with a book value of £10,000. C&K confirmed that there was no realisable stock remaining at the date of liquidation and therefore there will be no realisations in this regard.

Fixtures and Fittings and Plant and Machinery

The Company's balance sheet at 5 March 2021 showed fixtures and fittings with a book value of £55,501 and Plant and Machinery with a book value of £12. The valuation prepared by C&K indicated that due to the age and condition of these items, a value of £400 could be expected to be achieved on a forced sale basis.

As mentioned above a sale of these assets was agreed with Monk Lakes Fishery Ltd for £12,600 plus VAT.

Cash at Bank

The sum of £49 was held in the Company's bank account and was transferred to the Liquidation account shortly after the Joint Liquidators' appointment.

Estimated Future Realisations

No further realisations are anticipated.

3. CREDITORS: CLAIMS AND DISTRIBUTIONS

Secured Creditors

The Company had not granted any charges over its assets.

Preferential Creditors

Preferential claims relating to unpaid pension contributions were estimated at £166 in the Director's Estimated Statement of Affairs.

The Joint Liquidators liaised with the pension scheme provider to enable a claim to be submitted to the Redundancy Payments Service for the unpaid contributions. Confirmation has been received that payment of the outstanding contributions has been sent to the pension scheme provider and the scheme has been wound up.

It is not anticipated that there will be sufficient realisations to pay a dividend to Preferential Creditors.

Secondary Preferential Creditors

In any insolvency process started from 1 December 2020, HM Revenue and Customs ('HMRC') is a Secondary Preferential Creditor for the following liabilities:

- VAT
- PAYE Income Tax
- Employees' NIC
- CIS deductions
- Student loan deductions

This will mean that, if there are sufficient funds available, any of the above amounts owed by the Company will be paid after the Preferential Creditors have been paid in full.

HMRC's secondary preferential claims relating to PAYE, NIC and VAT were estimated at £32,670 in the Director's Estimated Statement of Affairs. To date, HMRC have not submitted a proof of debt in respect of their secondary preferential claim.

Based on the information presently available, it is not anticipated that there will be sufficient realisations to pay a dividend to HMRC in respect of their secondary preferential claim.

Prescribed Part

Under Section 176A of the Insolvency Act 1986, where after 15 September 2003 a company has granted to a creditor a floating charge, a proportion of the net property of the company must be made available purely for the Unsecured Creditors. This equates to:

- 50% of net property up to £10,000;
- Plus, 20% of net property in excess of £10,000.
- Subject to a maximum of £600,000.

The Company has not granted a floating charge to any Creditor after 15 September 2003 and consequently there will be no prescribed part in this Creditors Voluntary Liquidation.

Unsecured Creditors

Unsecured claims were estimated at £88,483 in the Director's Estimated Statement of Affairs and, to date, four claims have been received totalling £149,956.

It is not anticipated that a dividend will be paid to Unsecured Creditors.

Notice of No Dividend

In accordance with Rule 14.36 and Rule 14.37 no dividend will be distributed as the funds realised have already been distributed or used or allocated for defraying the expenses of the Creditorss' Voluntary Liquidation.

4. OTHER MATTERS AND INFORMATION TO ASSIST CREDITORS

Investigations

During the Review Period, the Joint Liquidators carried out an initial review of the Company's affairs in the period prior to appointment. This included seeking information and explanations from the Director by means of a questionnaire; making enquiries of the Company's accountants; reviewing information received from Creditors; and collecting and examining the Company's bank statements, accounts and other records.

The Director provided the books and records and a completed questionnaire as well as a Statement of Affairs.

The information gleaned from this process enabled the Joint Liquidators to meet their statutory duty to submit a confidential report on the conduct of the Director to the Insolvency Service.

This work was also carried out with the objective of making an initial assessment of whether there were any matters that may lead to any recoveries for the benefit of Creditors. This would typically include any potential claims which may be brought against parties either connected to or who have past dealings with the Company.

This initial assessment revealed matters that the Joint Liquidators considered merited further investigation and Wedlake Bell Solicitors LLP were instructed to review these matters. The review and

been concluded and the Joint Liquidators confirm after considering the legal advice received, there are no further assets or actions which might lead to a recovery for Creditors.

Although this work did not generate any financial benefit to Creditors, it was necessary to meet the statutory duties as well as conduct appropriate enquiries and investigations into potential rights of actions to enhance realisations.

Further Information

To comply with the Provision of Services Regulations, some general information about Quantuma Advisory Limited, including the complaints policy and Professional Indemnity Insurance, can be found at http://www.quantuma.com/legal-information.

Information about this insolvency process may be found on the R3 website here http://www.creditorinsolvencyguide.co.uk>.

General Data Protection Regulation

In compliance with the General Data Protection Regulation, Creditors , Employees, Shareholders, Directors and any other Stakeholder who is an individual (i.e. not a corporate entity) in these insolvency proceedings is referred to the Privacy Notice in respect of Insolvency Appointments, which can be found at this link http://www.quantuma.com/legal-notices.

5. ETHICS

Please note that the Joint Liquidators are bound by the Insolvency Code of Ethics when carrying out all professional work relating to an insolvency appointment. Further information can be viewed at the following link https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics Additionally the Joint Liquidators are also bound by the regulations of their Licensing Bodies.

General Ethical Considerations

Prior to the Joint Liquidators' appointment, a review of ethical issues was undertaken and no ethical threats were identified.

A further review has been carried out and no threats have been identified in respect of the management of the insolvency appointment over the Review Period.

Specialist Advice and Services

When instructing third parties to provide specialist advice and services or having the specialist services provided by the firm, the Joint Liquidators are obligated to ensure that such advice or work is warranted and that the advice or work contracted reflects the best value and service for the work undertaken. The firm reviews annually the specialists available to provide services within each specialist area and the cost of those services to ensure best value. The specialists chosen usually have knowledge specific to the insolvency industry and, where relevant, to matters specific to this insolvency appointment. Details of the specialists specifically chosen in this matter are detailed below.

6. **THE JOINT LIQUIDATORS' FEES AND EXPENSES**

A copy of 'A Creditors Guide to Liquidators' Fees' effective from 1 April 2021 together with Quantuma Advisory Limited's current schedule of charge-out rates and chargeable expenses, which includes historical charging information, may be found at https://www.quantuma.com/guide/creditors-guide-fees/.

A hard copy of both the Creditors' Guide and Quantuma Advisory Limited's current and/or historic charge-out rate and expenses policies may be obtained on request at no cost.

Pre-Appointment Costs

Quantuma Advisory Limited's fee for assisting the Director in convening the procedure to seek a decision from Creditors on the nomination of a Liquidator and helping with the preparation of the statement of affairs was £5,000 plus expenses and VAT.

The fee was agreed and paid by the Company from the interim payment made from the purchaser of the Company's assets, prior to the Company being placed into Liquidation.

Joint Liquidators' Fees

The basis of the Joint Liquidators' fees was fixed on 27 August 2021 as follows:

- That the basis of the Joint Liquidators' fees be fixed by reference to the time properly given by the Joint Liquidators and their staff in attending to matters as set out in the fees estimate (£22,924), such time to be charged at the prevailing standard hourly charge out rates used by Quantuma Advisory Limited at the time when the work is performed (plus VAT).

Time Costs

In accordance with the above decision, the Joint Liquidators are permitted to draw fees to a limit of £22,924.

As reflected on the Receipts & Payments Account, fees of £3,200 have been drawn during the Review Period.

The Joint Liquidators believe this case generally to be of average complexity and no extraordinary responsibility has to date fallen upon them.

Comparison of Estimates

The Joint Liquidators' time costs incurred to date (whether or not they have been charged to the Liquidation estate) are compared with the original fees estimate and the actual time costs incurred to the end of the Review Period. The fees estimate covered the life of the case.

For a detailed schedule of work undertaken by the Joint Liquidators during the Review Period, see Appendix 3. A detailed narrative list of the work undertaken during the Review Period is provided at Appendix 4.

	Original fees estimate			Actual time costs incurred during the Review Period		
Work category	No. of hours	Blended hourly rate £	Total fees £	No. of hours	Average hourly rate £	Total time costs £
Administration Planning	30.20	242.19	7,314.00	23.10	262.94	6,074.00
Cashiering	2.70	183.70	496.00	7.70	167.40	1,289.00
Creditors	19.30	244.30	4,715.00	31.30	210.65	6,593.50
Investigations	29.30	271.13	7,944.00	18.40	272.45	5,013.00
Realisation of Assets	6.00	260.00	1,560.00	5.20	215.00	1,118.00
Closing Procedures	3.00	298.33	895.00	0.40	377.50	151.00
TOTAL	90.50	253.30	22,924.00	86.10	235.06	20,238.50

Joint Liquidators' Expenses

The expenses, which include disbursements that have been incurred and not yet paid during the Review Period are detailed below. This includes a comparison of the expenses likely to be incurred in the Liquidation as a whole with the original expenses estimate, together with reasons where any expenses are likely to exceed that estimate.

Expenses	Original expenses estimate £	Actual expenses incurred in the Review Period £	Reason for any excess (if the expenses are likely to, or have, exceeded the original estimate)
Category 1 expenses			
Professional Advice: Agent's & valuers fees	600.00	600.00	
Professional Advice: Legal Fees	-	2,000.00	Not anticipated at the outset
IT Agent Fee	-	250.00	Not anticipated at the outset
Statutory & other Advertising	176.00	176.00	
Indemnity Bond	135.00	135.00	
Printing & Postage costs of external provider.	60.00		
Category 2 expenses			
Photocopying, scanning & faxes (per side)	60.00	-	Please be advised that, whilst it was originally envisaged that these expenses would be charged to the estate as Category 2 disbursements, this has no longer been allowed since 1 April 2021
Anti-Money Laundering Searches	3.00	-	
Stationery (Per Report/letter per Member/Creditor)	50.00	-	
TOTAL	1,084.00	3,161.00	

Details of the expenses paid in the Review Period are shown in the Receipts and Payments account at Appendix 2.

No Category 2 expenses have been incurred or drawn in this matter.

Cost to Closure

Having regard for the costs that are likely to be incurred in bringing this Liquidation to a close, the Joint Liquidators consider that:

- the original fees estimate is unlikely to be exceeded; and
- the original expenses estimate has been exceeded for the reasons given above.

Other Professional Costs

Agents & Valuers

C&K were instructed as agents and valuers in relation to the sale of the Company's unencumbered assets. Their costs have been agreed on the basis of a fixed fee of £600 plus VAT which has been paid in full.

IT Assistance

AADD Ltd were instructed to assist with obtaining historical financial information from the Company's Quickbooks records. A fee of £250 plus VAT was charged for this which was paid in full during the Review Period.

Solicitors

Wedlake Bell LLP were instructed by the Joint Liquidators to review the matters identified during the course of the investigation into the Company's affairs and advise on whether any further action should be take. Their costs have been agreed on the basis of a fixed fee of £2,000 plus VAT which has been paid in full.

All professional costs are reviewed and analysed before payment is approved.

Creditors' right to request information

Any Secured Creditor, or Unsecured Creditor with the support of at least 5% in value of the Unsecured Creditors or with permission of the Court, may request in writing the Joint Liquidators to provide additional information regarding remuneration or expenses to that already supplied within this report. Such requests must be made within 21 days of receipt of this report.

Creditors' right to challenge remuneration and/or expenses

Any Secured Creditor, or Unsecured Creditor with the support of at least 10% in value of the Unsecured Creditors or with permission of the Court, may apply to the Court for one or more orders, reducing the amount or the basis of remuneration which the Joint Liquidators are entitled to charge or otherwise challenging some or all of the expenses incurred.

Such applications must be made within 8 weeks of receipt by the applicant(s) of the progress report detailing the remuneration and/or expenses being complained of.

Please note that such challenges may not disturb remuneration or expenses disclosed in prior progress reports.

Future of the Liquidation

There are no outstanding matters preventing the closure of the liquidation and therefore the Joint Liquidators will shortly seek their release from office by issuing their final account to Members and Creditors.

Should you have any queries in regard to any of the above please do not hesitate to contact Nicola Lyle on 023 8082 1864 or by e-mail at Nicola.Lyle@Quantuma.com.

Duncan Beat
Joint Liquidator

MONK LAKES LIMITED
(IN LIQUIDATION)

STATUTORY INFORMATION

Company Name	Monk Lakes Limited
Trading Address	Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN
Proceedings	In Liquidation
Date of Appointment	15 July 2021
Joint Liquidators	Duncan Beat and Andrew Watling Quantuma Advisory Limited Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Registered office Address	c/o Quantuma Advisory Limited Office D, Beresford House, Town Quay, Southampton, SO14 2AQ
Company Number	05234067
Incorporation Date	17 September 2004

MONK LAKES LIMITED
(IN LIQUIDATION)

THE JOINT LIQUIDATORS' RECEIPTS AND PAYMENTS ACCOUNT AS AT 14 JULY 2022

Statement of Affairs £		From 15/07/2021 To 14/07/2022 £	From 15/07/2021 To 14/07/2022 £
	ASSET REALISATIONS		
	Bank Interest Gross	0.16	0.16
	Cash at Bank	49.04	49.04
400.00	Fixtures & Fittings	6,600.00	6,600.00
NIL	Leasehold Property	NIL	NIL
NIL	Plant & Machinery	NIL	NIL
Uncertain	Stock	NIL	NIL
		6,649.20	6,649.20
	COST OF REALISATIONS		
	Agents/Valuers Fees	850.00	850.00
	Legal Fees	2,000.00	2,000.00
	Office Holders Fees	3,200.00	3,200.00
	Specific Bond	135.00	135.00
	Statutory Advertising	176.00	176.00
		(6,361.00)	(6,361.00)
	PREFERENTIAL CREDITORS		
(165.83)	Pension Schemes	NIL	NIL
		NIL	NIL
	SECONDARY PREFERENTIAL CREDITORS		
(31,062.33)	HMRC - VAT	NIL	NIL
(1,607.46)	HMRC PAYE/NIC (Employees)	NIL	NIL
		NIL	NIL
	UNSECURED CREDITORS		
(61,984.57)	Banks/Institutions	NIL	NIL
(8,547.44)	HM Revenue and Customs - CT	NIL	NIL
(2,771.10)	Intercompany	NIL	NIL
(15,180.35)	Trade & Expense Creditors	NIL	NIL
		NIL	NIL
	DISTRIBUTIONS		
(100.00)	Ordinary Shareholders	NIL	NIL
		NIL	NIL
(121,019.08)		288.20	288.20
	REPRESENTED BY		
	Bank 1 Current		1,536.00
	Vat Control Account		(1,247.80)
			288.20

VAT Basis

Receipts and payments are shown net of VAT, with any amount due from HM Revenue and Customs shown separately.

MONK LAKES LIMITED (IN LIQUIDATION)
SCHEDULE OF THE JOINT LIQUIDATORS' **TIME** COSTS DURING THE REVIEW PERIOD

Appendix 3

6008231 - Monk Lakes Limited
To: 14/07/2022
Project Code: POST

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
100 : Administration & Planning	0.20	0.00	0.00	0.00	0.20	106.00	530.00
100A : Initial Notification(s) & Filing	0.00	0.10	0.00	0.00	0.10	31.00	310.00
102A : Recover Schedules Books and Records	0.00	0.00	1.00	0.00	1.00	200.00	200.00
103 : IPS Case / File set up/ Filing	0.00	0.00	0.80	0.00	0.80	181.50	226.88
104 : General Administration	0.00	0.20	8.30	0.60	9.10	1,555.50	203.90
105 : Case strategy / Review	2.70	1.50	2.80	0.70	7.70	2,633.50	342.01
106 : VAT & CT matters and returns	0.00	0.50	3.70	0.00	4.20	1,066.50	253.93
Admin & Planning	**2.90**	**2.30**	**16.60**	**1.30**	**23.10**	**6,074.00**	**262.94**
600 : Cashiering	0.00	0.40	2.80	4.50	7.70	1,289.00	167.40
Cashiering	**0.00**	**0.40**	**2.80**	**4.50**	**7.70**	**1,289.00**	**167.40**
650 : Closing Procedures	0.10	0.30	0.00	0.00	0.40	151.00	377.50
Closing Procedures	**0.10**	**0.30**	**0.00**	**0.00**	**0.40**	**151.00**	**377.50**
201 : Creditors	0.00	0.00	3.30	0.00	3.30	660.00	200.00
203 : Creditor correspondence / Call	0.00	1.00	3.50	0.00	4.50	1,010.00	224.44
204A : Dealing with Pension Schemes	0.00	0.60	21.40	0.00	22.00	4,623.50	210.16
213 : Interim Fee Report to Creditors	0.00	0.00	1.50	0.00	1.50	300.00	200.00
Creditors	**0.00**	**1.60**	**29.70**	**0.00**	**31.30**	**6,593.50**	**210.65**
300 : Investigations	0.60	5.20	6.00	0.00	11.50	3,160.00	287.80
300A : SIP 2 Review	0.40	1.40	1.70	0.00	3.50	966.00	276.00
301 : CDDA Reports	0.60	0.90	1.60	0.00	3.10	887.00	286.13
Investigations	**1.60**	**7.50**	**9.30**	**0.00**	**18.40**	**5,013.00**	**272.45**
400 : Realisation of Assets	0.00	0.20	4.00	0.00	4.20	862.00	205.24
401 : Freehold / Leasehold Property	0.20	0.00	0.00	0.00	0.20	96.00	480.00
411 : Cash at Bank	0.00	0.00	0.80	0.00	0.80	160.00	200.00
Realisation of Assets	**0.20**	**0.20**	**4.80**	**0.00**	**5.20**	**1,118.00**	**215.00**
Total Hours	**4.80**	**12.30**	**63.20**	**5.80**	**86.10**	**20,238.50**	**235.06**
Total Fees Claimed						**3,200.00**	

MONK LAKES LIMITED
(IN LIQUIDATION)

DETAILED NARRATIVE LIST OF WORK UNDERTAKEN BY THE JOINT LIQUIDATORS DURING THE REVIEW PERIOD

Description of work undertaken	Includes
ADMINISTRATION & PLANNING	
Initial Statutory and General Notifications & Filing e.g. Advertising the appointment, undertaking statutory notifications to Companies House, HMRC , the Pension Protection Fund, preparing the documentation and dealing with other notification of appointment	Filing of documents to meet statutory requirements Advertising in accordance with statutory requirements
Obtaining a specific penalty bond.	
Recovering & Scheduling the company's books and records.	Collection and making an inventory of company books and records
Setting up electronic case files and electronic case details on IPS.	
General Administration - Dealing with all routine correspondence and emails relating to the case.	
Case strategy & completing file reviews at 1 month, 2 months & 6 months.	Discussions regarding strategies to be pursued Meetings with team members and independent advisers to consider practical, technical and legal aspects of the case Periodic file reviews Periodic reviews of the application of ethical, anti-money laundering and anti-bribery safeguards Maintenance of statutory and case progression task lists/diaries Updating checklists
VAT & Corporation Tax matters and returns.	Preparation and filing of VAT Returns Preparation and filing of Corporation Tax Returns
CREDITORS	
Dealing with creditor correspondence, emails and telephone conversations.	Receive and follow up creditor enquiries via telephone Review and prepare correspondence to creditors and their representatives via email and post
Dealing with Pension Schemes	Corresponding with the PPF and the Pensions Regulator
Interim Fee Report to Creditors	
INVESTIGATIONS	
Investigations	
SIP 2 Review - Conducting an initial investigation with a view to identifying potential asset recoveries by seeking and obtaining information from relevant third parties, such as the bank, accountants, solicitors, etc.	Correspondence to request information on the company's dealings, making further enquiries of third parties Reviewing questionnaires submitted by creditors and Directors Reconstruction of financial affairs of the company Reviewing company's books and records Preparation of deficiency statement Review of specific transactions and liaising with Directors regarding certain transactions

Description of work undertaken	Includes
CDDA Reports - Preparing a report or return on the conduct of the Directors as required by the Company Directors Disqualification Act.	Preparing statutory investigation reports Liaising with Insolvency Service Submission of report with the Insolvency Service Preparation and submission of supplementary report if required Assisting the Insolvency Service with its investigations
Investigating & Pursuing Antecedent Transactions	
REALISATION OF ASSETS	
Freehold/Leasehold Property	Liaising with valuers and agents, and Council Reviewing Land Registry documents
Plant & Machinery, Fixtures and Fittings	Liaising with valuers, auctioneers and interested parties Reviewing asset listings Liaising with secured creditors and landlords
Stock	Conducting stock takes Reviewing stock values Liaising with agents and potential purchasers Analysing the value in WIP Contracting with service-providers/suppliers to complete WIP
Cash at Bank	Contacting the bank to arrange closure of the account and payment of the funds to the estate
CASHIERING	
Opening, maintaining and managing the Office Holders' cashbook and bank account.	Preparing correspondence opening and closing accounts Requesting bank statements Correspondence with bank regarding specific transfers Maintenance of the estate cash book
Dealing with cheque requisitions	Issuing cheques/BACS payments
Dealing with deposit forms	Banking remittances
Bank Reconciliations	
Preparing & Filing statutory Receipts & Payments accounts	Preparing and filing statutory Receipts and Payments accounts at Companies House
CLOSING PROCEDURES	
Closure Review	

Current Charge-out Rates of the staff working on the case

Time charging policy

Support staff and executive assistants do not charge their time to each case except when the initial set up is being performed or when a sizeable administrative task or appropriate ad hoc duty is being undertaken
Support staff include secretarial and administrative support.
The minimum unit of time recorded is 6 minutes.
Rates are likely to be subject to periodic increase.

Grade of Staff	Rate from 23 June 2022
	Regional Offices
CEO/Managing Director	£495.00
Senior Manager	£345.00
Assistant Manager	£295.00
Senior Administrator	£250.00
Case Accountant	£110.00
Support Staff/Executive Assistant	£110.00

Our Ref: DW:100351.0001

7 March 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail and by post

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

As you are aware we act for Mr David Padden in respect of the above proceedings. On 24 January our client filed an application at Court seeking to join the proceedings. That application is awaiting determination by the Court.

In Section F of our client's Summary Grounds of Resistance, we requested that you provide certain documents and information no later than 7 February 2023. You have not responded to that request.

We therefore repeat our request for the following:

a. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents related to the appeal between 11.09.20 and 05.10.22;

b. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents in relation to MLL, the liquidators' and/or the Claimant Company's authority to issue these proceedings; and

c. Confirmation that the Claimant Company is in fact authorised to act as agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered.

As set out in our client's Summary Grounds of Resistance, the Claimant Company is purporting to act as agent for and on behalf of Monk Lakes Limited. In these circumstances, you ought to be able to supply the above information with little difficulty, and indeed, we

consider that you are obliged to provide it in accordance with the Claimant Company's Duty of Candour.

Please therefore provide the requested information within 7 days of this letter.

We are copying this letter to the Court for its information.

Yours Faithfully

RICHARD MAX & CO

From: David Warman <David@RichardMax.co.uk>
Sent: Tuesday, March 21, 2023 9:10 AM
To: James Kon <James.Kon@asserson.co.uk>
Cc: Administrative Court Office, General Office <generaloffice@administrativecourtoffice.justice.gov.uk>
Subject: RE: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear James

I write further to your e-mail below. I am likewise copying this response to Court.

There is no basis on which it can properly be argued that it would be "inappropriate" to respond to our request for clarification on the points made, given the clear scope of the Claimant's Duty of Candour in judicial review proceedings.

Most importantly, your client (Taytime Limited) purports to have brought the claim expressly "on behalf of and as agent for" Monk Lakes Limited – a company in liquidation. Yet there is no evidence before the Court to substantiate the assertion that your client has been appointed to act on behalf of Monk Lakes Limited in this claim, whether as agent or otherwise. Without this information the Court cannot be satisfied that the claim has been properly initiated.

We would therefore repeat our request that your client respond to our request for information as a matter of urgency.

Whilst writing, we also enclose a Schedule of Costs on behalf of Mr Padden, in the event that his application to join the proceedings is granted and permission is refused to bring the claim.

Kind regards

David

RICHARDMAX&CO SOLICITORS

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

From: James Kon <James.Kon@asserson.co.uk>
Sent: 07 March 2023 10:52
To: David Warman <David@RichardMax.co.uk>
Cc: Administrative Court Office, General Office

<generaloffice@administrativecourtoffice.justice.gov.uk>
Subject: Re: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear David

Thank you for your email and your letter.

Whilst we acknowledge the request for further information on behalf of your client in its summary grounds of resistance, it would be inappropriate to consider disclosing any further documentation until and unless the Court joins your client as a party to the claim, and indeed therefore whether there is a claim at all following that Order (as if the Court confirms the draft order agreed by the Claimant, Council and GLD the decision will be quashed by consent).

I have copied the Court into this response by way of information.

Kind regards

James

James Kon

Senior Associate

ASSERSON

Mobile | +44 (0)7989 222 029

Office | +44 (0)203 691 4797

From: David Warman <David@RichardMax.co.uk>
Sent: 07 March 2023 10:33
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO/4860/2022 - Taytime Limited v SSDLUHC and Maidstone Borough Council

Dear James

Further to our previous correspondence in this matter please find attached a copy of our letter of today's date. A hard copy will be sent in the post.

Please kindly confirm safe receipt.

Kind regards

David

87 Chancery Lane
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Tel: +44 (0)20 7240 2400
Mob: 07729113312

www.richardmax.co.uk

Our Ref: DW:100351.0001

30 March 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

As you are aware on 24 March Ms Justice Lang granted our client's application to be joined as a party to the above proceedings and ordered an oral permission hearing to be listed.

Therefore, pursuant to your client's duty of candour please provided copies of the information requested in Section F of our client's Summary Grounds of Resistance (and repeated in our letter of 7 March 2023).

In addition, please provide full details of all and any pre-existing links between Mr Guy Harrison and the liquidators appointed in respect of Monk Lakes Limited.

In the event that we do not receive a full substantive response to this request within 7 days of this letter, we will make an application to the Court for specific disclosure and seek the costs of making that application from your client.

Please therefore provide the requested information within 7 days of this letter.

Yours Faithfully

RICHARD MAX & CO

Our Ref: DW:100351.0001

28 April 2023

Mr James Kon
Asserson
Suite 50
Churchill House
London
NW4 4DJ

By e-mail only

Dear Sir

Your client: Taytime Limited ("the Claimant Company")
CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

We write further to our previous correspondence and in particular our letters of 7 and 30 March 2023, which repeated our client's request for disclosure of certain documents and information originally requested in our client's Summary Grounds of Resistance. In our letter of 30 March, we requested a response within 7 days – by 6 April 2023.

We have yet to receive a substantive response to those letters.

In your e-mail of 31 March, you confirmed that you hoped to be able to provide the requested information by 6 April but that there may be some slippage due to the April holidays.

On 13 April your client e-mailed this firm and advised that she would "endeavour to have everything you asked for by Friday 21st".

On 24 April you advised that the documents "should be ready in the next few days"

On 27 April you advised that "Counsel is reviewing the documents now, but I am not sure of the precise timescales for this. I suspect it will be early next week".

Our client is very concerned at the time it continues to take your client to provide the requested information.

One of the matters requested relates to the authority given by the Monk Lakes Limited liquidators to commence the current proceedings. If such authority was in place, we can see no plausible reason why the information could not have been provided by now. We

reserve our position to seek further documentation regarding the relationship between Taytime Limited and the Monk Lakes Limited liquidators once the information is provided.

Given the repeated indications provided by you and your client that the information was being compiled and would be provided, our client has not yet made an application to Court for disclosure.

However, in light of the listing of the oral hearing on 21 June and the continuing delay we write to confirm that unless the requested information is provided in full by close of business on Tuesday 2 May, we will make a formal application for disclosure on behalf of our client on Wednesday 3 May and seek the costs of making that application from your client.

Yours Faithfully

RICHARD MAX & CO

Dear David

Apologies for the repeated emails on this.

I may have misspoken in my earlier email - I am now instructed that specialist advice has recently been sought with regard to your request, and that the information which needs to be disclosed is being finalised. The information will be with you in the next seven days.

Given that the 21 June hearing has now been vacated, and that we have made it clear that your request for disclosure is being taken very seriously, we do not consider that an application to the Court is necessary (especially as it is likely that the Court would in any event allow more than seven days from the date of the application). Please note that we will resist any formal application and seek our costs of doing so.

Separately, I believe that the clerks are discussing dates for the hearing – am I correct in saying that your client is represented by Landmark Chambers?

Kind regards

James

James Kon
Senior Associate

ASSERSON

Mobile | +44 (0)7989 222 029
Office | +44 (0)203 691 4797

From: James Kon <James.Kon@asserson.co.uk>
Sent: Friday, April 28, 2023 6:43 PM
To: David Warman <David@RichardMax.co.uk>
Subject: Re: Taytime v Secretary of State for Levelling Up Housing and Communities and others

Thanks David

I am instructed that the documents will be available by COP Wednesday so I would be grateful if you could wait until Thursday before submitting your application for disclosure.

Kind regards

James

Sent from Outlook for Android

From: David Warman <David@RichardMax.co.uk>
Sent: Friday, April 28, 2023 1:36:33 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: Taytime v Secretary of State for Levelling Up Housing and Communities and others

Dear James

Further to our previous correspondence please find attached our letter of today's date.

Kind regards

David

RICHARDMAX&CO SOLICITORS

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

www.richardmax.co.uk

Our Ref: DW:100351.0001

24 May 2023

Mr James Kon
Asserson
Suite 50 Churchill House
London
NW4 4DJ

By e-mail only

Dear Sir

Your client: Taytime Limited CO/4860/2022
The King (on the application of Taytime Limited as the appointed agent for and on behalf of Monk Lakes Limited) v the Secretary of State for Levelling Up, Housing and Communities and others

We write in response to your e-mail to the Court of 10 May 2023 attaching the Witness Statement of Emily Harrison and the accompanying Exhibit. Mrs Harrison's Witness Statement and Exhibit were lodged in response to our client's request for disclosure first set out in his Summary Grounds of Resistance and subsequently repeated a number of times in correspondence.

We confirm that our client is proceeding on the assumption that the information and documents provided is all the information and documentation in the possession of your client falling within all three categories of information requested by our client.

We will therefore proceed on the assumption that there is no further documentation or information of any sort which falls within the scope of our requests and which has not been disclosed, given the Duty of Candour that applies to your client in these proceedings. We will make submissions in respect of the information provided.

We will also be applying to adduce a further witness statement in support of the application for Security for Costs and in response to Mrs Harrison's Witness Statement. This will be filed and served prior to your client's skeleton argument for the Oral Permission Hearing being due.

As you will be aware the Oral Permission Hearing has now been listed for 13 June 2023. Please confirm that in the normal way you will be preparing a bundle for the Hearing and will provide a draft index for our review and comments.

Yours Faithfully

RICHARD MAX & CO

From: James Kon
Sent: Thursday, May 25, 2023 4:25 PM
To: David Warman <David@RichardMax.co.uk>
Subject: RE: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear David

Thank you for your email and letter.

Please note that we have complied with the duty of candour, which involves conducting a proportionate search and providing full and frank disclosure and exhibiting important documents. We have not however provided every document which we have (which we are not required to do under the duty of candour).

In terms of the bundle, currently I think it will comprise our SFG, the AoS from D1 and D2, the SGD and security for costs application from your client, the draft consent order (including correspondence with the Court), the order from Lang J, our witness statement and supporting documents, any witness statement which you serve in response and the skeleton arguments – do you have any additions at this stage? Also, I note that Lang J directed that you provide the authorities bundle.

Kind regards

James

James Kon
Senior Associate

ASSERSON

Mobile | +44 (0)7989 222 029
Office | +44 (0)203 691 4797

From: David Warman <David@RichardMax.co.uk>
Sent: Wednesday, May 24, 2023 4:14 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear James

Further to our previous correspondence, please find attached our letter of today's date.

Kind regards

David

RICHARDMAX&CO SOLICITORS

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

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From: David Warman <David@RichardMax.co.uk>
Sent: Tuesday, May 30, 2023 12:35 PM
To: James Kon <James.Kon@asserson.co.uk>
Subject: CO4860/2022 Taytime Limited v Secretary of State for Levelling Up, Housing and Communities and others

Dear James

Thank you for your e-mail of 25 May (timed at 16.25). We respond to the points raised in your e-mail as follows:

1. To be clear the duty of full and frank disclosure on claimants is well-established to be a duty to disclose "*all material facts known to a claimant in judicial review proceedings including those which are or appear to be adverse to his case"* (see ***R (Khan) v SSHD*** [2016] EWCA Civ 416 at para 35, emphasis added). The obligation is to make "full disclosure of all material available" (see ***R v Leeds CC, ex p Hendry*** (1994) 6 Admin LR 439, 44D, emphasis added). The position is also clearly recorded in the Administrative Court Guide (2022) at para 7.5.1 "*There is a special duty – the duty of candour and cooperation with the Court – which applies to all parties to judicial review claims. Parties are obliged to ensure that all relevant information and all material facts are put before the Court. This means that disclose parties must relevant information or material facts which either support or undermine their case. The duty of candour may require a party to disclose a document rather than simply summarising it*" (emphasis added). As you will know any failure to comply with these duties may result in indemnity costs against the party in default and/or a wasted costs order against their legal advisers: see e.g., ***R (F) v Head Teacher of Addington High School*** [2003] EWHC 228 (Admin).
2. As you know the requests that we have repeatedly made are as follows:
   "a. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents related to the appeal between 11.09.20 and 05.10.22;
   b. Details and copies of all communications between the Claimant Company, MLL, the liquidators and/or their advisors and/or agents in relation to MLL, the liquidators' and/or the Claimant Company's authority to issue these proceedings;
   c. Confirmation that the Claimant Company is in fact authorised to act as agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered."
3. You have not contended (and rightly so) that any of these requests is for material that is not relevant to the claim.
4. If there is, as your email suggests, other documentation that falls within the scope of these requests then it should be provided forthwith.
5. If nothing else is provided we will, as we have previously advised, be proceeding on the basis "that the information and documents provided is all the information and documentation in the possession of your client falling within all three categories of information requested by our client." If this turns out not to be so, then we reserve our position to seek indemnity costs and/or a wasted costs order.

Please would you kindly provide a Bundle Index for our review and comment. Likewise, please ensure that this e-mail and our previous correspondence regarding disclosure matters is included in the hearing bundle.

We are finalising our client's witness statement which will be filed (with accompanying application) as soon as possible and in any event before the end of this week.

Kind regards

David

87 Chancery Lane
London
WC2A 1ET
Tel: +44 (0)20 7240 2400
Mob: 07729113312

www.richardmax.co.uk

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

CO/4860/2022

B E T W E E N :

TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)

Claimant

-and-

(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

SECOND WITNESS STATEMENT OF EMILY HARRISON

I, Emily Harrison, of Sopers Farm, Peppers Lane, Ashurst, Steyning, West Sussex BN44 3AX, SAY AS FOLLOWS:

1. I make this statement in response to the Third Defendant's witness statement, served on 30 May 2023.

2. I am surprised that Mr Padden describes himself as a lay person (paragraph 10). He holds 15 open directorships, with the total turnover and valuation of those companies at around £76m and £98m respectively, and has held 16 prior directorships (report attached). It seems surprising that he then claims to be unable to understand the corporate structure of the Claimant.

3. I also note the change in Mr Padden's argument – the application for security of costs was made on the basis that Taytime would be unable to pay the costs of the Claim if ordered to do so.

4. Following the clear evidence in my first witness statement Mr Padden that Taytime would be unable to pay the security sought (though for the avoidance of doubt it formed no part of my statement that Taytime could not pay the costs associated with the Claim if ordered to do so) he is now arguing that Taytime (or its owners) would in fact be able to pay the security.

5. There is an obvious difference – Taytime would be able to pay the costs of the Claim if ordered to do so (though as per the Claimant's skeleton argument the costs cited by Mr Padden thus far are manifestly unreasonable and would therefore no doubt be subject to assessment), and for example would be in a position to pay Mr Padden's reasonable costs thus far should permission to proceed be refused.

6. However, payment of these costs within a reasonable timeframe is different to an instant requirement to make a large payment. Fisheries are by their very nature seasonal – the business closes at sunset between October and March (which can be as early as 330pm) and inclement weather conditions mean that there are far fewer customers during the winter season. The business therefore relies heavily on trade during the summer months to make up the shortfall – as we are now entering the summer season the business' cash flow will be much improved, as will its ability to fund the litigation process on a staggered basis.

7. In addition, myself and my husband on an individual basis would not be able to make this immediate payment and the Claim would be stifled.

8. Mr Padden has produced no evidence to support the position that we would be able to afford the immediate payment. The majority of his witness statement, relating to the personal assets of myself and my husband (Guy Harrison) is based on entirely unsupported and unsubstantiated supposition and rumour. For example, he states at paragraph 19 that we are wealthy individuals apparently based on nothing more than tabloid articles from over 15 years ago.

9. Mr Padden has produced no current or up to date evidence at all to support his position about our wealth, instead relying on vague assertions about activities which took place over 15 years ago. It is not credible to assume that a person's financial position will have not changed during the intervening period, bearing in mind (for example) the financial crisis in 2008 – 2010, Brexit, COVID, the war in Ukraine, the current cost of living crisis and ironically Mr Padden's own actions meaning that we have been unable to carry on our business in a profitable manner, and were forced to liquidate Monk Lakes Limited during the appeal process.

10. For the avoidance of doubt, we do not have the financial resources available to make the immediate payment sought. The Claim would be stifled and could not proceed. Taytime owns the land, and the company that operates on that land is currently servicing these legal proceedings and a loan of approximately £2m. It will also need to pay for a further Planning Hearing, should the matter be referred back to the Planning Inspectorate, plus the works required by the Section 106 agreement we entered into with the LPA, should permission be granted.

11. It is entirely disingenuous to suggest that the fact that Taytime (or its associated companies) funded a planning appeal process, somehow means that we (as individuals) have unlimited funds – the planning appeal was funded by Monk Lakes Limited, until it went into liquidation, and now by Monk Lakes Fishery Limited which operates on the land owned by Taytime (not by us) for a dedicated purpose using the company's limited assets, and under various agreements with the relevant professionals. Mr Padden's assumption in his paragraph 30 is just that.

12. Due to the fractious nature of our relationship with Mr Padden, I am reluctant to disclose personal and confidential financial information. However, in light of the application for security, I attest the following (bearing in mind again the sworn declaration at the end of this statement):

a. My pre-tax income for the past tax year was £37,706, and my husband's was £65,646;
b. We own and rent out a number of properties, but due to recent rises in interest rates the rents (which form part of the incomes listed above) are not sufficient to pay off all the properties' mortgages; and
c. The mortgage on the business currently outstrips its income, so we may now be forced to make up any shortfall from our own assets, in addition to supporting the running of the business.

13. A payment of no more than £20,000 for security would be affordable and the Claim would not be stifled.

14. However, as a lay person, I do not understand why Mr Padden is able to apply to join a litigation process voluntarily (as he was not required to be one of the original Defendants) and then subsequently request security of costs for taking part in that claim – a step which I am advised is very rarely undertaken by the Secretary of State. This seems to be another entirely tactical move to try and prevent the Claim from proceeding and for its merits to be assessed, as is Mr Padden's entire involvement in the Court proceedings.

15. As a lay person, it would in fact seem to be more logical and fair if Mr Padden was asked to give the Claimant security. When the Claim was submitted, it was done so partially on the basis that were we to succeed against the Secretary of State, we would be able to recover our costs of the litigation process. There is of course no doubt that the Department of Levelling Up, Communities and Local Government would be able to make any such payment (and indeed they have already agreed to pay our costs of submitting the Claim itself).

16. On the other hand, there is no evidence that Mr Padden, on a personal basis (the basis on which he is named as a Defendant), would be able to repay our costs. For example, his home is registered in a company name (Denton Homes Limited). See the land registration documents attached.

17. Mr Padden's statement sets out only the partial background to the issues. We have acted in good faith throughout the entire process – we purchased the property after the majority of the relevant works had been carried out (a fact mentioned but not acknowledged by Mr Padden) with professional legal advice and following discussions with both the LPA and the Environment Agency.

18. In fact, the LPA asked us to increase the speed at which the development was completed. However, another department within the LPA concluded that whilst the previous owner had "addressed the conditions precedent", he had not discharged them in a formal capacity and issued the Temporary Stop Notice only 6 weeks after we purchased the site.

19. Since then, we have worked tirelessly to try and regularise the position, including submitting 3 retrospective applications using top experts in disciplines such as hydrology, heritage, and ecology. All 3 of those applications were granted, and 50% of the site has been regularised.

20. Following Mr Padden's successful judicial review of the third application (which was determined after most of the work had already been carried out), we subsequently resubmitted it for redetermination, specifically addressing the points raised in the High Court.

21. We have also made vast physical improvements to the site since 2008; regrading the banks in front of Mr. Padden's home, grassing, mowing and deweeding, planting and softening the view from his house (please see the before and after photos attached). We would have, had permission been granted by now, installed the comprehensive drainage system as designed by our hydrologists, between our two properties.

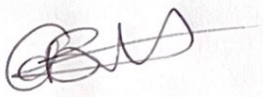
22. The application was recommended for Approval by the Council's professional planning officers and had no objections from any of the Statutory Consultees.

23. Mr Padden's witness statement also highlights (again) his attitude to us as neighbours and throughout the planning process, including the contemptuous tone he adopts, and his willingness to bring personal details before the Court.

24. Mr Padden states that he has experience of planning. I am at a loss as to why, in a situation where PINS have accepted that their Inspector made an error, Mr Padden is insisting that the planning merits of the appeal should not be re-visited.

25. The correct forum for to discuss the planning application is in front of an appropriately qualified Planning Inspector, who will be able make a decision on the planning merits of the Claim. Mr Padden will be able to be involved in that process, as he is entitled to be, and has been since 2008 and before (as he says in his statement he instructed a full professional team to appear at the earlier planning hearing, and he has been closely involved in the LPA's determination of the application) and no doubt will continue to be.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Date: 12/06/2023

pomanda

MR DAVID PHILIP ERSKINE PADDEN

Pomanda Director Report

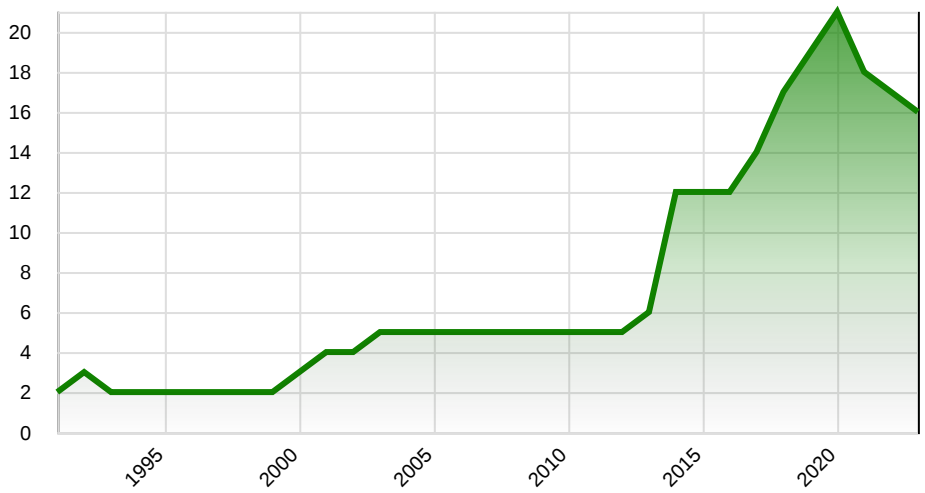
The following information relates to Mr David Philip Erskine Padden and was prepared by Pomanda for Emily Harrison on 05 Jun 2023

Companies House Director Profile

Companies House is the United Kingdom's registrar of companies. All companies are incorporated and registered with Companies House and file specific details as required by the current Companies Act 2006. All registered limited companies, including subsidiary, small and inactive companies, must file annual financial statements and annual company returns.

Director Name	**Mr David Philip Erskine Padden**
Director ID	**907952664**
Birth Date	July 1961
Age	61
Nationality	British
Region	South East England
Open Directorships	15
Turnover*	£76,242,976
Valuation*	£98,835,605
Prior Directorships	16
Turnover*	£258,491
Valuation*	£438,634

Active Directorships Over Time



** Pomanda estimated values*

Open Directorships

Mr David Philip Erskine Padden currently has directorships in 15 companies.

ID	Company Name	Industry	Status	From	To
02043978	DENTON HOMES LIMITED	Construction of buildings	Open	31 Jul 1991	-
02356096	DENTON GROUP LIMITED	Other professional, scientific and technical activities	Open	26 Feb 1992	-
03755083	DENTON HOMES SURREY LIMITED	Real estate activities	Open	06 Jul 2000	-
04344557	DENTON HOMES (LAND) LIMITED	Real estate activities	Open	21 Dec 2001	-
04876655	DENTON HOMES NEWCO LIMITED	Construction of buildings	Open	26 Aug 2003	-
08469773	DENTON HOMES FIR TREE ROAD LIMITED	Construction of buildings	Open	02 Apr 2013	-
08876583	DENTON HOMES SUSSEX LIMITED	Real estate activities	Open	05 Feb 2014	-
09204229	DENTON HOMES LONDON ROAD LIMITED	Real estate activities	Open	04 Sep 2014	-
10004561	DOWNS VIEW CLOSE MANAGEMENT COMPANY LIMITED	Real estate activities	Open	22 Aug 2017	-
11904883	FORESTERS WAY MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Open	26 Mar 2019	-
12963978	LINNET CLOSE MANAGEMENT COMPANY LIMITED	Real estate activities	Open	21 Oct 2020	-
13524940	KINGSBURY COURT (WOKING) MANAGEMENT COMPANY LIMITED	Real estate activities	Open	22 Jul 2021	-
13526920	KINGFISHER CLOSE (WARREN ROAD) MANAGEMENT COMPANY LIMITED	Real estate activities	Open	23 Jul 2021	-
13917626	BARN CLOSE ESTATE MANAGEMENT COMPANY LIMITED	Real estate activities	Open	15 Feb 2022	-
14755747	PERLANT PLACE MANAGEMENT COMPANY LIMITED	Real estate activities	Open	24 Mar 2023	-

Prior Directorships

Mr David Philip Erskine Padden has previously held directorships in 16 companies.

ID	Company Name	Industry	Status	From	To
13054193	DENTON CLOSE MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	01 Dec 2020	11 Aug 2022
12797074	DG MAIDENHEAD HOLDINGS LIMITED	Real estate activities	Retired	06 Aug 2020	30 Nov 2020
12171247	DENTON HOMES (FORDWICH) LIMITED	Real estate activities	Closed	23 Aug 2019	-
11883641	BEACON CLOSE (ROTTINGDEAN) RESIDENTS MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	15 Mar 2019	24 Feb 2022
11648868	LING COMMON PLACE MANAGEMENT COMPANY LTD	Undifferentiated goods- and services-producing activities of private households for own use	Retired	30 Oct 2018	01 Jan 2023
11418917	CROUCH FIELDS (ANSTY) MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	18 Jun 2018	06 Oct 2020
10171628	BRADBURY CLOSE (EAST PRESTON) MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	01 May 2018	01 May 2021
11292409	BLACKNESS LANE (WOKING) MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	05 Apr 2018	11 Dec 2020
11168363	DG MAIDENHEAD LTD	Real estate activities	Closed	26 Jan 2018	22 Mar 2018
10906520	HURSTWOOD CLOSE (HAYWARDS HEATH) MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	17 Aug 2017	09 Nov 2021
09326277	CHESTNUT WAY MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	25 Nov 2014	01 Feb 2017
09237644	DENTON HOMES LONDON ROAD MANAGEMENT LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	26 Sep 2014	27 Apr 2020
08882135	THE ELDERS MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	07 Feb 2014	01 Feb 2017
08882359	THE TATTENHAMS MANAGEMENT COMPANY LIMITED	Undifferentiated goods- and services-producing activities of private households for own use	Retired	07 Feb 2014	27 Apr 2020

ID	Company Name	Industry	Status	From	To
02741371	DENTON FINANCIAL MANAGEMENT LIMITED	Other professional, scientific and technical activities	Closed	20 Aug 1992	-
02188237	PRIMEFUTURE LIMITED	Other professional, scientific and technical activities	Closed	13 Jul 1991	-

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Official copy of register of title

Title number K720220 | Edition date 10.07.2019

- This official copy shows the entries on the register of title on 12 JUN 2023 at 13:28:57.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 12 Jun 2023.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Nottingham Office.

A: Property Register

This register describes the land and estate comprised in the title.

KENT : MAIDSTONE

1 (05.12.1991) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Hertsfield Barn, Staplehurst Road, Marden, Tonbridge, (TN12 9BW).

2 The land has the benefit of the following rights granted by the Conveyance dated 30 October 1991 referred to in the Charges Register:-

"TOGETHER with:-

(a) A right of way in common with the Vendor his successors in title and all other persons entitled to use the same for all purposes with or without vehicles over the accessway shown coloured yellow on the plan subject to the payment of a fair proportion according to user of the cost of maintaining and repairing and renewing the said accessway and the full right and liberty for the Purchaser and its successors in title to enter upon the said accessway coloured yellow on the plan and to carry out repairs to the said accessway in a good and proper manner at the expense of the Purchaser and its successors in title

(b) The right within twenty one years from the date hereof to lay gas and water pipes under the land coloured green on the Plan and thereafter to receive supplies of gas and water through such pipes and to enter upon the Remainder from time to time to repair maintain and renew the said pipes (the person or persons exercising such rights making good any damage caused to the Remainder forthwith."

NOTE: The land coloured yellow and the land coloured green referred to are hatched brown and tinted brown respectively on the filed plan.

3 The Conveyance dated 10 August 1992 referred to above contains the following provision:-

"IT IS HEREBY AGREED AND DECLARED that the Purchase shall not be entitled to any easement or right of way light or air or otherwise which would restrict or interfere with the free use of any part of the Remainder for building or other purposes."

4 (10.10.1992) The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 31 July 1992

A: Property Register continued

referred to in the Charges Register.

5 (01.10.1992) The Transfer dated 31 July 1992 referred to above contains provisions as to light or air and boundary structures.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (04.04.2003) PROPRIETOR: DENTON HOMES LIMITED (Co. Regn. No. 02043978) of 2 The Drive, Esher, Surrey KT10 8DQ.

2 (04.04.2003) The value stated as at 4 April 2003 for the land in this title and in K813555 was £1,700,000.

3 (04.04.2003) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 A Conveyance of the land in this title and other land dated 30 October 1991 made between (1) William Mercer Highwood (Vendor) and (2) Owlquest Limited (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.

2 The land is subject to the following rights reserved by the Conveyance dated 30 October 1991 referred to above:-

"EXCEPT AND RESERVED to the Vendor the owners or occupiers for the time being of the remainder of the land now or formerly comprised in an Assent dated the Twelfth day of January One thousand nine hundred and eighty-four and made by the Vendor ("the Remainder") the rights set out in the Second Schedule hereto.

THE SECOND SCHEDULE above referred to

1. A full and free right of way at all times with or without vehicles for agricultural purposes over and along the land coloured blue on the plan.

2. All or any quasi-rights or privileges (other than of way) now used or enjoyed by the Remainder over the Property as if the Property and the Remainder belonged to different owners and such rights or privileges had been acquired by prescription."

NOTE: The land described as the Remainder lies to the west, south and east of the land in this title. The land coloured blue referred to is tinted blue on the title plan.

3 A Transfer of the land in this title dated 31 July 1992 made between (1) Owlquest Limited (2) Raymond Parry and Toni Anne Parry and (3) Michael Colin Moxon and Janet Moxon contains restrictive covenants.

NOTE: Original filed.

Schedule of restrictive covenants

1 The following are details of the covenants contained in the Conveyance dated 30 October 1991 referred to in the Charges Register:-

"THE Purchaser covenants with the Vendor and for the benefit of the part of the Remainder now vested in the Vendor and each and every part thereof:-

Schedule of restrictive covenants continued

A. As more particularly set out in the Third Schedule hereto

.....

THE THIRD SCHEDULE above referred to

1. Not to keep or permit to be kept parked or stored on the Property any caravan house on wheels or other moveable or temporary structure used or intended or adapted for use as residential accommodation except ancillary to construction works on the Property before the Thirty-first day of December One thousand nine hundred and ninety-two.

2. Not to do or permit to be done anything on the Property which shall be or become a nuisance to the Vendor or his successors in title the owners and occupiers for the time being of the Remainder.

3. Within six months of the date hereof to erect and thereafter maintain good and sufficient stock-proof fences along the boundaries marked "T" within on the Plan.

4. From time to time to pay a fair proportion according to use of the cost of maintaining repairing and renewing the accessway coloured yellow on the plan.

5. Not to exercise any of the rights conferred by paragraph (b) of the First Schedule so as to interfere in any way with the land drainage or impede or prevent normal agricultural activities on the Remainder and without prejudice to the generality of the foregoing to obtain the Vendor's prior written approval (such approval not to be unreasonably withheld) for any engineering or other works connected with the exercise of such rights."

NOTE: The accessway coloured yellow referred to is the accessway leading to Staplehurst Road on the filed plan. The boundaries marked T referred to are the eastern and southern boundaries of the land in this title.

End of register


5/2007
Puma Lake
Bridges Lake
Hertsfield Barn
Monk Lakes
Mallard Lake
Monk Lakes
Match Lakes


River Beult
Hertsfield Barn

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Claim No: CO/4860/2022

BETWEEN:

TAYTIME LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

Defendants

(3) DAVID PADDEN

Third Defendant

WITNESS STATEMENT OF DAVID PADDEN

I, DAVID PADDEN of Hertsfield Barn, Staplehurst Road, Marden Tonbridge TN12 9BW state as follows.

1. I am the Third Defendant in these proceedings and make this statement in response to the Witness Statement of Mrs Emily Harrison.

2. I exhibit to this statement a paginated bundle of documents marked DP1.

3. I live at Hertsfield Barn, Staplehurst Road, Marden TN12 9BW, a Grade II listed building immediately adjoining the Monk Lakes site.

4. By way of background, between 2004 and 2008 unauthorised works were undertaken at the Monk Lakes site with a view to creating recreational fishing lakes including the unlawful dumping of significant amounts of waste material. In 2008 the site was acquired by Mrs Harrison and her husband Mr Guy Harrison, who continued with and intensified the unauthorised works. I attach an article from the KentOnline Website from 2008 which records the unlawful works that had been undertaken (DP1/2/3)

5. The facts of what was undertaken were set out in the judgment of the High Court in the judicial review that I successfully brought – see R. (on the application of Padden) v Maidstone BC [2014] 1 WLUK 445 | [2014] Env. L.R. 20 at para. 5 and following.

6. The Environment Agency has estimated that approximately 650,000 cubic meters of waste material were deposited on the site. This has included the formation of large 6m high bunds across the site.

7. The unauthorised works have and continue to cause me, and my neighbours, considerable distress. They have resulted in significant damage to my home (a listed building) through groundwater flooding and have also greatly impacted on my privacy

and outlook. A sense of the impact can be seen from the photographs in the claim form from previous proceedings attached to Mr Warman's first witness statement DTW1/2 in support of my Summary Grounds and which is in the bundle for the hearing.

8. The unauthorised works only stopped when Maidstone Borough Council served a Temporary Stop Notice and Enforcement Notice in September 2008 (attached at DP1/3/6).

9. Mr Harrison appealed against the Enforcement Notice and I was granted Rule 6 status in that appeal. The Enforcement Notice was upheld on appeal on 18 May 2015 and the Inspector made a partial award of costs in my favour against Mr Harrison due to his unreasonable behaviour. Those costs were never paid by Mr Harrison and remain outstanding. I attach a copy of some relevant documents on the Inspector's Costs decision (DP1/4/21-38). The Inspector in the enforcement appeal gave Mr & Mrs Harrison 2 years to clear the spoil off site. That period expired in mid 2017. Many years have now passed, and nothing has been done.

10. As a lay person, I find it difficult to keep up with the number of companies that Mr & Mrs Harrison use, and have used, for the ownership of this site.

11. In Paragraph 21 of her Witness Statement Mrs Harrison asserts that if my application for Security for Costs is successful Taytime Limited would be unable to continue with the Claim. I do not believe this is credible for a number of reasons.

12. In her Witness Statement, Mrs Harrison refers to four companies, Taytime Limited, Monk Lakes Limited, Merrymove Limited and Monk Lakes Fishery Limited.

13. In paragraph 25 of her Witness Statement Mrs Harrison states that Merrymove Limited is the parent company of Monk Lakes Limited. In turn in paragraph 26 she states that Monk Lakes Fishery Limited is now running the Monk Lakes fishing complex following Monk Lakes Limited's liquidation. She states that Monk Lakes Fishery Limited is "another group company".

14. Taytime Limited is the owner of the Monk Lakes site. The Companies House website records that Mrs Harrison's husband, Mr Guy Harrison is the controlling shareholder of Taytime Limited. The sole director of Taytime Limited is Mr William Kinsey-Jones.

15. Merrymove Limited is the parent company of Monk Lakes Limited and Monk Lakes Fishery Limited. The Companies House website records that Mr Harrison is the controlling shareholder of Merrymove Limited. Mr Harrison is also a director of Monk Lakes Limited.

16. Mrs Harrison is the sole director of Monk Lakes Fishery Limited and a director of Merrymove Limited.

17. My understanding is, and always has been, that all four companies are ultimately under the control of Mr and Mrs Harrison.

18. The Witness Statement of Mrs Harrison does not contain any information regarding either her or Mr Harrison's financial resources.

19. To the best of my knowledge and belief Mr and Mrs Harrison are very wealthy individuals.

20. Mrs Harrison does not mention Monk Leisure Limited in her Witness Statement. This Company was dissolved following voluntary liquidation on 2 November 2010. Both Mr and Mrs Harrison were directors of this company. Accompanying the Statement of Affairs filed as part of the liquidation, is a signed affidavit from Mr Harrison dated 2 July 2008 which states that Monk Leisure Limited carried on business as "Land tipping site" (DP1/4/40)

21. As set out above the Environment Agency has stated that over 650,000 cubic metres of spoil were dumped on the site. This would have generated a vast amount of money in gate fees for Monk Leisure Limited when they were operating the "Land tipping site".

22. The Enforcement Notice (DP1/3/6) also states that the notice was issued due to the unlawful waste disposal by land raising, generating significant lorry traffic confirming the likely gate proceeds.

23. In addition to the companies mentioned above, Mrs Harrison is a Director of at least a further four companies; Tokara Hampshire Ltd (according to Companies House a company the nature of this business is the letting of own or leased real estate) (DP1/6/45); Dakota Sussex Limited (according to Companies House the nature of this business is "other holding companies not listed elsewhere classified") (DP1/7/49); Honeybridge Limited (according to Companies House the nature of this business is "mixed farming") (DP1/8/53); and Rent Vault Limited (according to Companies House the nature of this business is "Other letting and operating of own or leased real estate" (DP1/9/57). The total balance sheet [of these companies] is over £600,000 (DP1/10/61) but it is important to note that the Company House SIC code is "Other letting and operating of own or leased real estate" so there may be other property assets.

24. Mr Harrison is a Director of One Ladbroke Square Ltd. Mr Harrison's occupation is listed on the Companies House Website as Various Fisheries and Property (DP1/11/65).

25. In Exhibit EH1, Page 30, there is an e-mail from Andrew Miles at Burges Hodgson to Mrs Harrison which states that "Attached the final version of the indemnity for signing and witnessing. This incorporates Taytime and Guy indemnifying Quantuma if any costs should arise".

26. I attach an extract from the BBC Website from 13 March 2005 (DP1/12/67). The article identifies Mr Harrison as the "purple protester" who threw purpose power at the then Prime Minster Tony Blair in the House of Commons as part of a Fathers4Justice campaign. The article identifies Mr Harrison as "a millionaire businessman".

27. I attach a Telegraph press article from 23 October 2005 (DP1/13/69) which refers to Mr Harrison as having "amassed a multi million pound fortune through various business enterprises". It also refers to Mr Harrison's home comprising a "8 bedroom home, man made lake, outdoor hot tub and private swimming pool...tennis court...and a helicopter that can be wheeled out of a glorified garden shed".

28. I attach a further press article from The Argus dated 20 May 2004 (DP1/14/76). The article refers to Mr Harrison as "a millionaire entrepreneur".

29. I attach an article from the Guardian dated 11 July 2007 (DP1/15/78) in respect of the singer James Blunt. Mrs Harrison is Mr Blunt's sister. The article records that Mr Harrison responded to a notice placed by Mr Blunt on eBay seeking help to transport Mrs Harrison to Ireland for a funeral. The article records that Mr Harrison responded to the notice and flew Mrs Harrison to the funeral in his own private helicopter.

30. At the Hearing into the appeal in October 2022, Monk Lakes Limited was represented by Leading Counsel and a professional team of six consultant witnesses with other assistants present. Given that Monk Lakes Limited was in liquidation at the time and the information provided by Mrs Harrison regarding the financial resources of Taytime Limited, I can only assume that the costs of the Hearing and wider appeal process were paid for by Mr and Mrs Harrison. Certainly if the accounts of Taytime and Mrs Harrison's evidence is to be believed it cannot have been Taytime that paid these costs.

31. For comparison purposes I was likewise professionally represented at the hearing by Leading Counsel and (a smaller team) of professional consultants. My costs of this representation were approximately £57,000. It is likely that the Claimant would have incurred much higher costs, being the appellant in the planning appeal and so with more of the work falling on those consultants and having a larger consultant team, which does not suggest any lack of financial resources.

32. In respect of these s. 288 proceedings, the Claimant's pleadings were drafted by Leading and Junior Counsel and London solicitors have been instructed. I also understand that they have also instructed specialist insolvency counsel for the Oral Permission Hearing on 13 June 2023. No information is provided in Mrs Harrison's Statement to explain how this level of legal representation has been funded by Taytime Limited. It is certainly not being funded by MML in liquidation. Again, I can only assume that these legal costs will be met by Mr and Mrs Harrison.

33. It is clear that were the Court to order security for costs the sums would be paid. There is money behind both the planning appeal and these proceedings.

34. I note that Taytime Limited stated in its Claim Form that this claim falls within the scope of the Aarhus Convention. This being a planning case I am told that substantively it would likely be held to be within that definition. However, to obtain such protection the Claimant would have been required to provide full details of the assets and income of the relevant companies as well as any persons supporting the Claimant.

35. I believe that if my application for Security for Costs is not successful and if I were in turn to be awarded my costs (or any part of them) in these proceedings, that the Claimant would ignore the award. Taytime Limited would likely be folded. Indeed, as I have said Mr Harrison has ignored the Enforcement Notice Appeal costs award in my favour in 2015 despite that being an order made against him personally.

36. There are some other matters I must deal with arising from the Claimant's skeleton argument for the Oral Permission Hearing. In not responding to other assertions in the Claimant's skeleton argument I should not be taken to have accepted any of these.

37. In the Claimant's skeleton argument it is said that "Quantuma's statement that MLL has no interest in the Land is different from saying that MLL has no interest in the appeal succeeding. On the contrary, and as explained below, MLL's creditors may well benefit from a successful appeal, because were the appeal to succeed the Liquidator's anticipated realisations would in all probability improve." I have never known this to have been previously suggested in the long history of this matter. It is unsupported by any evidence. I have experience in planning. If planning permission were granted the benefit of this runs with the land. That is land which the liquidators have made clear MML has no interest in. I am therefore baffled by this suggestion.

38. Moreover, there is reference in the skeleton argument to the possibility of the assignment of the planning appeal. I do not understand this. I attended the planning hearing that took place last year. In the oral submissions made it was agreed by all three

Leading Counsel (for Taytime, myself and the Council) that assignment was not possible in respect of an appeal made under s. 78 of the Town and Country Planning Act 1990. This is why as I understood matters those acting for Taytime instead argued that it was an "agent".

39. Finally through my solicitors I have been seeking to ascertain further information regarding the relationship between Monk Lakes Limited, Taytime Limited and Mr and Mrs Harrison. I attach copies of the correspondence sent my solicitors to the Liquidators (DP1/16/80) since I became aware of these proceedings. To date no substantive response has ever been received to these letters.

Statement of Truth

I believe that the facts stated in this statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made a false statement in a document verified by a statement of truth without an honest belief in the truth.

Signed: David Padden

DAVID PADDEN 1 JUNE 2023

From:	James Kon
To:	duncan.beat@quantuma.com
Cc:	emily@sopersfarm.com; amanda.karkocki@quantuma.com
Subject:	Monk Lakes Limited - planning appeal reference APP/U2235/W/20/3259300
Attachments:	image001.png image002.png image003.png

Dear Duncan

I write as the solicitor instructed in connection with the above planning appeal.

As liquidators of Monk Lakes Limited, you entered into an indemnity agreement with Taytime Limited dated 27 September 2021 giving Taytime authority on behalf of Monk Lakes Limited to conduct the planning appeal (APP/U2235/W/20/3259300) in return for various indemnities.

As part of the planning appeal, you had also confirmed in writing to the Planning Inspectorate on 22 September 2021 (at the request of Emily Harrison, who is copied into this email) that: "*Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal*".

As you know, the planning appeal was dismissed in November 2022, and (as you are aware from previous discussions), Taytime has submitted an application to the Court (in its continuing capacity as agent for Monk Lakes Limited in conducting the Appeal) for a statutory review of the appeal decision under s288 Town and Country Planning Act 1990, which is currently proceeding before the High Court as Taytime Limited (as the appointed agent for and on behalf of Monk Lakes Limited) v Secretary of State for Levelling Up, Housing, and Communities (CO/4860/2022).

I am writing to give you formal written notice that the first hearing with regard to the claim has been listed for 13 June 2023 at the Royal Courts of Justice (the time has yet to be confirmed but it is likely to start at 10/1030am). This is not the final hearing into whether the appeal decision was unlawful, but a permission hearing to determine whether or not the grounds of claim are arguable and whether and on what basis the claim should proceed.

You are not required to attend the hearing or take any other steps in relation to this, but you are of course at liberty to attend or instruct legal representatives to attend on your behalf should you wish to do so.

If you require any further information, please do not hesitate to contact me.

Kind regards

James Kon

James Kon
Senior Associate

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IN THE HIGH COURT OF JUSTICE **Claim No. CO/4860/2022**
KING'S BENCH DIVISION
PLANNING COURT

CHALLENGE PURSUANT TO SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

TAYTIME LIMITED
as the appointed agent for and on behalf of
MONK LAKES LIMITED

Claimant

- and –

(1) SECRETARY OF STATE
FOR LEVELLING UP, HOUSING, AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

CLAIMANT'S SKELETON ARGUMENT
for hearing on 13 June 2023

At the time of preparing this skeleton argument, no agreed and finalised paginated bundle of documents was available. A replacement skeleton with final cross-references and essential reading will be provided once such an agreed bundle is available

A. Introduction

1. This claim is plainly arguable. At its heart is whether, following the liquidation of Monk Lakes Limited ("**MLL**") on 15 July 2021, Taytime Limited ("**Taytime**") acted as MLL's agent in pursuing the appeal that MLL had brought. That was a question of law turning on the construction of the letter of appointment dated 22 September 2021.[1]

2. Both the Secretary of State for Levelling Up, Housing, and Communities ("the **Secretary of State**") and Maidstone Borough Council ("the **Council**") accept that the Inspector erred in law and have consented to judgment.[2] Those *were* the only two Defendants, in accordance with CPR PD54D Section V.

3. On 23 January 2023, however, David Padden applied to be joined as a party and filed Summary Grounds of Resistance disputing the validity of MLL's decision to bring

[1] **[4/23]**
[2] **[16/100-112]**

these proceedings as well as resisting the Claim in substance.[3]

4. On 24 March 2023 Lang J joined him as a party to these proceedings and adjourned the question of permission to be determined at an oral hearing.

5. On 20 April 2023 Mr Padden applied for security for costs against the Claimant in the sum of £100,000.[4]

6. The issues falling for determination at the hearing are therefore:

    (1) Whether these proceedings have been validly brought;

    (2) Whether the Claimant's claim is arguable and should be granted permission to proceed; and

    (3) Whether the Claimant should be ordered to pay security for costs in the sum of £100,000.

7. The issues fall to be determined in that order. Specifically, the Court is asked to rule on the validity of these proceedings and the question of permission before hearing argument on Mr Padden's application for security.

8. If the proceedings have been validly brought and are arguable, then the Claimant cannot be ordered to pay security for costs if such an order would stifle the Claimant's claim (see *Goldtrail Travel Ltd (in liquidation) v Onur Air Tasimacilik AS* [2017] 1 WLR 3014 at para. 12 per Lord Wilson JSC with whom Lord Neuberger of Abbotsbury PSC, Lord Hodge JSC (and on this point Lord Carnwath of Notting Hill) agreed).

9. The evidence filed on behalf of the Claimant, which Mr Padden has neither challenged nor produced any evidence to contradict, is that it would.[5]

10. In summary, Mr Padden is pursuing every procedural avenue, however tenuous, to prevent an adjudication on the planning merits of the Claimant's appeal. His arguments, however, are misconceived. The Claimant's claim is more than arguable, as both the Secretary of State and the Council have accepted. It should be permitted to proceed. To

[3] **[17/113-192]**
[4] **[19/192-208]**
[5] **[20/213-214]**

prevent it from proceeding would be wholly contrary to the overriding objective of deciding cases justly and at proportionate cost under CPR 1.1.

B. Factual Background

The Application

11. On 9 December 2011 the Council, as the relevant local planning authority, validated a planning application ("the **Application**") in relation to land at Monk Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("the **Land**").[6]

12. The Land was owned by Taytime, who held an Asset Purchase Agreement for the rights to any planning permission, application, or appeal associated with it.

13. The planning application was made by Mr and Mrs Harrison and MLL, which at that time operated a fishery business on the Land.

14. The application sought part retrospective and part prospective permission for recreational fishing related development.

15. Planning permission was initially granted and the works were largely completed. However, following a claim for judicial review by Mr Padden, the decision to grant permission was quashed by the High Court on 22 January 2014. Both MLL and Taytime, as well as Mr and Mrs Harrison, were Interested Parties in that litigation.

16. The updated Environmental Statement prepared for the redetermination of the Application set out the project team and confirmed that Taytime was responsible for the project management of the Application (volume 1, part A, paragraph 1.13, February 2019).[7]

17. Upon redetermination by the Council on 12 March 2020, officers recommended that planning permission be granted and there were no objections by any statutory consultee. The Application was refused by the Council's planning committee, however, contrary to officer recommendation.[8]

[6] **[5/24]**
[7] **[8/77]**
[8] **[9/79-81]**

The Appeal

18. By appeal notice dated 11 September 2020, MLL appealed against the refusal of planning permission.[9]

19. The appeal form was completed by Pegasus Planning Group Limited ("**Pegasus**") who had been appointed to act in relation to the planning appeal. Because MLL had been an applicant for planning permission, it was the company which brought the appeal.[10] As Mrs Harrison explains in her witness statement, planning appeal forms are completed online and follow a strict pro-forma which directs questions to the person completing the appeal form, using the second person singular. Once an appeal form has been created, the first question asked is "are you the appellant?". Having answered no and given the Appellant's details the form displays a page headed "agent details" which enables the details of one agent to be entered. The form does not enable multiple agents to be identified. It usual for the planning consulted conducting the appeal to provide their details on that page. That is what happened in this case. In accordance with common practice, Pegasus completed the appeal form and entered their own details. This did not mean that they were MLL's sole agent, but rather were the planning consultant dealing with the appeal.[11]

20. From that time until 15 July 2021 Pegasus' fees and those of Counsel instructed by them, James Pereira KC of Francis Taylor Building, were paid by MLL.

Liquidation of MLL and the Appointment of Taytime as Agent

21. On 15 July 2021, MLL filed for voluntary liquidation and Quantuma Advisory Limited ("**Quantuma**") were appointed liquidators for MLL.

22. That being so, in July and August 2021, Mrs Harrison approached Quantuma to discuss whether Taytime could take over conduct of the ongoing appeal.

23. Following discussions, Taytime and William Morgan Edward Kinsey-Jones (a Director

[9] **[10/82-89]**
[10] **[10/82]**
[11] **[20/211-212, 249-251]**

of Taytime) entered into an indemnity agreement with Quantuma[12], by which Taytime and Mr Kinsey-Jones indemnified Quantuma in relation to any costs and expenses of and occasioned by the Appeal or any damages arising therefrom, in consideration of which Quantuma consented to Taytime having conduct of the Appeal at its own expense and agreed to sign, do and permit all documents and things reasonably necessary for that purpose.

24. Having been so indemnified, by a letter dated 22 September 2021 ("the **September 2021 Letter**"), and in exercise of the power under Paragraph 12 of Part III of Schedule 4 to the Insolvency Act 1986, Duncan Beat of Quantuma (in his capacity as liquidator of MLL) appointed Taytime as the agent for MLL in connection with the planning appeal to which these proceedings relate.

25. The September 2021 Letter said:

> *"Further to the liquidation of Monk Lakes Limited on 15th July 2021, and in my capacity as the appointed Liquidator operating under the Insolvency Act 1986, I am writing to appoint Taytime Limited (registered number: 07062161, registered office: Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN) to take over full responsibility for the above-listed planning appeal. Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land."*[13]

26. On 12 October 2021, solicitors acting for Mr. Padden, wrote to PINS drawing attention to the liquidation of MLL.[14]

27. On 17 November 2021 PINS responded with its decision ("the **November 2021 Decision**") on this request, stating as follows:

> *"I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will*

[12] **[20/251-255]**
[13] **[4/23]**
[14] **[12/91-92]**

continue to determine the appeal."[15]

28. The appeal never was withdrawn, nor was any second notification letter ever published in the Gazette.

29. Accordingly, the parties to the appeal (MLL, the Council and objectors including Mr. Padden) all prepared for the appeal hearing which was held on 5 October 2022, with a site visit on 6 October 2022. Also attending the appeal were Mr and Mrs Harrison.

Mr Padden's Objection

30. Three working days prior to the appeal, on 30 September 2022, Counsel acting for Mr Padden submitted a document headed "Procedural Application in Respect of the Appeal" arguing again that the appeal should be dismissed because of circumstances related to the liquidation and Taytime's involvement in it.[16]

31. On the morning of the hearing, the Inspector heard submissions from the three main parties. Mr Padden argued that the appeal should be dismissed for the reasons set out in the procedural application note. MLL and the Council argued that the appeal was valid: it had been lawfully brought by MLL, PINS had already decided the matter, and MLL were lawfully acting as agent appointed by the liquidator.

32. The Inspector indicated that he would not make a decision there and then, but would hear the planning merits evidence and then deal with the matter in his decision letter. The Inspector therefore heard the merits of the appeal and conducted a site visit the following day.

The Decision Letter

33. On 21 November 2022 the Inspector published his decision letter ("the **DL**")[17]. There was no consideration of the planning merits. Instead, the Inspector characterised "the main issue" as being "whether the planning appeal was correctly made and is thus capable of being lawfully determined" (DL2).

[15] **[13/93-94]**
[16] **[14/95-101]**
[17] **[3/19-22]**

34. At DL6 the Inspector said that "MLL is listed on the appellant on the appeal from dated dismissed the appeal form, but this has now been overtaken by events" because "it is clear that the party now pursuing the appeal is Taytime not MLL" and "the appellant is, therefore, not the applicant".[18]

35. On this basis at DL7 the Inspector went on to say that "Consequently, there is no valid appeal capable of being determined" before concluding that, "the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits" (DL9).[19]

C. <u>The Law of Agency</u>

36. Notably absent from Mr Padden's SGR is any attempt to identify, let alone apply, the relevant legal principles in relation to the law of agency. Insofar as relevant to these proceedings the law may be summarised as follows:

    (1) The classic definition of Agency is "the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party" (see *Bowstead & Reynolds on Agency (2nd Ed)* 1-001 para. (1)).

    (2) The basic justification for the agent's power is the unilateral manifestation by the principal of willingness to have his legal position changed by the agent. To this conferral, any contract between principal and agent is secondary and there is no conceptual reason which requires a contract between principal and agent to achieve the creation of power (see *Bowstead & Reynolds* 1-006).

    (3) The relationship of principal and agent may be constituted by the conferring of authority by the principal on the agent, which may be express, or implied from the conduct or situation of the parties, and may or may not involve a

[18] **[3/20]**
[19] **[3/20]**

contract between them (see *Bowstead & Reynolds* 2-001 para. (1)(a)).

(4) The simplest way in which agency arises, both between principal and agent is by an express appointment whether written or oral, by the principal, and acquiescence by the agent, or person similarly empowered to act for the agent (see *Bowstead & Reynolds* 2-028). This is referred to as "actual" authority.

(5) Conferral of authority may be implied in a case where one party has acted towards another in such a way that it is reasonable for that other to infer from that conduct assent to an agency relationship. This represents no more than the obvious proposition that contracts are not always expressly made, but often inferred by the court from the circumstances. Such assent may be implied when the principal places another in such a situation that, according to ordinary usage, that person would understand themselves to have the principal's authority to act on the principal's behalf or where the principal's words or conduct, coming to the knowledge of the agent, as such as to lead to the reasonable inference that the principal is authorising the agent to act for the principal. Substance is more important than form, and there may even be an agency relationship though the agreement creating it purports to exclude the possibility. This is referred to as "implied" authority (see *Bowstead & Reynolds* 2-029 - 2-031).

(6) "The interpretation of both written and oral authority is a matter of law" (see *Bowstead & Reynolds* 2-028). is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties (see *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 502 per Diplock LJ (as he then was)).

(7) The scope of such authority is generally to be construed liberally (see *Pole v Leask* (1860) 28 Beav 562 at 574). Indeed, where authority is conferred in ambiguous terms such that they are fairly capable of more than one construction, an act reasonably done by the agent in good faith which is justified by any of those constructions is deemed to have been duly authorised, even if that construction was not intended by the principal (see *Ireland v Livingston* (1972) LR 5 HL 395 at 416 per Lord Chelmsford).

(8) The conferral of actual authority will be construed to include implied authority to do whatever is necessary for, or ordinarily incidental to, the accomplishment of the object of the principal power (see *Bowstead & Reynolds* 3-022 – 3-023).

(9) Agents are entitled to delegate their authority in whole or in part or to appoint sub-agents with the express or implied authority of the principal (see *Bowstead & Reynolds* 5-009 – 5-011)

D. Issue 1: The Validity of These Proceedings

37. Mr Padden makes two different arguments at paras. 19 – 23 of his SGR[20]:

(1) First, he argues that Taytime is not authorised to bring this claim on MLL's behalf (see SGR para. 19); and

(2) Second, he argued that neither MLL nor its liquidators can lawfully pursue these proceedings.

38. Both arguments would appear properly to be arguments that the Claimant's claim should be struck out as an abuse of process under CPR 3.4(2)(b). No such application has been made.

Taytime's Authority

39. There are two insurmountable hurdles to Mr Padden's argument that Taytime does not have lawful authority to bring this litigation:

(1) Taytime *are* authorised to conduct this litigation on MLL's behalf. The burden of proof lies on Mr Padden to demonstrate the contrary is true, and he has identified no evidence whatsoever capable of discharging that burden.

(2) Even if Taytime were not properly to be regarded as acting as the agent of MLL (which it is) it would still be a "person aggrieved" for the purposes of section 288 of the Town and Country Planning Act 1990 ("the **1990 Act**") such that the question of authority is academic.

[20] **[17/183-184]**

Taytime's Authority from MLL

40. Solicitors who issue proceedings in the name of a company warrant that they are authorised to do so, and the Court proceeds on that basis unless the contrary is shown to be the case. The Court is therefore entitled to assume that proceedings brought in the name of a company are properly authorised unless Mr Padden establishes that they are not. The burden is of proof in that regard is on him (see *Zoya Ltd v Ahmed* [2017] Ch 127 at paras. 66 – 72).

41. Mr Padden has not come close to discharging that burden:

    (1) The Claim Form bearing a Statement of Truth attesting to the veracity of its contents (including the contents of the SFG) was sworn by a solicitor at Asserson, a respected London firm of solicitors. No challenge has been made to the veracity of that attestation.

    (2) MLL has, since 22 September 2021 expressly appointed Taytime to take over full responsibility for the appeal. That authority includes authority to bring the proceedings, not least because such proceedings are ordinarily incidental to the accomplishment of the object of the principal power; namely successfully appealing against the Council's decision to refuse planning permission.

    (3) MLL and its liquidators are well aware of Mr Padden's challenge to Taytime's continued conduct of these proceedings, including specifically the conduct of this Claim pursuant to section 288 of the 1990 Act, not least because Mr Padden has contacted them and sought to apply pressure to them to discontinue these proceedings.[21] That has not happened. On the contrary, MLL has continued to assent to Taytime pursuing these proceedings on its behalf.

    (4) Mr Padden's only substantive submission, namely that statement in the 22 September Letter that "Monk Lakes Ltd (in Liquidation) has no interest whatsoever in this land" amounts to "clear evidence that MLL's liquidators are unlikely to have authorised [Taytime] to issue these proceedings" (SFG para. 19) is fundamentally misconceived.[22] Quantuma's statement that MLL has no interest in the Land is different from saying that MLL has no interest in

[21] A fact which Mr Padden should have drawn to the Court's attention pursuant to his duty of candour.
[22] **[17/126-127]**

the appeal succeeding. On the contrary, and as explained below, MLL's creditors may well benefit from a successful appeal, because were the appeal to succeed the Liquidator's anticipated realisations would in all probability improve.

Taytime's Own Standing

42. Further, and in the alternative, Taytime itself has an interest in the Land and plainly has standing to bring these proceedings. This is a point which was specifically pleaded in the SFG (see paras. 5-6).[23] Thus, even if Taytime, MLL, and Asserson were all mistaken as to Taytime's authority to act as MLL's agent in bringing these proceedings (which they are not) that would be irrelevant. It would not render the proceedings abusive (see *Zoya Ltd* at para. 62). Taytime would be the Claimant and would have standing to bring a claim which it brought in time.

The Company Law and Insolvency Position

43. Similarly, the suggestion that there is no "lawful" authority for Taytime to act as agent is wrong as a matter of company and insolvency law.

44. It is important first to explain the function and powers of liquidators in a winding up (including a creditors' voluntary liquidation):

(1) Upon a winding up, the powers of the company's directors are displaced and their functions are assumed by the liquidator(s). Liquidators take over the functions of the directors as the decision-making body of a corporate entity. They act as the agents of the company: the company's assets do not vest in the liquidators themselves (see *Re Silver Valley Mines Ltd* (1882) 21 Ch. D. 381 CA);

(2) In a creditors' voluntary liquidation, the liquidator's powers are regulated by s. 165 Insolvency Act 1986 ("**IA 1986**"), which are subject to s. 166 IA 1986. In particular, under s. 165(2) IA 1986, the liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4 to the IA 1986;

(3) The powers specified in Parts 1 to 3 of Schedule 4 to the IA 1986 include

[23] **[2/9]**

express powers to:

a. Compromise, on such terms as may be agreed, all questions in any way relating to or affecting the assets or the winding up of the company;[24]

b. Bring or defend any action or other legal proceeding in the name and on behalf of the company;[25]

c. sell any of the company's property by public auction or private contract;[26] and

d. appoint an agent to do any business which the liquidator is unable to do himself;[27] and

(4) There is no requirement (whether under IA 1986 or otherwise) for a liquidator in a voluntary winding up to obtain any sanction (whether of the court or of creditors) before exercising any of the powers contained in Schedule 4;

(5) The exercise by liquidators of their powers is a matter for their commercial judgment, in what they consider to be in the best interests of the company and all those with an interest in its estate – a decision on which the Court will not give directions or generally interfere unless it is a decision that was taken in bad faith or that no reasonable liquidator could have taken: *Re Longmeade Ltd* [2016] EWHC 356 (Ch); [2017] B.C.C. 203 at para. 66;

(6) While it is correct that s. 87(1) (which applies in the case of a voluntary winding up) provides that "*the company shall from the commencement of the winding up cease to carry on business, except so far as may be required for its beneficial winding up*", this is again a matter for the liquidator's own *bona fide* judgment: see *Sealy & Milman: Annotated Guide to the Insolvency Legislation* (25th ed, 2022). Moreover, this only restricts the ability of a company to carry on a "*trading business*" (which trading obviously might increase liabilities): see *Secretary of State for Business, Innovation and Skills v PAG Management Services Ltd* [2015] EWHC 2404 (Ch) at paras. 47-48.

[24] Schedule 4, Part I, Para 3
[25] Schedule 4, Part II, Para 4
[26] Schedule 4, Part III, Para 6
[27] Schedule 4, Part III, Para 12

Company Law

45. If MLL were not in liquidation, there would (and could) be no suggestion that the Court in these proceedings could override any decision of its directors to continue the Appeal and related proceedings. That decision could only be set aside by a successful claim (in the Chancery Division) by somebody with standing to bring it. For example, a member of MLL might in theory be able to obtain the permission of the Court to bring a derivative claim on behalf of MLL against its directors under Part 11 Companies Act 2006 for breach of their statutory duties owed to MLL, and potentially seek an injunction extending to the pursuit of the Appeal as part of those proceedings. However, a third party with no interest in MLL has no standing to interfere in decisions made by its decision-making body, let alone to seek to do so in collateral proceedings in the Planning Court. Indeed, the Planning Court (forming as it does a specialist list within the Administrative Court of the King's Bench Division) has no jurisdiction to consider or determine applications which seek to challenge the actions of a private company on that basis.

Insolvency

46. The position is no different simply because MLL is in liquidation. The Court has no power, absent a successful application by somebody with standing, to interfere in the winding up of MLL or in the exercise by its liquidators of their powers of management. There has been no suggestion that Mr Padden has brought or has any standing to bring such an application (which, in any event, would need to be commenced in the Business and Property Courts of England and Wales (Chancery Division)). The relevant provision which applies in a voluntary winding up is s. 112(1) IA 1986, which permits only the "*liquidator or any contributory or creditor*" to "*apply to the court to determine any question arising in the winding up of a company…*". Again, Mr Padden has no standing to make such an application, and the Administrative Court of the King's Bench Division has no jurisdiction to hear it.

47. Mr Padden's submissions are themselves an abuse of the Court's process. They seek to subvert the statutory scheme which dictates the court's jurisdiction to supervise the lawful operation of corporate entities, whether solvent or in liquidation.

48. Moreover, even if a person with standing under s. 112(1) IA 1986 applied in the Chancery Division and sought to complain (as Mr Padden does) that the liquidators of MLL are in violation of s. 87(1) and that the Court should therefore give some form

of direction to the liquidators, the Court would still be highly unlikely to accede to that application: see *Re Longmeade Ltd* (supra).

49. While the liquidators' decision-making is not strictly relevant given the matters above, it certainly cannot be assumed that it was in "bad faith" for them to authorise the Claimant to pursue the Appeal on behalf of MLL or that no reasonable liquidator could have taken that decision. The Court has repeatedly stressed that it will not normally review the exercise by liquidators of their powers and discretions. The liquidators are not even before the Court in these proceedings to explain their decision-making. Nor (though this is not the proper test) can it safely be assumed that there is no possible benefit to MLL. The Liquidators' Progress Report of 8 September 2022 records (under "Leasehold Land") that MLL's accounts showed leasehold land with a book value of £77,163, which relates to improvements made by MLL on the land which is owned by the Claimant and subject to the Appeal.[28] It is in the context of the Appeal (i.e. that the land "*is subject to an ongoing legal case with the local Council who state that significant remedial works were required*") that no realisations were anticipated: the position might of course be different if the Appeal were successful.

50. Consequently, there can be no proper suggestion (let alone any determination) in these proceedings that the liquidators have not "lawfully" exercised their powers in connection with the Appeal and these proceedings.

Conclusion on Issue 1

51. Mr Padden's submissions are a characteristically arid attempt to conjure a legal impediment to these proceedings where none exists. The proceedings are not abusive and the Court should proceed to determine the question of permission.

E. Issue 2: The Inspector's Legal Errors

52. The Secretary of State accepts that the Inspector erred in law and concedes that the DL should be quashed, as does the Council.

53. This is only a permission hearing, however, and all the Claimant must show is that the Inspector arguably erred in law. In circumstances where the Secretary of State accepts

[28] **[21/280-298]**

that an error has been made, the Court should be extremely slow to find that the Claimant's claim is unarguable.

54. On the contrary, it is more than arguable that the Inspector erred as follows:

Validity of the Appeal

55. The Inspector erred in concluding that "the appeal was not correctly made" and "is not capable of being lawfully determined" (see DL2, DL7, and DL9).[29] In reaching that conclusion he failed to recognise the critical distinction between an appeal which was never validly made (and cannot be determined) and an appeal which was validly made (and accepted as such by PINS) but in which another party contends that the individual pursuing that appeal does not have the power to do so.

The DL

56. In dismissing the appeal, the Inspector:

(1) Identified the main issue as requiring him "to establish whether the planning appeal was correctly made and is thus capable of being lawfully determined" (DL2).

(2) Held that "the appellant is, therefore, not the applicant and that "consequently, there is no valid appeal capable of being determined" (DL6-7).

(3) Concluded that "the planning appeal was not correctly made and thus is not capable of being lawfully determined under section 78 of the Act, irrespective of the planning merits" (DL9).

Submissions

57. It is more than arguable that that analysis was legally erroneous. The Inspector's analysis is obviously wrong in law and it is unsurprising that the Secretary of State has consented to judgment.

58. Section 78 of the 1990 Act provides that "the applicant may by notice appeal to the Secretary of State". The procedure for giving such notice is prescribed by Articles 36 and 37 of the Town and Country Planning (Development Management Procedure)

[29] **[3/19-20]**

(England) Order 2015. The statute restricts the person empowered to bring an appeal by giving such notice to the applicant.

59. The appeal was made by MLL on 11 September 2020 (see DL6). It was MLL who paid Pegasus' fees and those of counsel in relation to bringing and prosecuting that appeal until July 2021. It was not until 15 July 2021, some 10 months after the appeal was made, that MLL filed for liquidation.

60. In those circumstances, there could never have been any issue as to whether the appeal had been properly or correctly made. Indeed, Mr Padden itself made that point stating "there can be no issue but that this appeal was made by MLL".[30]

61. That appeal was never withdrawn (as the Inspector himself recognised at DL7).

62. In those circumstances, it was impossible for the Inspector lawfully to conclude as he did that the appeal was "not correctly made" (DL9) and/or that there was "no valid appeal capable of being determined" (DL7).

63. In reaching those conclusions, the Inspector erred in that he misinterpreted section 78 of the 1990 Act, which restricts the person who may by notice bring an appeal and/or acted irrationally in that he proceeded by flawed logic, reached a conclusion contrary to all of the evidence, the agreed position between the parties, and/or made a decision which did not add up.[31]

64. Mr Padden's attempt to resist this ground is untenable, not least given that the Secretary of State accepts that the Inspector's approach in this regard was erroneous. He argues at SGR para. 29 that the Inspector did not mean to say the appeal was not correctly made, invalid, and incapable of determination (despite that being precisely what he said at DL2, 7 and 9) because he also said at DL4 that MLL still exists and could "in principle" pursue the Appeal and/or because even if the Inspector did err, his error was immaterial. Both arguments are hopeless:

    (1) *First*, Mr Padden's interpretation of the DL is not the interpretation adopted by the SoS himself. Nor is it what the DL says. Whilst decision letters must be

[30] **[14/96]**

[31] See *Parkhurst Road Ltd v Secretary of State for CLG* [2018] EWHC 991 (Admin) per Holgate J. at para. 106; *Pearce v Secretary of State BEIS* [2021] EWHC 326 (Admin) per Holgate J. at para. 127, *R (Keegan) v Sutton LBC* (1995) 27 HLR 92 per Potts J. at 100A, and *R v Parliamentary Commissioner for Administration, ex p Balchin* [1998] 1 PLR 1, 13E-F per Sedley J (as he then was))

read in a reasonably benevolent manner, there are limits to that approach and a DL cannot be re-written or made to mean something it does not say. The DL is clear, and indeed says repeatedly, that the reason for dismissing the appeal was that it was "not correctly made" and that in those circumstances "there was no valid appeal capable of being determined". Those words cannot be read as saying that the appeal was correctly made and that there was a valid appeal capable of being determined, but that appeal has not been pursued by anyone. At the very least, they arguably give rise to a substantial doubt that the inspector erred in law (see *South Bucks v Porter (No 2)* [2004] WLR 1963 at para. 36).

(2) *Second*, Mr Padden ignores the fact that, once it is recognised that the appeal was validly made and was capable of being determined, the question of whether or not Taytime was acting as agent for MLL was not and could not have been dispositive of the appeal, since:

a. The statute restricts who may bring the appeal by notice, not who may pursue it. There is nothing in section 78 of the 1990 Act to prevent a validly brought appeal being assigned to another party (see by analogy *Muorah v Secretary of State* [2023] EWHC 285 (Admin) at paras. 50-55 which in the context of section 289 appeals suggests that statutory appeals under the 1990 Act may be assigned). It now appears from SGR para. 36(1) that Mr Padden's position is that that is what happened in this case. Were that correct it would not have provided a lawful basis for dismissing the appeal, had the Inspector not erred as identified above.

b. Even if Taytime's actions in pursuing the appeal were a nullity because they had not been appointed by MLL to act as its agent or assigned its cause of action (which is not accepted), that still would not have provided a lawful basis for dismissing the appeal. The liquidators had not suggested that they did not have any interest in the outcome of the appeal (as opposed to in the Land itself). On the contrary, their letter PINS on 22 September had made clear that they intended that it be pursued by Taytime who were "best placed to manage that process". The Inspector himself is clear that he did not understand this to involve

MLL withdrawing the appeal (see DL7). In circumstances where PINS had stated expressly to MLL and its liquidators following that Letter that "the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the inspector will continue to determine the appeal"[32] Had PINS changed its mind and determined that Taytime's actions were not effective to pursue the appeal, the least that it was required to do was to notify the liquidators and seek their confirmation as to whether or not they wished to proceed with the appeal or withdraw it. Any other approach would have been procedurally unfair (see the principles in *Bounces Properties Limited v Secretary of State* [2022] EWHC 735 (Admin) at para. 32).

c. Mr Padden's argument at SGR para. 35 that MLL could not have pursued the appeal is unarguable as a matter of company and insolvency law, for the reasons set out above in relation to the validity of these proceedings.

65. For these reasons permission should be granted on this issue.

Misconstruction of the 22 September Letter

66. The Inspector misconstrued the 22 September Letter which, on its proper construction, appointed Taytime to act as its agent in relation to the Appeal.

67. Contrary to Mr Padden's submission at SGR para. 36, the construction of that authority is a matter of law and not a question of judgment (see *Bowstead & Reynolds* 2-028 and *Freeman & Lockyer v Buckhurst Park Properties* at 502).

68. Applying the principles identified above, the test is whether, according to ordinary usage, a person in the position of Taytime would reasonably have understood the 22 September Letter to mean that MLL had given Taytime authority to act on MLL's behalf in relation to the Appeal.

[32] **[13/93-94]**

69. Once the above is understood, the hopelessness of Mr Padden's submission becomes apparent. It is at the very least arguable that the Inspector's construction of the 22 September Letter was erroneous:

(1) The 22 September Letter expressly "appoint[ed] Taytime…to take over full responsibility for the above-listed planning appeal". The use of the word appoint was deliberate. It is a clear reference to the power under Paragraph 12, Part III of Schedule 4 to the IA 1986 to appoint an agent to act for a company in liquidation. The use of the word "appoint" thus carries a specific meaning in an insolvency context, and is to be construed accordingly, according to custom and ordinary usage. In those circumstances, the natural and ordinary meaning of the words used in the 22 September Letter is plainly that MLL assents to Taytime acting on MLL's behalf in relation to the appeal.

(2) This is re-enforced by the following paragraph, in which Quantuma describe ML as being "best placed to manage that process from this point forward". Reference to 'managing the process' clearly carries with it the sense that MLL are permitting Taytime to conduct the appeal on its behalf. It would be nonsensical to refer to the ongoing management of the process if, instead, Quantuma were intending to discontinue the appeal on behalf of MLL.

(3) These arguments apply *a fortiori* given the liberal construction normally given to the construction of documents conferring authority to act as agent (see *Pole v Leask* at 574). To the extent that there is any ambiguity, this should be resolved in Taytime's favour. Given there is no suggestion of Taytime acting unreasonably or in bad faith, all Taytime need show is that the construction of the 22 September Letter they relied upon was one of which the Letter is fairly capable of bearing (see *Ireland v Livingston* at 416). Plainly, the words identified above are fairly capable of being read as authorising Taytime to act as MLL's agent in conducting the appeal.

(4) To the extent that it is necessary to consider them, and noting that they were not before the Inspector, this construction of the 22 September Letter is also supported by the other relevant facts and circumstances, including the correspondence between Quantuma and Taytime and the Indemnity. Specifically:

a. The correspondence in relation to the terms of the 22 September Letter which makes clear that the use of the word "appoints" was deliberate.[33]

b. Correspondence which makes clear Taytime and MLL (together with its Liquidators) understood MLL could at any time withdraw the appeal but permitted it to continue.[34]

c. The fact that the Liquidators required Taytime and its director to enter into an indemnity agreement indemnifying the Liquidators in relation to all of the costs and expenses of and occasioned by the Appeal or any damages arising therefrom in consideration for the Liquidators' consent to Taytime "having conduct of the Appeal at its own expense" and agreeing "to sign, do and permit all documents and things reasonably necessary for that purpose". Were MLL and its Liquidators not assenting to Taytime acting on its behalf in relation to the appeal no indemnity would have been required (because MLL and its Liquidators would not have been liable for them) and no agreement to sign, do and permit all documents and things reasonably necessary for that purpose would have been needed, because MLL would not have been pursuing the Appeal.

(5) This construction is also supported by the validation principle. The Court should prefer an interpretation of the 22 September Letter that renders the authority it granted to pursue the appeal valid rather than void (see *DB Symmetry Ltd v Swindon BC* [2022] UKSC 33 at para. 23). That is especially so in circumstances where there is no evidence that MLL ever intended to withdraw the appeal (c.f. DL7).

(6) The fact that MLL said that it had no interest whatsoever in the Land does nothing to change this interpretation. As already explained, that statement is not the same as saying MLL had no interest in the outcome of the appeal. Mr Padden's arguments regarding the company and insolvency law position are legally and factually misconceived, for the reasons already given.

70. It is at least arguable, therefore, that the Inspector misconstrued the 22 September

[33] **[20/219]**
[34] **[20/222, 227, 229, 231]**

Letter and permission should be granted on this issue.

Material Considerations/ Irrationality/ Reasons

71. Further, and in the alternative, the Inspector's conclusions in relation to the question of whether Taytime was acting as MLL's agent in relation to the Appeal, in that the Inspector proceeded by flawed logic, reached a conclusion contrary to all of the evidence, the agreed position between the parties, and/or made a decision which did not add up.

72. There are numerous indications in the DL that the Inspector fundamentally misunderstood the relevant law, acted irrationally, and/or at the very least, gave reasons which give rise to a substantial doubt that the inspector erred in law (see *South Bucks v Porter (No 2)* at para. 36).

73. In particular, DL5 suggests a fundamental misunderstanding regarding the ability of agents to sign documents on behalf of their principal and to appoint sub-agents:

    (1) As to the former, it is well established that under English law, even where an agent is appointed orally he may sign documents which are required to be in writing on behalf of his principal, whether that principal is disclosed or undisclosed (see *Bowstead & Reynolds* 2-036 – 2-037). The Inspector's suggestion that the fact that Taytime signed the SoCG rather than MLL suggests that Taytime was not acting as MLL's agent is irrational. On the contrary, if Taytime were MLL's agent then signing the SoCG on MLL's behalf is exactly what one would have expected them to do.

    (2) As to the latter, it is wrong to suggest (as the Inspector does at DL5) that because "the appointed agent is Pegasus Group" because they were the planning consultant identified as agent on the appeal form and other supporting documents:

        a. Pegasus were appointed by MLL prior to its liquidation and it is that which is reflected in the appeal form.

        b. The Inspector's approach betrays a failure to comprehend that an agent may, as a matter of general law, appoint further persons to act (see

Bowstead & Reynolds at 5-009 – 5-011). As companies both MLL and Taytime can only act through their Directors/ Liquidators, who necessarily have the power to appoint sub-agents.

74. Overall, there is nothing in the DL rationally capable of explaining why the Inspector concluded that the 22 September Letter was incapable reasonably of being understood by Taytime to mean that MLL had given Taytime authority to act on MLL's behalf in relation to the Appeal.

75. The Claimant's submissions on this argument are again, at least arguable, and permission to proceed should be granted.

Legitimate Expectation

76. Further, and in the alternative, both MLL and Taytime had a legitimate expectation that the appeal would proceed to be determined on its merits as a result of the November 2021 Decision.

77. PINS statement that it could "*confirm that [having considered the status of the appellant company] unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal"* was clear, unambiguous, and devoid of relevant qualification. It created a legitimate expectation that the appeal would be regarded as continuing.[35]

78. The legitimate expectation that the appeals were validly proceeding was relied upon by Taytime and others (including Taytime, MLL, and their directors).

79. Had PINS stated in November 2021 that it was treating MLL's liquidators as having withdrawn or otherwise discontinued the appeal, the liquidator's decision to take such action (i.e. to withdraw or otherwise discontinue the appeal) would have been liable to challenge under section 168(5) Insolvency Act 1986 by a person "aggrieved" by that decision. On such a challenge, the court has power to "*confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just*". Had PINS found in November 2021 that the September 2021 Letter had the effect of

[35] **[13/93-94]**

withdrawing the appeal (despite the clear intention to the contrary), the liquidators' decision to withdraw the appeal could (and in all likelihood would) have been challenged.

80. Mr Padden's response to this ground at SGR paras. 39 – 41 does not withstand scrutiny. It falls well short of demonstrating that the Claimant's submissions are unarguable:

    (1) As to SGR para. 39 – 40, the words used by PINS *were* clear, unambiguous and devoid of relevant qualification. They referred specifically to "the status of the appellant company" having been considered and indicated that the Inspector "*will*" continue to determine the appeal unless withdrawn (or the 'Second' notification letter is published in the Gazette). PINS' assurance was unambiguous, the Appeal would continue to be determined absent either of the two events identified. The word "continue" does not suggest anything to the contrary. Mr Padden is forced to seek to imply into PINS' email the words "for the time being" (SGR para. 40). Those words were not used and cannot properly be implied, being as they are wholly inconsistent with what was actually said, which identified to specific circumstances in which the appeal would not continue (withdrawal of publication of the Second notification letter) neither of which took place.

    (2) SGR para. 41 is yet another attempt improperly to challenge the lawfulness of the decision-making of a private company in public law proceedings. For the reasons already given, those submissions are legally and factually misconceived, and the argument is, in any event, one which cannot be made in this Court.

81. Thus, whilst the Secretary of State and the Council have <u>not</u> indicated they will consent to judgment on this issue, it is at least arguable that the DL breached that legitimate expectation and no justification for that breaching of legitimate expectation has been provided. That is unlawful and permission should be granted.

F. <u>Security for Costs</u>

82. The question of Security for Costs falls to be considered following the decision on the Claimant's application for permission.

Principle

83. If permission is granted, the Claimant cannot be ordered to pay security for costs if such an order would stifle the Claimant's claim (see *Goldtrail Travel Ltd* at para. 12 per Lord Wilson JSC).

84. The Claimant has provided evidence, in the form of the Witness Statement of Emily Harrison, which candidly sets out the financial position of MLL, Taytime and its director, as well as MLL's parent company Merrymove Limited and Monk Lakes Fishery Limited. As is apparent from this evidence, and as Mrs Harrison expressly states at para. 27, having to pay security for costs in the sum of £100,000 would make both Taytime and Monk Lakes Fishery Limited's operations entirely unsustainable, such that continuing with the proceedings would become impossible and the claim would be stifled. Mr Padden has not challenged that evidence, sought any further information or clarification, or otherwise produced any evidence to rebut it. That is in circumstances where he expressly reserved the right to do so.[36]

85. Making an order for security in the sum of £100,000 would thus be unjust and contrary to the overriding objective under CPR 1.1.

86. That is especially so in circumstances where the Secretary of State has consented to judgment. It is unthinkable that the Secretary of State would have sought an order for security in that sum. The irony of Mr Padden's approach of seeking to be joined to the proceedings and then applying for security is that the Claimant is in a worse position than if the Secretary of State had not consented.

Quantum

87. Further, and in the alternative, if an order for security were to be made, the quantum of security sought by Mr Padden is wholly unreasonable:

    (1) The combined fee of £80,000 for a 2 hour oral permission hearing and (at most) a one day substantive hearing (£35,000 for a permission hearing and 45,000 for a final hearing) is obviously disproportionate and unreasonable.

    (2) The fee of £35,000 for attendance at a 2 hour oral permission hearing is

[36] **[19/203]**

especially objectionable. Moreover, those costs are irrecoverable absent exceptional circumstances, of which there are none in this case (see *Mount Cook Land Ltd v Westminster CC* [2004] 2 Costs LR 211 at para. 76). There is no justification for including them within the sum of security sought.

(3) This is not a case which requires or otherwise justifies representation by leading counsel. Mr Padden has experienced junior counsel instructed who would be perfectly capable of presenting arguments in this matter. Indeed, the Claimant will be represented at the permission hearing and the final hearing by junior counsel only. Whilst Mr Padden may choose to instruct leading counsel, it is not reasonable or proportionate to require the Claimant to pay for that representation.

(4) The costs referred to by Mr Padden are generally inflated. To give just one example, the £5,490 of solicitor's fees <u>in addition</u> to the £6,500 of counsel's fees for acknowledging service are unreasonable. The exercise of preparing an acknowledgment of service should not require significant work (see *Davey v Aylesbury Vale DC* [2008] 2 All ER 178 at para. 13). In a case of this nature, claiming £14,663 for acknowledging service is disproportionate and unreasonable.

88. £100,000 is not a reasonable sum to seek by way of security. Indeed, Mr Padden's tactic of seeking security for costs in a disproportionate and unreasonable sum is characteristic of his approach to this litigation, which is to seek to prevent the merits of the Claimant's arguments being heard.

G. <u>Conclusion</u>

89. For the reasons set out above, the Claimant/ Appellant seeks an order:
    (i) Granting permission for statutory review pursuant to section 288 of the 1990 Act;
    (ii) Dismissing Mr Padden's application for security for costs; and
    (iii) For costs.

CHARLES STREETEN
CHANTELLE STAYNINGS
30 May 2023

IN THE HIGH COURT OF JUSTICE **CO/4860/2022**

KING'S BENCH DIVISION

PLANNING COURT

BETWEEN:

TAYTIME LIMITED
(as appointed agent for and on behalf of MONK LAKES LIMITED)
Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) MR DAVID PADDEN

Defendants

SKELETON ARGUMENT

ON BEHALF OF

THE FIRST DEFENDANT

For Permission Hearing on 13 June 2023

INTRODUCTION

1. Before the Court is an application for judicial review, adjourned into Court by Lang J, pursuant to an order dated 24 March 2023.

2. As developed below, the Secretary of State accepts the Claimant has established an (at least arguable) error of law on Ground 2. Accordingly, the Secretary of State accepts the claim should be granted permission on that basis.

3. The Secretary of State appears to assist the Court explain the basis of his concession and accordingly files this skeleton in line with the order of Lang J.

SUBMISSIONS

4. These proceedings concern an application for leave to bring planning statutory review proceedings pursuant to s.288 Town and Country Planning Act 1990. Within that claim the Claimant seeks an order quashing the decision of the 1st Defendant ("Secretary of State") to dismiss a planning appeal, brought pursuant to s.78 Town and Country Planning Act 1990.[1]

5. The original planning application, which gave rise to that appeal, sought permission for the retention of two lakes known as Bridges and Puma and works to create three additional lakes, all for recreational fishing, together with the erection of clubhouse building and associated works and landscaping.

6. The Inspector dismissed the appeal concluding not on its merits, rather because he found the appeal was no longer being pursued by the applicant for planning permission, Monk Lakes Ltd and therefore fell outside s.78 of the 1990 Act.

7. The Claimant contends that decision was unlawful on three grounds:

    a. Ground 1: the Inspector had no jurisdiction to make that decision as he was precluded from doing so by operation of s.284(1)(f) Town and Country Planning Act 1990.

    b. Ground 2: (i) the Inspector made an error of law to conclude that the appeal was not correctly made and (ii) was in error to find Taytime Ltd were not acting as Monk Lakes Ltd's agents.

    c. Ground 3: the Inspector acted in breach of a legitimate expectation arising on 17 November 2021 that the appeal would be allowed to proceed.

[1] CB/19.

8. The Secretary of State accepts that the Inspector failed to supply adequate reasons for his conclusion that Taytime Ltd was not acting as the appointed agent for Monk Lakes Ltd (the applicant for planning permission).

9. In any event, even if the Inspector were correct that Taytime Ltd was not the appointed agent for Monks Lakes Ltd (in-spite of its submissions to the contrary), there remained a valid appeal made by Monks Lakes Ltd, which had not been withdrawn, and which remained an active company at the point of the decision. The Inspector failed to supply any reasons for dismissing the appeal on its merits.

10. The Secretary of State therefore accepts the claim should be allowed on Ground 2 and the decision quashed on that basis.

11. The Secretary of State does not however agree that the claim should be quashed on Grounds 1 or 3.

12. As to Ground 1, the decision on 17 November 2021 that Taytime Ltd was pursuing a valid appeal, was not a decision *"disposing on an appeal"* and therefore falls outside s.284(3)(b) Town and Country Planning Act 1990, see: ***Co-operative Retail Services Ltd v Secretary of State for the Environment*** [1980] 1 WLR 271, as applied to the 1990 Act by Holgate J at ***London Historic Parks and Gardens Trust v SSHCLG*** [2021] JPL 580.

13. As to Ground 3, the 17 November 2021 decision not amount to a promise which was *"clear, unambiguous and devoid of relevant qualification",* cf**. *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No.2)*** [2009] 1 AC 453 at [60]. The communication made clear the Inspector would continue to determine the appeal and, within that determination, the Inspector was at liberty to conclude the appeal was not being made by a valid appellant.

14. However, given the concession that the error identified in Ground 2 alone necessitates the quashing of the decision letter, it would not further the overriding objective to require the Court to consider Grounds 1 and 3.

CONCLUSION

15. The Secretary of State accepts the Claimant has established an error of law on Ground 2 but does not accept Grounds 1 and 3 are arguable. He appears to assist the Court to determine whether to grant permission.

ASHLEY BOWES

CORNERSTONE BARRISTERS
2-3 GRAY'S INN SQUARE
LONDON, WC1R 5JH

6 June 2023

Claim No: CO/4860/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
BETWEEN:

TAYTIME LIMITED[1]

Claimant

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) MAIDSTONE BOROUGH COUNCIL

(3) DAVID PADDEN

Defendants

THIRD DEFENDANT'S SKELETON ARGUMENT
For a permission hearing on 13 June 2023

References	• *In the form [#] are to page numbers in the Hearing Bundle* • *In the form SFG§ are to paragraph numbers in the Claimant's Statement of Facts and Grounds [**8-18**]* • *In the form SGR§ are to paragraph numbers in the Third Defendant's Summary Grounds of Resistance [**176-192**]* • *In the form CSk§ are to paragraph numbers in the Claimant's Skeleton Argument* • *In the form DL§ are to paragraph numbers in the Inspector's Decision Letter [**19-22**]*
Suggested reading:	• *Pleadings **[8-18 -176 -192]** and Chronology (attached)* • *The Detailed Statement of Facts and Grounds at §§1 – 16 in one of the Third Defendant's previous judicial review proceedings in this matter* • *Inspector's Decision Letter [**19-22**]* • *The Third Defendant's "Procedural Application" in the planning appeal **[95-101]*** • *Liquidators' Letter 22.00.21 **[23]*** • *Indemnity Agreement [**278-281**]* • *Witness Statement of Mr David Padden [**345-349**]* • *Witness Statement of Mrs Emily Harrison and exhibits [**235-274**]* • *Third Defendant's application for Security for Costs [**200-203**]*
Time Estimate	• *The parties indicated 3.5 hours were needed; the hearing has been listed for 2.5 hours*

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[1] The claim form, the Claimant's Statement of Facts and Grounds and in its skeleton the title of the proceedings is states as "*TAYTIME LIMITED (as the appointed agent for and on behalf of MONK LAKES LIMITED)*." This is in issue for the purposes of this hearing: see below.

A. INTRODUCTION

1. The Third Defendant ("**Mr Padden**") was granted permission to be added as a defendant to this claim by order of Lang J, dated 24.03.23 [**193**]. He seeks an order: (i) refusing permission to bring this claim for judicial review on the grounds that Taytime Limited ("**Taytime**") does not have the lawful authority to bring the claim and/or that is unarguable; and/or (ii) that the Claimant be required to provide him with security for costs ("**SfC**") in the sum of £100,000[2].

2. The Claimant has identified three issues which it says fall for determination at this permission hearing. These are adopted for the purposes of this skeleton argument. Three points, though, need to be made at the outset.

3. First, the Claimant's skeleton is entirely unclear about who the claimant really is. It refers to "*the Claimant*", "*MLL*" and "*Taytime*" separately. This skeleton has of necessity adopted this. But the refusal of the claimant – whoever they may be - to pin their colours to the mast (i.e. is Taytime the Claimant or is it MLL) is noted. This is also relevant to the SfC application which is pleaded in the alternative: see below.

4. Second, much is made by the Claimant of the fact that the First and Second Defendants have consented to judgment in this claim (CSk§§2, 10, 57). However:

    a. That consent was given on very limited grounds only. It was restricted to Ground 2 and even then only to an admission that the Inspector had failed to give sufficient reasons for his decision. There was no admission that there was any defect in the Inspector's underlying reasoning or conclusions [**111**].

    b. It does not follow from this that the court should conclude that this claim is arguable. There are numerous examples of the Secretary of State consenting to judgment and other Defendants/Interested Parties nevertheless going on to successfully defend his decisions: e.g. ***Wychavon DC v SSCLG*** [2009] PTSR 19.

    c. Since the First and Second Defendants consented to judgment, new evidence has emerged with undermines the Claimant's case on Ground 2, in particular

[2] See the Application for Security for Costs dated 25 April 2023 **[195-234].** Mr Padden has also made an application to be given permission to rely on his witness statement made in response to that of Mrs Harrison **[340-342].**

the indemnity agreement and correspondence that are exhibited to Mrs Harrison's witness statement and discussed further below [**242-281**].

5. Third, in respect of the chronology of Mr Padden's involvement in this case, it should be noted that:

   a. Mr Padden was not notified about or made a party to this claim at the point it was issued, which he plainly should have been given his obvious interest in it[3]. Accordingly, he has had to seek permission to be added as a party.

   b. At that point (on 24.01.23), Mr Padden sought disclosure of highly relevant documents and information (SGR§43 [**191**]). Despite repeated chasing by Mr Padden's representatives [**325-334**], nothing was provided until Mr Padden was served with Mrs Harrison's statement on 10.05.23. As confirmed in correspondence, Mr Padden is proceeding on the basis that Mrs Harrison's statement contains *all* the material which is relevant to his request [**335-338**]. This is important because there is a conspicuous absence of any documents confirming that Taytime has the authority to issue these proceedings on behalf of MLL.

   c. Contrary to what is said at CSk§§9 & 84, Mrs Harrison's evidence is not "*unchallenged*" or "*uncontradicted*". Mr Padden reserved the right to reply to such evidence at [**203**] and indeed has done so as soon as reasonably practicable: see Mr Padden's statement and his application to rely on it [**340-432**].

B. BACKGROUND

6. The Claimant seeks permission to bring a statutory review of the decision of an Inspector appointed by the First Defendant ("**the Inspector**") to dismiss planning appeal reference APP/U2235/W/20/3259300 ("**the Appeal**") in relation to land at Monks Lakes, Staplehurst Road, Marden, Kent, TN12 9BS ("**the Site**").

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[3] See SGR §2 at **[177]** "*the Appeal included an application for retrospective planning permission for what can only be described as one of the largest breaches of planning control in the history of the planning system. Mr Padden's home is directly and significantly affected by this breach. The Inspector's decision which is the subject of this challenge was made in direct response to a procedural application which was made on behalf of Mr Padden*" (emphasis added).

7. The background to this challenge as set out at CSk§§11-35 is incomplete to the point of being misleading. In particular, the Claimant completely (and conveniently) ignores the nature of the development which was the subject of the Appeal and its effect on Mr Padden. It is no exaggeration to describe this development as one of the largest breaches of planning control in the history of the planning system. The development was described by a Deputy High Court judge (in previous judicial review proceedings relating to this matter)[4] as follows [**39-40**]:

> *The unauthorised works took place between 2003 and 2008 and involved the importation of very large amounts of construction waste material including glass, plastic and asbestos. The Environment Agency has estimated that about 650,000 cubic metres of waste material were deposited on the land between March 2003 and January 2008 with even more since. The material was formed into, amongst other things, massive 8 metre high retaining bunds close to neighbouring residential properties including Hertsfield Barn.*

8. The Judge went on to find several additional facts to be "*agreed or not much in dispute*" including: (i) that the Site had been acquired in 2008 by Emily and Guy Harrison and Monk Lakes Limited ("**MLL**") who "*continued, and intensified, the unauthorised works*" (§5); and (ii) that "*there is expert and circumstantial evidence that the unauthorised works and in the deposition of vast quantities of waste as part of them, have had damaging effects on Hertsfield Barn, including causing groundwater flooding*" (§6). Mr and Mrs Harrison have a long connection with the Site via a continually changing web of companies under their control, including Taytime and MLL [**346-347**]. Words alone do not do justice to the scale of the unlawful works or their effect on Mr Padden, who is the owner and occupier of Hertsfield Barn[5], and pictures have been provided at [**122-125**]. The Second Defendant ("**the Council**") eventually, after the dumping of hundreds of thousands of tonnes of waste material, issued both a stop notice and an enforcement notice in respect of the unlawful development in 2008 [**355-364**]. By that time there was a continual stream of lorries delivering waste to the site all day long and paying gate fees to deposit the waste on the site. An appeal against the enforcement notice brought by Mr Harrison was then eventually dismissed by an Inspector appointed by the Secretary of State on 18 May 2015. The effect of this was that the enforcement notice should have been complied with and

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[4] ***R (Padden) v Maidstone BC*** [2014] Env LR 20, per HHJ Mackie KC (sitting as a High Court Judge) at §4.

[5] A number of Mr Padden's neighbours have been similarly affected. A number of them attended and spoke at the planning appeal **[21]**.

the unauthorised development removed from the site by no later than 18 May 2017. But the enforcement notice, as upheld by the Inspector, has never been complied with [**346**]. Mr Harrison was ordered to pay costs to both the Council and Mr Padden because of his unreasonable behaviour on that appeal **[376-381]**.

9. This is the background to what the Claimant rather euphemistically calls an application for "*part retrospective and part prospective permission for recreational fishing related development*" (CSk§14). This application ("**the Application**") itself has a long history, which includes a successful previous judicial review claim, brought by Mr Padden. The Application was made by MLL [**24**] and refused by the Council [**79-81**]. This is unsurprising because, as EIA development, retrospective permission can only be granted in exceptional circumstances: ***R (Padden) v Maidstone BC*** [2014] Env LR 20, §56. Thus, when the Claimant accuses Mr Padden of pursuing a "*characteristically arid*" challenge (CSk§51) and of seeking "*to prevent an adjudication on the planning merits*" of the Application (CSk§§10 7 88), nothing could be further from the truth. Indeed, Mr Padden made full argument on the planning merits of the Application during the course of the Appeal. It just so happens that the Appeal was (rightly) dismissed on other grounds.

The Appeal

10. MLL appealed against the Council's refusal on 11.09.20 [**82**]. The Appeal form also recorded that the Pegasus Group had been appointed as MLL's agent for the purpose of the Appeal and made no reference to Taytime [**82**]. On 15.07.21, MLL filed for voluntary liquidation. MLL appointed Duncan Beat and Andrew Watling of Quantuma Advisory Ltd ("**the Liquidators**") to act as liquidators of the company [**90**]. Following the appointment of liquidators (and presumably in response to concerns raised by PINS)[6] the liquidators wrote to PINS on 22.09.21 ("**the Liquidators Letter**") to state [**21**]:

> *I am writing to appoint Taytime Limited…to take over full responsibility for the above-listed planning appeal. Taytime Limited owns the land to which the original planning application and subsequent appeal relates, and I am satisfied that it is best placed to manage that process from this point forward as Monk Lakes Ltd (In Liquidation) has no interest whatsoever in this land. The representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party*

[6] Mr Padden was not privy to all of the correspondence between PINS and MLL in relation to this matter. However, Mrs Harrison's email of 03.09.21 [**257**] suggests that PINS sought further information in relation to the position of the liquidators at that time and that this request generated the letter from the liquidators on 22.09.21 [**23**].

that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal and they have an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land

11. It is now clear from Mrs Harrison's statement that, shortly after this letter was sent (on 27.09.21), the Liquidators entered into an indemnity agreement with Taytime ("**the Indemnity Agreement**") [**278-279**].[7] The Indemnity Agreement has only very recently been disclosed by Taytime. It was evidence that should clearly have been produced at the planning appeal, when Mr Padden raised the issue of Taytime ability to pursue the appeal. It should also have been included in the claim bundle for these s. 288 proceedings given the requirements of the duty of candour. The following paragraph in the *"BACKGROUND"* to the Indemnity Agreement is important and (conspicuously) not mentioned by the Claimant in its very brief summary at CSk§23 but is worth citing in full. It states [**278**]:

(E) On the basis the planning application should have been in the name of Taytime and that Monk Lakes Limited had (and has never had) any interest therein, the Liquidators have agreed to permit Taytime to adopt the planning appeal against the decision 11/1948 provided that they are indemnified as to any costs expenses damages and adverse costs arising therefrom.

12. On 12.10.21 Mr Padden wrote to advise PINS of MLL's liquidation and to ask that the Appeal be dismissed [**92**]. At this time Mr Padden was not aware of the Liquidators Letter or the Indemnity Agreement. PINS responded with a letter, dated 17.11.21 ("**the PINS letter**"), stating that "*unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette the Inspector will continue to determine the appeal*" [**94**].

13. Mr Padden did not receive a copy of the Liquidators Letter until 27.09.22, so that is to say one year after it was sent to PINS. For reasons it is difficult to understand no one previously sent it to Mr Padden or his advisers. Upon receipt, Mr Padden directed his solicitors to write to the Liquidators (copying PINS) to restate his position that the Appeal was being unlawfully pursued by Taytime as opposed to MLL and that it should be dismissed. The Liquidators did not provide any substantive response. It is now clear from Mrs Harrison's evidence that the Liquidators are likely to have been specifically told

[7] CSk§24 is therefore not correct in saying that the Liquidators only wrote the Liquidators Letter *after* they had been indemnified.

not to respond by Mrs Harrison [**250**]. Indeed the Liquidators have never responded to any of the communications sent to them from Mr Padden's representatives (see §39 **[349]**. Following the failure to respond in September 2022, Mr Padden instructed leading counsel to draft written submissions in support of a procedural application to dismiss the Appeal [**95-101**]. The hearing of the Appeal took place on 05.10.22. Taytime was invited to make oral submissions in response to Mr Padden's application[8]. At no point did Taytime seek to suggest (as it seems to now in its skeleton at least as an alternative) that the Appeal had in fact been assigned to it[9]. Rather, it argued that Taytime had been appointed as agent by MLL and could pursue the Appeal on its behalf [**348-349**]. The Inspector did not agree and dismissed the Appeal [**19-22**]. Moreover, the SFG as pleaded before this Court, under Ground 2, are solely predicated on agency. No argument on assignment is pleaded in the SFG.

14. Before turning to the law of agency it should be noted that it is said (see CSk§19) that "*Because MLL had been an applicant for planning permission, it was the company which brought the appeal*". This is on its face wholly inconsistent with what is said by the Liquidators Letter (quoted above and also in CSk§25 namely that "*[t]he representatives of Taytime Limited believe that the application should have been placed in their name in the first place, they were the party that instructed Pegasus Planning and James Pereira of Francis Taylor Building Chambers for the submission of the appeal*". Moreover, even this statement is a little odd given that the appeal was brought on 11.09.20 prior to MLL filing for voluntary liquidation. Why then, it may be asked, were Taytime instructing consultants and Counsel on the appeal?

C. THE LAW OF AGENCY

15. At CSk§36, the Claimant criticises Mr Padden for not having set out the law of agency in the SGR. This is a very surprising criticism from the Claimant, who has pleaded this case in reliance upon agency, but failed to set out the relevant law in the SFG. Moreover, it is

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[8] The attempt to criticise Mr Padden's representatives for raising the procedural issue on the appeal late (see CSk§26-30) is unworthy given that the Claimant, the liquidators and PINS had kept Mr Padden entirely in the dark as to the critical letter until shortly before the hearing of the appeal was due to begin.

[9] Mr Padden's submissions at the hearing were clear on this: so see §25 "*[i]t is clear from the terms of s. 78 of the TCPA 1990 that the only party that may appeal the refusal of planning permission is the applicant*" ***[99]*** and §29 "*there is no power under the Planning Acts for substitution of an appellant with another. In any event the Planning Acts are clear only an applicant can appeal*" **[100]**. Those acting for the Claimant at the hearing never disputed these contentions in oral submissions or otherwise.

the Claimant as opposed to Mr Padden or the Inspector who has proceeded on a misunderstanding of the relevant law as set out below.

16. Most of the principles set out at CSk§36 are uncontroversial, but are also largely irrelevant to this claim. The following *highly relevant* principles have, however, been omitted or incorrectly stated:

    a. *"Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent".*[10]

    b. Although it is correct that the scope of an agent's authority will generally be construed liberally, that will not be so if the source of that authority is said to arise from a deed.[11] This is relevant because the Indemnity Agreement is a deed.

    c. One characteristic of agency is control. *"[I]f the principal gives up all control of the supposed agent the relationship is only doubtfully one of agency".*[12] Similarly, *"if an agreement in substance contemplates the alleged agent acting on their own behalf, and not on behalf of a principal, then, although they may be described in the agreement as an agent, the relation of agency will not have arisen."*[13]

    d. In general, the principal authorises the agent to act on the principal's behalf and in the principal's interests. The arrangement is for the principal's benefit. Therefore, the principal must reimburse the agent for expenses and must indemnify the agent against liabilities. Agent acting for principal and principal

[10] Bowstead & Reynolds 1-011.
[11] Bowstead & Reynolds 3-018.
[12] Bowstead & Reynolds 1-018.
[13] Halsbury's Laws – Agency, vol.1, section 1(1).

reimbursing and indemnifying agent is the characteristic quid pro quo of any agency relationship.[14]

D. ISSUE 1: THE VALIDITY OF THESE PROCEEDINGS

17. At CSk§38, the Claimant alleges that this argument is properly an argument that the claim should be struck out as an abuse of process, pursuant to CPR 3.4(2)(b). This is incorrect. As has been previously held, strike out applications will only be appropriate in judicial review proceedings (or analogous proceedings such as this statutory review) in exceptional circumstances because abuse of process arguments can and should be raised at the permission stage: ***R (Suleiman) v SSHD*** [2017] EWHC 3308 (Admin), per Lang J at §3. Moreover, the fallacy of the Claimant's position on this is further exposed by CSk§47 where it is contended (quite wrongly) that Mr Padden's pleaded case is an abuse of process but in relation to which no strike out application has been made by the Claimant. No further time need be wasted on the strike out point.

Taytime does not have authority to bring this claim

18. The Claimant's assertion (CSk§37) that there are "*two insurmountable hurdles*" to Mr Padden's argument that Taytime does not have the authority to bring this litigation is entirely misplaced.

19. As to the first supposed hurdle (that Taytime is authorised to bring this claim on MLL's behalf):

    a. This case is very different to the case of ***Zoya Ltd v Ahmed*** [2016] EWHC 1981 (Ch), relied upon by the Claimant. In that case the claim was specifically brought in the name of the alleged principal and so the court was entitled to proceed from a basis that the instructed solicitor had authority *from the principal*. In this case the claim is brought in the name of Taytime, but it is asserted that it is brought in its capacity as agent for MLL: see **[2]** (at section 1);

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[14] Bowstead & Reynolds 7-057. See also 1-101 "*(1) Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent*" (emphasis added). See also Halsbury's Laws – Agency vol 1 section 1(1) "*[i]f an agreement in substance contemplates the alleged agent acting on their own behalf, and not on behalf of a principal, then, although they may be described in the agreement as an agent, the relation of agency will not have arisen*" – the footnote then refers to case-law that supports this proposition.

[**8**] (the title of the proceedings) and §2 (ibid.). Mr Padden does not seek to dispute that the solicitor in this case has been duly authorised to act by Taytime. The question is whether Taytime has been duly authorised to act as MLL's agent for the purpose of bringing these proceedings.

b. This is a different question from the question of whether Taytime was authorised to act as MLL's agent for the purposes of the Appeal. In light of the Claimant's responses to Mr Padden's requests for information (see above), it is clear that there is *no direct evidence* of Taytime having been authorised by MLL or the Liquidator to bring these proceedings. This is despite the fact that Mr Padden has repeatedly written to the Liquidator to request confirmation of this [**429-432**].

c. Instead the Claimant seeks simply to rely on the evidence of its supposed agency to bring the Appeal in general (which was rejected by the Inspector) as well as the recently produced Indemnity Agreement and says that, since these proceedings are ordinarily incidental to the Appeal, its authority to bring them should be implied. This is not accepted. For example, the Indemnity Agreement carefully defines the Appeal as "*an appeal against decision 11/1948 by Maidstone Council*" [**278**]. This definition does not include a statutory review against any decision of a planning inspector and, given that the Indemnity Agreement is a deed such authority should not simply be implied: see the law as set out above. It must be remembered, at the time of the Agreement, MLL was in voluntary liquidation and therefore subject to strict constraints on its actions (see below).

d. Moreover, Mr Padden does not accept that the evidence relied upon by the Claimant demonstrates that Taytime was acting as MLL's agent *at all* during the course of the Appeal. However, it is recognised that this question is very closely bound up with Ground 2 in these proceedings and that if Mr Padden's other arguments under this issue are not accepted, it should stand or fall with that.

20. In respect of the <u>second</u> hurdle, the assertion (CSk§42) that Taytime would have had standing to bring this claim in its own right does not assist it. That is not what Taytime has done. Rather it expressly purports to have brought this claim in the capacity of "*the*

appointed agent for and on behalf of" MLL. So, in the SFG (§§5&6 **[9]**) it is said that "*Taytime also itself has an interest in the Land*" and "*[t]here can be no doubt, therefore, that Taytime is a person aggrieved for the purposes of section 288 of the 1990 Act*". These are statements as to why Taytime could have brought s. 288 proceedings in its own right, but instead it brought them only "*as the appointed agent for and on behalf of*" MLL. No application has been made under CPR19 for substitution.

MLL or the Liquidators cannot lawfully authorise Taytime to pursue these proceedings

21. The Claimant's submissions at CSk§§43-50 represent a complete inversion of the proper approach to this issue. It is not for Mr Padden to show that he has standing to challenge the exercise of the liquidator's power to appoint Taytime as agent. On the contrary, Mr Padden is a defendant to proceedings brought in the Planning Court by Taytime purporting to act on behalf of MLL. In his defence, Mr Padden is perfectly entitled to (and plainly has standing to) challenge Taytime's authority to do so. Indeed, this was precisely what happened in ***Zoya*** – a case upon which the Claimant relies.

22. The question of whether MLL can lawfully authorise Taytime to act on this basis is therefore highly relevant and falls for determination in this claim. Indeed the insolvency context is highly relevant to the question of agency more generally in this claim. As to this:

    a. Pursuant to s.87(1) of the Insolvency Act 1986 ("**IA**"), a company which has commenced a voluntary winding up is obliged to "*cease carrying on its business, except so far as may be required for its beneficial wind up*". The Clamant asserts that this is restricted to "*trading business*", but the authority which it relies upon (***SSBEIS v PAG Management Services Ltd*** [2015] BCC 720, §§47-48) simply does not support this assertion.

    b. A liquidator is a creature of statute and may only exercise such powers as are conferred on him,[15] and may exercise them only for the purposes for which such powers have been conferred.[16]

[15] ***Kirkpatrick v Snoozebox Ltd*** [2014] BCC 477 (Ch), §12.
[16] ***Re Mama Milla Ltd*** [2016] BCC 1 (Ch) at §§40-41; appeal on different grounds dismissed.

c. A liquidator must act in the best interests of creditors and must exercise his powers to get in and realise the company's assets and distribute the proceeds amongst creditors.[17]

d. The powers of liquidators in the case of a voluntary winding up are set out in s.165 IA and in Parts 1-3 of Schedule 4.

i. The power to appoint an agent is contained in §12 of Schedule 4, but *"is impliedly limited to acts and transactions of a purely ministerial kind and the discretion of the liquidator is not to be delegated in matters which require the exercise of professional judgment"*.[18]

ii. The power to issue proceedings in the name of the company is contained in §4 of Schedule 4, but may only be exercised in what the liquidator believes to be the best interest of the insolvent company and all those who have an interest in the estate: ***In re Longmeade Ltd (in liquidation)*** [2016] Bus LR 506 at §66.[19]

23. In light of the above, it is clear that neither MLL nor the liquidators could lawfully authorise Taytime to issue these proceedings because:

a. Taytime purports to have done so pursuant its general authority to pursue the Appeal. However, the decision about whether or not to issue proceedings following the determination of the Appeal is plainly and expressly a matter for the discretion of the liquidator and so could not lawfully have been delegated to Taytime; and/or

b. As noted above, the Liquidators accepted in the Liquidators Letter that MLL has no interest in the Site. The Claimant submits (CSk§41(4)) that this is not the same as saying that MLL has no interest in the Appeal. This is not accepted, but in any event, the Claimant appears to have conveniently ignored the recently disclosed Indemnity Agreement in which the Liquidators expressly agreed that MLL had no interest in *"the planning application"* [**278**]. Having

[17] ***In re Southern Pacific Personal Loans Ltd*** [2014] Ch 426 (Ch) at §33; and ***Manolete Partners Plc v Hayward and Barrett Holdings Ltd*** [2022] BCC 159 (ICC) at §§5-6.
[18] McPherson & Keay's Law of Company Liquidation (5th Ed.) 8-059.
[19] This paragraph is conspicuously omitted from the Claimant's summary of this case.

reached this conclusion, the Liquidators could not rationally conclude that the pursuit of these proceedings was in the best interests of MLL or its creditors and therefore could not lawfully authorise them to be brought.

24. It follows that this claim falls to be dismissed on this basis alone.

25. To be clear none of this is about Mr Padden asking this Court to exercise any power under insolvency law. The issue that arises is whether, as is asserted, Taytime has the authority to pursue these proceedings as agent for MLL. That question can only be answered by reference to certain matters of insolvency law because MLL is in liquidation and was so at the date it is now purported that an agency relationship was created.

E. ISSUE 2: WHETHER THE CLAIMANT'S CLAIM IS ARGUABLE

Ground 1: Jurisdiction

26. This ground is not addressed at all in the Claimant's skeleton argument. This is unacceptable. As the Administrative Court Guide (2022) states (§20.2.3) "*it should not be left to other parties to infer from omissions in skeleton arguments what grounds of claim have been abandoned. If a party no longer pursues a ground of claim, that ought to be made clear to the court and to the other parties.*" In any event, Ground 1 is plainly unarguable being directly contrary to Court of Appeal authority which the Claimant wholly failed to refer to in the SFG: ***Co-operative Retail Services Ltd v SSfE*** [1980] 1 WLR 271. It is thus assumed that Ground 1 has been abandoned.

Ground 2: Error of Law

27. It bears re-stating that this was the only ground on which the First and Second Defendants consented to judgment, but that they only did so on the basis that "*the Inspector failed to supply adequate reasons for his conclusion that Taytime Ltd were not acting as the appointed agent for Monk Lakes Ltd*" **[111]**. No concession was made as to the correctness of that conclusion or the Inspector's underlying findings of fact.

28. Furthermore, if the Claimant is correct, see above, in suggesting that the question of whether or not Taytime was appointed as MLL's agent for the purposes of the Appeal is principally if not entirely a question of law then (in the end) any defects in the Inspector's reasoning and conclusions are ultimately irrelevant to the determination of this claim.

29. There were two elements to this ground as originally pleaded: (i) that the Inspector was wrong to hold that the Appeal had not been validly made and (ii) that the Inspector was wrong to hold that Taytime was not acting as MLL's agent. These heading are maintained below.[20]

The validity of the Appeal

30. The Inspector's decision letter must be read: (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: ***Greenwood v SSCLG*** [2021] EWHC 2975 (Admin) at §39.

31. As set out at SGR§§28-29, when these principles are applied to the DL, it is clear that the Inspector did not conflate the issue of whether the Appeal had been validly made with the issue of whether it could be validly pursued. It is obvious from DL§§6 & 4 [**19-20**] respectively that the Inspector accepted: (i) that MLL was listed as the appellant on the appeal form; and (ii) that MLL could "*in principle*" pursue the Appeal as the appellant. This would have been entirely obvious to the Inspector, as even the Claimant accepts that this matter was not in dispute between the parties (SFG§23 [**13**]).

32. In any event, this error cannot possibly be said to have been material since the Inspector's finding at DL§6 that "*it is clear that the party now pursuing the appeal is Taytime and not MLL*" was fatal to MLL's (and Taytime's) position. It is this question (i.e. the question of whether Taytime was acting as MLL's agent) that was dispositive of the Appeal and rightly so.

33. Intriguingly, the Claimant seeks to argue (for the first time) at CSk§64(2) that this was not (or should not have been) so. As to this:

    a. It was no part of the Claimant's case before the Inspector that the Appeal had been assigned to Taytime and that this was lawful. The Claimant's arguments were solely focused on whether or not Taytime was acting as MLL's agent [**348-349**]. Moreover, this is not pleaded in the SFG which relies solely on agency. It follows that this is not an argument which is now open to the Claimant in these proceedings. In any event, no such assignment is possible. As Mr Padden

[20] The Claimant's decision to split the question of Taytime's authority to act as MLL's agent into two separate headings (CSk§§66-75) merely serves to confuse the issue, which should be considered in the round.

pointed out in his procedural application [**99**], the right to appeal a refusal of planning permission is only available to the person who made the planning application: s.78(1) TCPA.[21] ***Muorah v SSLUHC*** [2023] EWHC 285 (Admin) – the case cited *"by analogy"* at CSk§64(2)(a) – has no bearing whatsoever on this issue. That case was about whether a cause of action *before the courts* could be assigned. It was not suggested that an appeal under s.174 TCPA could be assigned and, in any event, the class of person with a right to bring an appeal under s.174 is much broader than that under s.78, and only serves to underline the strictness of the latter – as pointed out in Mr Padden's procedural application [**99**].

b. It is obvious from the Liquidators' statements (in the Liquidators Letter) that MLL had *"no interest whatsoever in the Site"* and that it had appointed Taytime *"to take over full responsibility"* for the Appeal that MLL had no interest in the Appeal. The Claimant has failed to explain how it could possibly be otherwise. In any event, it is now clear from the Indemnity Agreement that the Liquidators had indeed formed the view that MLL had no interest in *the Application* and thus the Appeal. If this issue were to be redetermined by the Inspector, he would inevitably have to consider the Indemnity Agreement and this would (inevitably) only fortify him in the conclusion that he reached. As to the suggestion of procedural fairness, the Liquidator was served with a copy of Mr Padden's procedural application and had the opportunity to make representations. This is clear from the correspondence exhibited to Ms Harrison's statement. The Liquidators did not respond, presumably because they were asked not to by Mrs Harrison and/or her advisors [**250**]. It can only be assumed that this advice was given in expectation that the Liquidators' response would be unhelpful to Taytime: i.e. that it would confirm what the Liquidators had already said in the Indemnity Agreement that MLL had no interest in pursuing the Appeal. There can certainly be no question whatsoever of any procedural unfairness. Quite the contrary – it would appear to be the Claimant that was engaged in procedural impropriety.

[21] For completeness, this is affirmed by the PINS Procedural Guidance at §2.3.1 [**99**] and the Planning Encyclopaedia P78.07.

c. In any event, even if the Liquidators had been minded to pursue the Appeal itself (which they plainly were not), they could not lawfully have done so for the reasons given at §§21-23 above.

The conclusion that Taytime was not acting as MLL's agent

34. It is not arguable that the Inspector erred in concluding that Taytime was not acting as MLL's agent for the following reasons.

35. First, the meaning of the Liquidators Letter is clear. The Claimant's excessive focus on the use of the word "*appoint*" does not assist it. In light of the recently disclosed correspondence, it appears that this word was inserted into the letter at the request of Mrs Harrison [**245**]. But this letter does not constitute any agreement between Taytime and the Liquidator. It says nothing about the intention of the Liquidators themselves or the true relationship between MLL and Taytime. It merely shows how Mrs Harrison wanted the Liquidators to *present* their relationship to PINS. However, the legal nature of a relationship arising under an agreement is determined by ascertaining the parties' rights and obligations pursuant to that agreement and by characterising their effect in law; the label used by the parties to describe the relationship is of little or no weight: ***Secret Hotels2 Ltd v Revenue and Customs Commissioners*** [2014] 1 All ER 685 (SC), §§32. Applying this principle, it is clear that the relationship between Taytime and MLL was not (and could not have been) one of agency.

36. Second, this is supported by the terms of the Liquidators Letter read as a whole, and in particular what Taytime was appointed to do, and why. Taytime was appointed to "*take over full responsibility*" for the Appeal because MLL had "*no interest whatsoever in the Site*". This amounts to a complete renunciation by the Liquidators (on behalf of MLL) of any control over Taytime which (as stated above) strongly militates against any relationship of agency. Further, if MLL has no interest in the Site, Taytime could not possibly be said to be acting on MLL's behalf because there is no interest to act on behalf of. The Claimant's belated attempt (CSk§49) to suggest that MLL does retain an interest in the Appeal is unsupported by any evidence whatsoever. It is also directly contrary to what is said in the Indemnity Agreement (see above). Furthermore, it does not make obvious sense: how can a grant of planning permission for land in which MLL has no interest increase the realisations that the Liquidators may make for the benefit of MLL's creditors? The Liquidators confirmed that no realisations were anticipated from the Site and their report

did not identify the Appeal as an asset **[152]**. The Liquidators' report instead concluded that *"the Joint Liquidators confirm after considering the legal advice received [that] there are no further assets or actions which might lead to a recovery for Creditors"* **[153-154]**.

37. Third, this understanding of the Liquidators Letter is fortified (indeed confirmed) by the terms of the Indemnity Agreement. This conspicuously does not use the term *"appoint"* or (for that matter) *"manage"*. Rather it records the Liquidators' agreement *"to permit Taytime to adopt the appeal"*. The fact that this is the language which was used internally (between the parties) as opposed to externally (to PINS) is highly significant. It is much more likely to represent the true picture. If Taytime has *adopted* the Appeal entirely then it cannot be said to be acting as MLL's agent in respect of it. Further, the grant of an indemnity by the supposed agent to the supposed principal is, as explained above, entirely inconsistent with a typical agency relationship.

38. Fourth, this conclusion (that Taytime had adopted the Appeal rather than been appointed as agent) is supported by the Inspector's findings of fact as to Taytime's conduct: in particular, his finding that Taytime signed the Statement of Common Ground for the Appeal as the Appellant and that Taytime had instructed planning consultants and leading counsel for the submission of the Appeal (DL§5 **[19]**). The Statement of Common Ground entered into by Taytime and the Council clearly named the appellant as Taytime (ibid., and see also §28 **[99-100]**). It is absolutely wrong for the Claimant to suggest (CSk§73) that the Inspector concluded that no agent *could* carry out such acts. Rather, it is clear (particularly when his decision is read fairly) that he concluded (entirely properly given all the circumstances) that these acts militated against a relationship of agency. For completeness, the fact that the consultant and counsel fees may have been paid by MLL up to 15.07.21 (CSk§20) does not assist the Claimant at all. First, it does not appear to be consistent with the statement in the Liquidators Letter (dated 22.09.21) that these individuals were *"instructed by Taytime"*. Second, this says nothing about who paid these fees after that date, which is the material period.

39. Fifth, as noted above, all of the above facts fall to be interpreted in the context of insolvency law. As set out above, a liquidator's power to appoint agents does not extend to the power to delegate matters which require the exercise of professional judgment. Quite clearly the pursuit of a planning appeal requires the exercise of professional judgment to be made at various stages. However, the Liquidators Letter indicates that *"full responsibility"* for such judgments rested with Taytime. Given that the Liquidator

could not lawfully authorise Taytime to act as its (or MLL's) agent on these terms it should be assumed that it did not do so. Accordingly, the validation principle, which is prayed in aid by the Claimant at CSk§69(5), actually counts against it or is at worst neutral.

40. Sixth, it should be stated at the outset that the Liquidator has had numerous opportunities since 30.09.22 to provide confirmation that Taytime was instructed as its agent in the Appeal. This ought to have been a simple matter for Taytime to arrange if indeed it was appointed as it alleges. However, no such confirmation has been forthcoming even in the course of proceedings – not even to support Taytime's interpretation of the Liquidators Letter. This is extremely surprising. It is also fair to say that it raises questions about the Liquidator's own independence and propriety given: (i) there is a suggestion that they have delayed the liquidation (and any reimbursement of MLL's creditors) to facilitate Taytime's appeal [**244**]; (ii) there is a suggestion that one of the liquidators (now resigned), Mr Beat, has a longstanding relationship with Mr Harrison [**431**]. This is an extremely important part of the context within which the Claimant's complaint falls to be determined. It weighs heavily against Taytime's claim to have been acting as MLL's agent.

41. Finally, even if the court finds that there were errors in the Inspector's reasoning, for the reasons given above, it is inevitable that the Inspector would reach the same conclusion if the matter were remitted to him. Having regard to the factual position, which has become even clearer with the recent disclosure of the Indemnity Agreement, it is clear that as a matter of law Taytime is not acting as MLL's agent. Thus, relief should be refused in any event.

Ground 3: Legitimate Expectation

42. It should be noted that the First and Second Defendants did not consent to judgment on this ground which is plainly unarguable.

43. The letter from PINS upon which the Claimant relies states only that Inspector would "***continue*** *to determine the appeal*" [**94**]. Contrary to what is suggested at CSk§80(1), the word "*continue*" performs an important function here. Without it, the Inspector would have unlawfully fettered his discretion to make future procedural decisions in respect of this issue, which would plainly have been prejudicial to other interested parties, including Mr Padden who at that time had not seen highly relevant correspondence from MLL's

liquidators to PINS and so was unable to make any representations on the issue until much later.

44. Second, and in any event, even if (contrary to the above) this was sufficient to establish an expectation, it was not sufficient to establish a *legitimate* expectation. It is well established that a public authority cannot establish a legitimate expectation that it will do something which is unlawful: ***Henry Boot Homes v Bassetlaw DC*** [2002] EWHC 546 (Admin). It follows that this ground is parasitic upon Grounds 1 and 2 because, unless the Claimant can establish that the Inspector was wrong to conclude that the Appeal could not lawfully be determined under s.78 TCPA, it cannot be said to have had a *legitimate* expectation that he would do so. It is entirely unclear why the Claimant suggests (CSk§80(2)) that this is "*yet another attempt to challenge the lawfulness of the decision-making of a private company*". It is not. Rather it is the Claimant who (by these grounds) is mounting a highly tenuous challenge to the lawfulness of the decision-making of a professional planning inspector.

45. Further and in any event, for the reasons given above, if the matter were to be remitted to the Inspector on this ground the outcome would inevitably be the same and, accordingly, relief should be refused.

F. SECURITY FOR COSTS

46. The sole basis upon which the Claimant resists Mr Padden's application for SfC is that neither MLL, nor Taytime, nor its parent company Merrymove Ltd and Monk Lakes Fishery Limited have the means to provide the security. It is said that, accordingly, to require them to do so would stifle the Claimant's claim.

47. The Claimant bears the burden of proving on the balance of probabilities that its claim will be stifled and will need to show that it cannot provide security and cannot obtain appropriate assistance to do so. The court should not take at face value assertions by the company or its owner that no such assistance would be provided but instead should judge the probable availability of funds by reference to the underlying realities of the company's financial position and to all aspects of its relationship with its owner, including, in particular, the extent to which the owner is directing the company's affairs and supporting it financially: ***Goldtrail Travel Ltd v Aydin*** [2017] 1 WLR 3014, particularly §§15, 23-24. In ***Al-Koronky v Time Life Entertainment Group*** [2005] EWHC 1688 (QB) Eady J held (§31):

… it is necessary for the Claimants to demonstrate the probability that their claim would be stifled. It is not something that can be assumed in their favour. It must turn upon the evidence. I approach the matter on the footing that there needs to be full, frank, clear and unequivocal evidence before I should draw any conclusion that a particular order will have the effect of stifling. The test is whether it is more likely than not.

48. The Claimant relies on the evidence of Mrs Harrison, which it wrongly states is unchallenged. However, this evidence is insufficient to discharge the Claimant's burden and it is challenged by Mr Padden's statement, which shows that:

    a. It is absolutely clear that Mr and Mrs Harrison have been intimately involved with the Site and the various companies which have operated on it since at least 2008 and, in fact, all four companies referred to above are ultimately under their control (§§10-17 [**346**]). Indeed, the extent of Mrs Harrison's ongoing involvement is clear from her statement and the correspondence attached thereto.

    b. Mrs Harrison's statement does not contain any evidence about her or her husband's own resources. It is of note that, there has never been any dispute that this claim would be covered by the Aarhus Convention and the costs capping regime in CPR 45.41-45. However, the Claimant has not sought any cost protection despite its apparently limited means. This is presumably because, in order to do so, it would have to provide a statement of financial resources including details of any financial support which any person has provided or is likely to provide to the claimant: CPR 45.42(1)(b).

    c. There is extensive evidence to suggest that between them Mr and Mrs Harrison have significant financial resources of their own and, further, that they are likely to have profited from the unlawful development which is at the heart of this claim (§§19-33 [**346-348**].

    d. Given its limited financial resources it is highly likely that the Claimant is already in receipt of financial assistance. The Claimant's own legal costs to date will comfortably exceed its existing assets and the Claimant has conspicuously not provided any details about who has been paying these costs since September 2021. Nor do we know who paid from the date of MLL entering liquidation the significant (likely six figure) costs incurred by Taytime

in pursuing the Appeal with a full consultant team and Leading Counsel at the inquiry.

49. In all of these circumstances, it is quite clear that the Claimant would be able to continue with its claim if it were ordered to pay SfC. It would not be stifled. Indeed, the Claimant's suggestion to the contrary raises doubts about how it would continue to pursue the Appeal in the event that it is remitted. If it cannot do so then any grant of relief in this case would be futile.

50. As to quantum, £100,000 is an entirely reasonable sum to seek by way of security. This is an exceptional case, raising questions of planning, agency and insolvency law. It has (unusually) been listed for an oral permission hearing without any determination on the papers. Given this, it is reasonable for him to instruct leading counsel – indeed he has been represented by leading counsel in respect of this matter since 2012. It is notable that the Claimant does not say what its own costs to date have been by way of comparison. Finally, the sum of £14,663 is entirely reasonable for acknowledging service in a claim of this nature and the Claimant omits to mention that Mr Padden was also required (as a result of the Claimant's omission) to make an application to be joined as a party to the proceedings which increased his costs. Costs have also been incurred chasing over many months responses to requests for further information and documents.

G. CONCLUSION

51. For the reasons given above, the court is respectfully invited to refuse permission to bring this claim and/or make the order for SfC as sought.

52. Mr Padden will also seek an order for costs in relation to: (i) his application for SfC; and (ii) his costs in resisting permission. On (ii) he is entitled to his costs of the SGR if permission is refused. In addition he contends that this is an exceptional case falling within ***R (Mount Cook Land Ltd) v Westminster City Council*** [2017] P.T.S.R. 1166 at §76 for the full award of costs in relation to the permission hearing.

JAMES MAURICI KC

BEN FULLBROOK

LANDMARK CHAMBERS

RIZ MOKAL

APPENDIX - CHRONOLOGY

Date	Event	Ref
17.09.03	Planning permission granted on the application of the then owners., Mr & Mrs Hughes, on land that is now known as Monk Lakes for: "*Change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing. The application involves the formation of ponds and lakes, the erection of a building and the formation of a car park, the existing access to Staplehurst Road is to be improved…*" ("the 2003 Permission"). The 2003 Permission did *not* authorise raised ponds and lakes. The 2003 Permission was also subject to various conditions including the submission for approval of various pre-commencement details. These details were not submitted for approval.	***Padden*** judgment [2014] Env LR 20 at [3] and [4]
2003-2008	Unlawful development commences on the Site involving importation of significant amounts of waste to form vast raised fishing lakes the banks of which being over 6m high. The development was unauthorised by the 2003 Permission for two reasons: (i) the pre-commencement conditions were not discharged and (ii) and more importantly what was constructed had no relationship to what was consented (Mrs Harrison's w/s (**[236],** §6) is not correct in this regard as she only refers to (i)).	**[122]**
2008	*" … site was acquired by three of the Interested Parties, Emily and Guy Harrison and Monk Lakes Limited ("MLL")* ***who have apparently continued, and intensified, the unauthorised works****."* (emphasis added)	***Padden*** judgment [2014] Env LR 20 at [5] and 121-122
04.08	Council serves a temporary stop notice	***Padden*** judgment [2014] Env LR 20 at [7]
12.09.08	Enforcement Notice served by the Council. The list of breaches of planning control is extensive **[355]-[356]** and should be read in full but includes the creation of the raised lakes as well as the "*importation of materials, including construction and demolition waste, and the deposit and stockpiling of these materials on the land*".	***Padden*** judgment [2014] Env LR 20 at [7] and **[355-366]**
2008	Mr Harrison appeals under s. 174 of the TCPA 1990 against the Enforcement Notice	**[346]**
04.11.11	MLL makes application 11/1948 for part retrospective permission to regularise the unauthorised development	**[19]**
09.12.11	The Council grants planning application 11/1948	***Padden*** judgment [2014] Env LR 20 at [8]
2012-2014	Mr Padden issues judicial review proceedings against the permission granted on application 11/1948 and which succeeds. Judgment dated 22.01.14. The matter was remitted to the Council for re-determination.	126 and ***Padden*** judgment [2014] Env LR 20
18.05.16	Mr Harrison's appeal against the Enforcement Notice dismissed and costs award made against Mr Harrison in favour of the Council and Mr Padden	**[346]** and **[372]-[381]**

12.03.20	Application 11/1948 comes back before the Council for re-determination in the name of MLL and is refused by the Council.	**[79]**
11.09.20	Appeal under s. 78 of the TCPA 1990 made by MLL against the refusal of application 11/1948	**[82]-[89]**
15.07.21	MLL files for voluntary liquidation	**[90]**
16.08.21	Mrs Harrison emails Liquidators saying: *"The planning inspectorate are suggesting that the Appeal continues in the name of the liquidators.* *Have you had experience of this before and what are your thoughts?"*	**[259]**
16.08.21	Email from Andrew Miles of Burgess Hodgson to Mrs Harrison: *"Emily the appeal in the name of the liquidator will be very difficult. A number of reasons but mainly* *The costs for the liquidator to be part of appeal will be expensive. Their usual rates are £550 per hour and they would employ specialists to represent them so will be very costly.* *The liquidator will not want to be exposed to any costs as he has no funds and the risk of any loss and costs awarded would mean he will unlikely take this forward* *Is there no alternative?"*	**[260]**
17.08.21	Email Mrs Harrison to Andrew Miles of Burgess Hodgson (who it is understood is Mr & Mrs Harrison's accountant): *"Our barrister says we're going to need to speak to the liquidator about this….* *I have tried and tried to steer off this.* *What are your thoughts?* *Our Section 106 agreement signed with the LPA is in Taytime's name…"*	**[258]**
03.09.21	Email from Mrs Harrison to the Liquidators: *"I was wondering if I could pick your brains on something?* *At the fishery, we submitted a planning application to the Local Planning Authority … but, frustratingly, the application was refused by the Councillors at Planning Committee. We have submitted an appeal … and we're waiting for that appeal to be heard.* *The land for which the application is made is owned by a company called Taytime Limited, but annoyingly (mistakenly) the appeal was submitted in the name of Monk Lakes Limited which only operated on the land, and didn't own it. Our planners advised us that this shouldn't cause a problem with the appeal when Monk Lakes Limited goes into liquidation, but it appears that it is now causing problems, and the Planning Inspectorate are suggesting that you, as the liquidator would need to in some way give authorisation for Taytime Limited to continue with the claim.* *Have you had experience of anything like this before, and how would you say is the best way to approach this?"*	**[257]**
22.09.21	Liquidators write to PINS to explain that they have appointed Taytime to take over full responsibility for the Appeal and have no interest whatsoever in the Site The letter is amended before it is sent by request of Mrs Harrison: *"There is no risk to Quantuma anyway because the applicant has no obligations whatsoever, it is always the landowner.* *Please could you ask them to issue the letter today, and we will make that payment today too. And if you could ask that the letter "appoints" Taytime Limited rather than "authorises" Taytime, that would be great."* The Liquidators letter was not sent to Mr Padden by anyone until a year later (see below).	**[23]** **[245]**
27.09.21	Liquidators and Taytime enter Indemnity Agreement (which agreement is only disclosed to Mr Padden in these proceedings on 10.05.23). The emails associated with agreeing the Indemnity Agreement refer to the indemnity being given by Taytime *and Mr Harrison* (e.g. **[270]**).	**[278]-[279]**

06.10.21	Email from Andrew Miles to Liquidators: "*Amanda understand Padden solicitor putting pressure on you re the appeal on Monk Lakes. I received 2 letters but Duncan mentioned may be a third. Are you ok for me to have a copy to send to Emily for her to get a response from her barrister on this ?"*	**[253]**
12.10.21	Mr Padden, having been advised of MLL's liquidation write to PINS to ask that the Appeal be dismissed	**[92]**
17.11.21	PINS respond stating "*I can confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette, the Inspector will continue to determine the appeal*."	**[93]-[94]**
08.09.22	Liquidators file Joint Liquidators' Progress Report stating that there is no realisable value in the Site. This was only made available on the Companies House website on 20.09.22	**[149]-[163]** **[95]**, §4(2)
22.09.22	Having obtained the Liquidators' Progress Report on 20.09.22 Mr Padden instructs his solicitors to write to the liquidators querying why MLL is pursuing the Appeal given that there is no realisable value in the Site.	**[100]** at §6
27.09.22	Mrs Harrison and Mr Andrew Miles exchange emails in relation to encouraging the Liquidators not to reply to Mr Padden's letters querying why it is that MLL is pursuing the Appeal when it has no interest in so doing Mr Padden is sent by the Liquidators a copy of their earlier letter to PINS dated 22.09.21 (so over a year earlier) for the first time and write to PINS inviting it (again) to dismiss the appeal.	**[250]** **[95]** at §4(1)
29.09.22	Further letter from Mr Padden's solicitors to the Liquidators seeking further information. No response ever received.	**[101]** at §7
30.09.22	Mr Padden instructs counsel to make a procedural application to the Inspector at the Appeal hearing to dismiss the appeal	**[95]-[101]**
05.10.22	Appeal hearing attended by leading counsel for Mr Padden and for the Claimant	**[19]**
21.11.22	Appeal dismissed	**[19]-[21]**
29.11.22	Email from Andrew Miles to Liquidators this says: "*Just as an update, believe the appeal was adjourned until the judge can get an opinion on the assignment* [*]. *Emily Harrison is currently looking to instruct a specialist insolvency barrister to deal with the queries.* *In the meantime it is important the liquidation remains open and wonder if this can be done until the outcome of the appeal is finalised* [**]. *They understand this may have cost implications depending on the length of time and they will obviously cover these."* * This is on the face of it misleading as the Appeal has in fact been dismissed at this stage. ** This appears to be seeking to persuade the Liquidators to keep the liquidation open pending an Appeal which is of no benefit to the company in liquidation	**[244]**
24.12.22	Claimant issues challenge to the Appeal decision under s.288 TCPA 1990	**[2]**
24.01.23	Mr Padden applies to be joined as a defendant to the proceedings and requests disclosure of further documents from the Claimant and the liquidator	**[113]-[117]**
26.01.23	Mr Padden's solicitors write to the liquidator seeking confirmation that it had granted Taytime authority to pursue the High Court claim	**[428]-[429]**

07.03.23	Mr Padden's solicitors chase the Claimant for a response to his request for disclosure	**[325]**
07.03.23	Mr Padden's solicitors write to the liquidator to repeat their request for confirmation that it had granted Taytime authority to pursue the High Court claim	**[431]-[432]**
21.03.23	Mr Padden's solicitors repeat their request for disclosure	**[327]**
24.03.23	Lang J grants Mr Padden's application to be added as a party and directs an oral permission hearing	**[193]-[194]**
30.03.23	Mr Padden's solicitors repeat their request for disclosure	**[330]**
20.04.23	Mr Padden makes an application for security for costs	**[200]-[206]**
28.04.23	Mr Padden's solicitors repeat their request for disclosure	**[331]-[332]**
10.05.23	Mrs Harrison's witness statement and exhibits are filed	**[235]-[305]**
01.06.23	Mr Padden's witness statement and exhibits are filed along with an application to admit this evidence	**[340]-[432]**

IN THE HIGH COURT OF JUSTICE CO/4860/2022

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Tuesday, 13 June 2023

SIR ROSS CRANSTON
Sitting as a High Court Judge

B E T W E E N :

TAYTIME LIMITED
as the appointed agent for and on behalf of
MONK LAKES LIMITED Claimant

- and -

(1) SECRETARY OF STATE
FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) MAIDSTONE BOROUGH COUNCIL
(3) DAVID PADDEN Defendants

Mr C STREETEN and MS C STAYNINGS (instructed by Assersons Law) appeared on behalf of the Claimant.

DR A BOWES (instructed by Government Legal Department) appeared on behalf of the First Defendant.

THE SECOND DEFENDANT did not appear and was not represented.

MR J MAURICI KC and MR S JONES (instructed by Richard Max and Co LLP) appeared on behalf of the Third Defendant.

P R O C E E D I N G S

I N D E X

(Transcript prepared from poor quality recording)

(9.58 a.m.)

MR STREETEN: Yes, my Lord, I appear with my learned friend, Ms Chantelle Staynings, (inaudible) for the claimant. Ms Staynings will deal with insolvency matters. For the first defendant is my learned friend, Dr Ashley Bowes. The second defendant does not appear, and for the third defendant, Mr Padden, (inaudible) Mr Maurici KC and Mr Simon Jones.

THE JUDGE: Yes.

MR STREETEN: My Lord, there is a little housekeeping to do. I understand that my Lord will be assisted by a hard copy hearing bundle.

THE JUDGE: Thank you very much.

MR STREETEN: I have one of those to hand up, as well as some further documents. (Same handed) So, my Lord, there have been some documents inserted, I am afraid unpaginated, at the back of that bundle, and I just want to take you to those so that you know what they are.

THE JUDGE: Yes.

MR STREETEN: My Lord, there should be three new documents right at the very back. Firstly, the second witness statement of Emily Harrison. Secondly----

THE JUDGE: Sorry, what page? Do we have a page? We do not have a page number?

MR STREETEN: I am afraid they are unpaginated. Some are from me and some are from my learned friend.

THE JUDGE: I can see Mrs Harrison's here.

MR STREETEN: So, Mrs Harrison's witness statement, which runs through to an aerial plan of the site, and then behind that two further documents: an email from James Kon, my solicitor, and a response to this court in relation to that email from my learned friend's solicitor.

In addition to that, my Lord, we have some additions and substitutions to the authorities bundle. Firstly, there is a replacement for tab 42 – I will hand these out now, if I may – (same handed) which is a reprint of the extracts from *Bowstead & Reynolds*, and secondly, and I have put these at the back of tab 2 of the-- tab 42, replacement of the *Bowstead*.

THE JUDGE: Sorry, let me just do this.

MR STREETEN: Yes. (After a pause) Secondly – I have put these at the back of tab 2 – there are two sections of the Town and Country Planning Act, s.79 and s.289, and, my Lord, my instructions are that we do not need to deal with the security anymore. There is an agreed position on that. My learned will correct me if I am wrong but, essentially, we have agreed

to an immediate payment and two further payments in relation to security, and the quantum is agreed, so that does not need to take the court's time.

THE JUDGE: And the witness statements are admitted as well?

MR STREETEN: Absolutely, I am grateful, yes. So, my Lord, there are two issues, essentially.

THE JUDGE: Well, sorry, just before we go any further, just in terms of housekeeping, have you divided up the time?

MR STREETEN: Yes, my Lord. Mr Maurici and I spoke this morning, and I intend to be just over an hour and he, I think, just under an hour.

THE JUDGE: That is fine; that is good.

MR STREETEN: We will be done by lunch, I think, is the idea. I do not know about my learned friend, Dr Bowes.

DR BOWES: My Lord, I mean, I am in your hands. You will see our position from the skeleton and we are here to assist the court should it be necessary. If you need my assistance on grounds 1 and 3 where we do not consent or (inaudible) the validity under the Ground 2, of course I am here to assist and, if you want to hear more from us in terms of the points on which we do consent, well, of course we are here, but I am sure Mr Streeten will explain that. Thank you.

THE JUDGE: Okay, thanks very much. All right, so where do we start?

MR STREETEN: Well, my Lord, there are two issues which I will identify and then I will take you to some of the key documents, then deal with the claimant, then deal with the standing/validity of these proceedings point, and then finally deal with the arguability of the defendants' claim.

In terms of the two key issues as I see them, they are, firstly, whether these proceedings have been validly brought in the High Court and, secondly, whether the claimant's claim is (inaudible) to be granted permission.

THE JUDGE: Yes, of course.

MR STREETEN: Turning----

THE JUDGE: I have read the documents online.

MR STREETEN: I trust that, my Lord, but in terms of key documents, I really only wanted to go to a few of them and very briefly.

THE JUDGE: Yes. No, no, I do not mind you doing that, yes.

MR STREETEN: But before I do, my Lord, I will just slightly test the court's patience by reiterating the point I am sure my Lord has well in mind, namely that this is only a

permission hearing. The test is only arguability, and that both of the defendants are required to be served with this claim under CPR Practice Direction 54D, 4.8; that is (inaudible) to judgment. The first two defendants are public authorities required to act in the public interest, and their view is that the decision is unlawful. I am not saying that it never happens that the Secretary of State consents and nevertheless the decision is upheld at final hearing, but I do say that is a pretty clear indicator that the test for arguability at least is met. The only remaining defendant is Mr Padden, who is acting in his own private interest, as he is entitled to, but he is not in the same position as a public authority defendant.

THE JUDGE: Yes.

MR STREETEN: So, my Lord, in terms of those key documents, the first that I would like to briefly look at, which is behind tab 12 of the same bundle, is the letter from my learned friend's solicitors to the Planning Inspectorate, which started the hare running, if I can put it like that. Page 92, para.D, and my Lord will see from that that the issue put in play at that point was essentially the issue with which we are still dealing, namely the effect of the liquidation of Monk Lakes Limited. The response to that from the Planning Inspectorate is in the next tab, tab 13, and it is p.94, the final paragraph to which I draw my Lord's attention. Just above the "yours sincerely":

> "Finally, I can confirm that the issue of the status of the appellant company can also be considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published in the Gazette [i.e. that it has been completed and it's been dissolved], the Inspector will continue to determine the appeal."

My Lord, my learned friend will perhaps take you to it in detail, but given my Lord has read the papers, Mr Padden then makes a procedural application, which is behind tab 14, a few days before the hearing. There is a letter dealing with this particular issue.

THE JUDGE: Do I have the statement of common grounds? I could not find it.

MR MAURICI: My Lord, it is not in the bundle, no. It is referred to in my submissions to the Inspector, but the actual document has not been provided to the court, no.

THE JUDGE: No, okay, fair enough. I could not find it.

MR STREETEN: The next document that I would like to go to, my Lord, is behind tab 4. That is the Quantuma letter. So, Quantuma are the liquidators, p.23 of the bundle, and just briefly to parse that letter, my Lord, in the first paragraph Quantuma are clear to say-- are writing to appoint Taytime, and I will come back to this because the use of the word "appoint" was deliberate, and we see that from the underlying documents.

Secondly, what they say is that Taytime should take over responsibility for the appeal because they are best placed to manage it and, in my submission, that concept of management, again, is important. Thirdly, the point upon which my learned friend places particular weight, namely the absence of any interest whatsoever in the land, is a statement of fact, and what it is talking about is no legal or equitable interest in the land, i.e. no freehold/leasehold option, etc.

THE JUDGE: Yes.

MR STREETEN: It is not the same as no interest in the outcome of the appeal. Interest in land is a term of art. Fourthly, my Lord, and I do say that this is important, is, "Should you have any queries in this regard then please do not hesitate to contact me." That is written to the Planning Inspectorate, and the Planning Inspectorate never had contacted Quantuma further.

THE JUDGE: Just to be clear, Taytime own the land?

MR STREETEN: Yes.

THE JUDGE: Okay.

MR STREETEN: They own the land. The business is now run by Monk Lakes Fisheries Limited, that you would have seen reference to in the first witness statement of Emily Harrison.

THE JUDGE: Yes.

MR STREETEN: My Lord, going to go back to the key documents, the next one for my purposes is behind tab 20 starting on p.278, and it is the indemnity agreement. I just ask my Lord to note the date. It is 27 September 2021.

THE JUDGE: Sorry, what page?

MR STREETEN: 278, my Lord, so it is in the exhibits for the witness statement.

THE JUDGE: Oh, I have got that, yes. As I say, I have seen (inaudible).

MR STREETEN: Yes, my Lord. So, just to note the date, 27 September, i.e. five days after the letter from Quantuma, and I will come back to it but, my Lord, I do say that that is significant, because the appointment is effected by the letter from Quantuma. In terms of this agreement, firstly, the parties are identified at the top. It is the liquidators, Taytime, and a director of Taytime, the director of Taytime.

THE JUDGE: The sole director?

MR STREETEN: Sorry, my Lord?

THE JUDGE: Is it the sole director?

MR STREETEN: The sole director, yes. Then, my Lord, under "Background", point E, not one of the terms of the agreement but deals with the background:

> "…the liquidators have agreed to permit Taytime to adopt the planning appeal against the decision … provided that they are indemnified as to any costs expenses damages and adverse costs arising therefrom."

Pausing there, my Lord, if they were not themselves continuing the appeal, there would be no risk of costs; there would not be a party to it; and then what the parties agree-- and in particular, my Lord, skipping over the interpretation section to the main clause – it is cl.2 on p.279 – is that the liquidators consent to Taytime having conduct of the appeal and agree to "sign, do and permit all documents and things reasonably necessary for that purpose." Again, I say, if there was not an agency agreement, there would be no need to agree to "sign, do and permit all documents and things reasonably necessary for that purpose" to be signed.

THE JUDGE: Although it might be that they are simply doing this as a matter of caution.

MR STREETEN: Well, my submission is that that is not the case, my Lord.

THE JUDGE: Yes, though I could just submission back.

MR STREETEN: I will develop it in a second. My Lord, cl.3, then, is the indemnity, and I just-- again, perhaps this, to some degree, answers my Lord's point. Note that it is "so long as the Appeal is on foot", so it is not, in my submission, an abundance of caution; it is a recognition that the appeal will be on foot and that there is a need for an indemnity, and that indemnity is provided by Taytime and its sole director.

THE JUDGE: Yes.

MR STREETEN: I just note, my Lord, the language used in cls.2 and 3 is, "have conduct of", not "be assigned to."

THE JUDGE: Well, there is no issue of assignment, is there?

MR STREETEN: Sorry, my Lord?

THE JUDGE: There is no issue of assignment.

MR STREETEN: Well, my learned friend's submission, I think, is that it was assigned. I think he says that is the effect of it.

MR MAURICI: Well, my Lord, my submission is that that is what they thought they were doing but they cannot do it, so that is the submission.

THE JUDGE: Yes.

MR STREETEN: We are not agreed on the effects of assignment. So, I say you can assign, but that was not what was intended; it was an agency agreement. My learned friend's submission is that it was an assignment, so I think I do have to deal with that.

THE JUDGE: I see. Okay, yes.

MR STREETEN: Next key document for my purposes, and there are just two more, my Lord, is the decision letter itself. That is behind tab 3, and just a number of short points on this, my Lord. Firstly, in para.4 there is no dispute that Monk Lakes Limited, whilst in liquidation, still exists as a going concern. Secondly, para.5 of the decision letter refers to the appointment of Taytime to take over, and the Inspector's suggestion – and I will deal with this in detail later – is that Taytime is now pursuing the appeal, not Monk Lakes Limited. Paragraph 6, he says, "[Monks Lakes Limited] is listed as the appellant," but then says this has "been overtaken by events."

Then, perhaps critically, the last three paragraphs, 7, 8, and 9, which give us his core reasoning on why he has to dismiss the appeal: para.7, first line, "…there is no valid appeal capable of being determined." Paragraph 8, "…I have found the appeal to be invalid," and para.9, "…the planning appeal was not correctly made, and thus is not capable of being lawfully determined under Section 78..." The short point, my Lord, is that all three of those statements suggest that there is no valid appeal before the Inspector, and that, as I will come on to say, is completely wrong.

THE JUDGE: Yes.

MR STREETEN: Finally----

THE JUDGE: Just before I forget the point, at some stage can you tell me why MLL has never been dissolved?

MR STREETEN: Because it is awaiting the outcome of these proceedings.

THE JUDGE: Oh, is that why? Okay.

MR STREETEN: That is the answer, my Lord.

THE JUDGE: Yes, okay. Okay, yes.

MR STREETEN: My Lord----

THE JUDGE: But, I mean, it was-- I just have not got the sequence in my head yet but there was a period, was there not, when it had not been-- where there was no voluntary winding up and the proceedings were on foot, were they not?

MR STREETEN: Yes, so the appeal was brought by Monk Lakes Limited almost a year before it went into liquidation.

THE JUDGE: Oh, I see, okay.

MR STREETEN: But the course of the appeal is extremely long, my Lord, because of the intervening proceedings. So, the appeal was brought, I believe in 2011. The application was certainly made in 2011; the appeal was brought in 2020.

THE JUDGE: Yes, okay. Okay, yes.

MR STREETEN: My Lord, just the final document I want to look at before I turn to my submissions on the two key issues is the email from Mr Kon of Asserson to Monk Lakes Limited, which we put at the back of the bundle. Two short problems----

THE JUDGE: Now, this is a letter from----

MR STREETEN: An email from James Kon to Duncan Beat at Quantuma, so to the liquidators. The short point is that the liquidators are well aware----

THE JUDGE: Sorry, let me just-- James Kon is?

MR STREETEN: My solicitor from Asserson.

THE JUDGE: Your solicitor, okay, yes. Yes, sorry.

MR STREETEN: So, my Lord, the short point arising from this is that the liquidators are, and have long been, well aware of these proceedings in the High Court, and nobody is here suggesting that this is not part of the agency. My learned friend, just to be clear, takes issue with the reference to previous discussions within this email, and says that that suggests we have not been candid, but, my Lord, I do not want to be too glib, but generally speaking, correspondence from a solicitor in the context of litigation is privileged, so my learned friend might not expect to see that correspondence.

THE JUDGE: So, what is your solicitor doing here?

MR STREETEN: He is writing to the liquidators----

THE JUDGE: Yes, telling them what?

MR STREETEN: To make absolutely sure that there can be no suggestion that we have not told them that this hearing is happening; these proceedings are on foot.

THE JUDGE: Yes, and what do they say in reply?

MR STREETEN: Something along the lines of, “Yes, we know.”

MR MAURICI: Well, my Lord, have we got the reply?

MR STREETEN: It is privileged.

MR MAURICI: Well, we have seen nothing from the liquidators, is all.

THE JUDGE: Okay. Well, anyhow, I have got the letter. I have got the email. Yes.

MR STREETEN: Just in terms of the duty of candour, we have had no application for specific disclosure, and the duty of candour is not the duty to disclose any and all documents. It is the

duty to provide a full a frank explanation of the material facts and, in my submission, that is exactly what we have done.

THE JUDGE: Yes, okay.

MR STREETEN: So, my Lord, turning to those standard points. I will deal firstly with the claimant, secondly with the validity of standing point, and thirdly with what we say are the errors in the decision letter.

THE JUDGE: Yes.

MR STREETEN: In terms of the claimant, the claimant is Taytime. That is clear from the claim form. Taytime believes it is acting as agent in these proceedings but, just to make the point good, if we could turn up the claim form behind tab 1, p.2 of the bundle. The claimant's name is given as Taytime Limited as the appointed agent for and on behalf of Monk Lakes. It gives its address as Camburgh House, 27 New Dover Road, Canterbury, Kent. That is Taytime's address. It is not and never has been, as far as I can tell, Monk Lakes Limited's registered address, which at the time of the claim form being filed was Quantuma's address, namely Office D, Beresford House, County Southampton. My Lord, for your note, that is claim bundle tab 21, p.319, and previously, it was also (inaudible) address, see claim bundle tab 10, p.82. Secondly----

THE JUDGE: And this claim form is this-- Oh, this for the statutory review.

MR STREETEN: For this statutory review, my Lord. I am dealing, firstly, with the claimant and the statutory review and then I will deal with the planning (inaudible), but for the statutory review, I would say the position is extremely clear, and it is-- because my learning friend argues that it is an abuse of trust to be bringing these proceedings because we do not have authority to bring them. The short answer to that, which I will come to, my Lord, is that that cannot be right because Taytime has standing in and of itself, so we just do not need to go there.

We see this also, my Lord, from the claim form itself. If you-- from the statement of facts and grounds themselves. So, if you go to tab 2, p.8, there is a sub-heading B, "The Claimant", para.2:

> The Claimant, Taytime Limited ('Taytime'), is (and has since 15 July 2021) been the appointed agent for Monk Lakes Limited ('MLL') in relation the Appeal."

Very clearly, the claimant is Taytime, and just for the complete avoidance of doubt, my Lord, if we go over the page, paras.5 and 6:

> "5. Taytime also itself has an interest in the Land.
>
> 6. There can be no doubt, therefore, that Taytime is a person aggrieved for the purposes of section 288 of the 1990 Act."

My Lord will be well aware that under s.288, the test for standing is being aggrieved and the pleading is very clearly that it is Taytime that is the person aggrieved. It says that, essentially, for two reasons, one because it is the appointed agent of Monk Lakes Limited and two, on its own behalf because it has an interest in the land. My Lord, that brings me onto the standing point taken by Mr Padden in paras.17 to 25 of his skeleton.

THE JUDGE: If someone is acting as an agent, it is actually the principal who is doing things.

MR STREETEN: Yes, my Lord, it is the principal's relations that are being affected, but the point I make is that for the purposes of s.288, and this is where I am coming to, that does not matter, because it can never be said that this is an abuse because Taytime is acting as the agent of Monk Lakes Limited and understands it and that would make that good, but even if my learned friend's submissions were right and it was not, it would not matter because it would not be abusive given that it has standing in its own right.

THE JUDGE: Yes, we will put the "abusive" to one side but, I mean, the fact is if you act on behalf of the principal, it is the principal's relations with the third party that are affected.

MR STREETEN: Yes.

THE JUDGE: Yes, okay.

MR STREETEN: But my point is that you cannot refuse permission in circumstances where-- yes, so Taytime, and this is my primary submission, is acting as agent of Monk Lakes Limited and, in my submission, there is nothing to suggest to the contrary and the burden is on my learned friend to show that, but I also say that, if I can put it like this, it is a side show, because even if that were wrong, it would not mean that this court does not have jurisdiction.

THE JUDGE: Yes, okay.

MR STREETEN: That is the point I want to deal with now. So, I will deal with them in order: Firstly, that Taytime is authorised to act for Monk Lakes Limited in these proceedings; and, my Lord, on the law, I just want to make----

THE JUDGE: Is this your third main point, then, you are on to?

MR STREETEN: This, my Lord, is the heading, "Does this court have jurisdiction?"

THE JUDGE: Yes, okay.

MR STREETEN: And I have two subpoints. First one is Taytime is authorised to act for Monk Lakes Limited----

THE JUDGE: Yes.

MR STREETEN: -- and my second subpoint would be even if it is not, this court still has jurisdiction.

THE JUDGE: Yes, okay.

MR STREETEN: So, first point, my Lord, relates to-- or, if I may, I can just deal with three points on the law and the legal principles and, in that context, we can turn up authorities bundle, p.270.

THE JUDGE: Yes. Sorry, just so I have got-- I am picking this up, although-- just to help me pick it up a bit more, where is this in your skeleton, just so I know?

MR STREETEN: Yes, my Lord. It is my skeleton, paras.40 to 41, which deals with the fact that Taytime is authorised to act for----

THE JUDGE: I have got you, okay. Yes, good.

MR STREETEN: I would like to go in the authorities to tab 16 and we start on p.254, which is the head note, my Lord, and I would just ask my Lord to read the headnote.

THE JUDGE: Yes, well, I could have a look at this. So, this was really about the director having been appointed, and about the solicitor.

MR STREETEN: Yes. I rely on it, my Lord, for three propositions.

THE JUDGE: Yes. Well, tell me, yes.

MR STREETEN: The first is that the burden is on Mr Padden to prove want of authority on the balance of probability, and you will see that in para.71 of the judgment. The second is that the court is entitled to assume that if a solicitor has warranted that he is authorised to act then the court proceeds on that basis unless the contrary is shown to be the case. You will see that in paras.67 to 71, and the third is that what must be shown to merit either a refusal or the permission or the strikeout of the case is that the court's process is being abused. You can see that in para.62, in my submission.

THE JUDGE: Well, what has that got to do with this? I mean, okay, I have got the burden of proof point, but----

MR STREETEN: Well, my Lord, the point is----

THE JUDGE: What about the solicitor point? Where does that come?

MR STREETEN: Well, my Lord has the sworn statement of facts and grounds in which my solicitor has said that Taytime, the claimant, is acting as the appointed agent of Monk Lakes Limited.

THE JUDGE: But was this not about whether the solicitor was appointed?

MR STREETEN: No, my Lord, it was not. It was about whether the director could appoint a solicitor. It was about whether the director had the power of agency to act for the company.

THE JUDGE: Yes, okay. I see, okay, yes. So, whether the sole director (inaudible) could bring the claim, yes. Yes, so in that case, it was the onus upon that-- or the burden was on that-- the defendant to show that. Okay, I have got it, yes.

MR STREETEN: My Lord, as I have said, in this case we have the sworn statement in the statement of facts and grounds, and the short point of my submission is that the burden has not been discharged and that, even if it had, there would be nothing abusive in this case. So, my Lord, on that first point, the burden not having been discharged, we have seen the claim form which bears the statement of truth. My learned friend seeks to distinguish *Zoya Ltd v Ahmed* [2016] EWHC 1981 (Ch) in his skeleton at para.19a. by saying, "Oh, well, in that case there was a sworn statement to the facts." In my submission, we have got exactly the same here.

THE JUDGE: Yes.

MR STREETEN: Secondly, we have the letter of appointment and the indemnity and, in my submission – and I will deal with this when I come to the main points – it is perfectly obvious Taytime has been appointed to act in relation to this matter since September 2021.

THE JUDGE: Yes.

MR STREETEN: The third point is that Monk Lakes Limited and its liquidators, specifically its liquidators, are well aware of these proceedings and they have not in any way suggested that the way in which they are being pursued is wrong or not in their name. We know that they are well aware of this, my Lord, partly because Mr Padden has written repeatedly and vociferously to them, and you will find that behind tab 23 of the bundle at pp.429-432.

THE JUDGE: 439----

MR STREETEN: 429 to 432.

THE JUDGE: Yes, thank you.

MR STREETEN: And, secondly, because of the letter----

THE JUDGE: Which you showed me.

MR STREETEN: -- which I showed you.

THE JUDGE: Yes.

MR STREETEN: Fourthly, my Lord, there has been no challenge to the veracity of Assersons' assertion. There has been no allegation of bad faith, no application to cross-examine, nothing to cast-- or nothing more than casting aspersions. Fifthly and finally, my Lord, Mr Padden's

only point, really, is that the letter of appointment says that MLL has no interest in the land, and on that basis it is said, "Well, it is unlikely they would have authorised Taytime," but – and, again, I will come back to this – there is a difference between not having an interest in the land, which is true as a matter of fact – it is a legal term of art – and not having any interest in the outcome of the proceedings. To make the point shortly, Taytime owes a debt to Monk Lakes.

THE JUDGE: What is the debt?

MR MAURICI: I am sorry, where is the evidence of that?

MR STREETEN: Taytime is a creditor of Monk Lakes.

THE JUDGE: Yes, but where was it?

MR STREETEN: Yes, it is in evidence. If we go within the Voluntary Liquidators Report to----

THE JUDGE: Yes. Where is that?

MR STREETEN: Yes, my Lord, I am just getting the reference.

THE JUDGE: Yes.

MR STREETEN: Sorry, my Lord, one second.

THE JUDGE: We can come back to it.

MR STREETEN: My Lord, I do not want to forget to come back to it. I just beg your indulgence for one more moment. Yes, 152 of the bundle will make good. That is behind tab 17.

THE JUDGE: Yes, where on the page?

MR STREETEN: At the top under, "Leasehold Land."

DR BOWES: My Lord, can I ask you to look at 159 when you do because I have never had this suggestion made before that Taytime was a creditor, and the list of creditors is given on 159. I cannot see Taytime on there. 152 is about a lease, which we have not had (inaudible), but I am unaware of this ever being suggested before, so----

THE JUDGE: Sorry, did you say 159?

DR BOWES: 159, my Lord, you have got a list of the referential creditors, secondary creditors, unsecured creditors. Those are the creditors: those people that are owed money by Monk Lakes Limited. I do not see-- I have never known it to be suggested before that Taytime were a creditor of MLL.

MR STREETEN: My Lord, firstly, it is suggested in our skeleton. Secondly, it is an inter-company creditor, but unsecured creditors (inaudible).

THE JUDGE: That says nil.

MR STREETEN: No, it does not. It says £2,771.50.

MR MAURICI(?): Can I just have a look? Is it in your skeleton?

MR STREETEN: My Lord, so I will give the reference in the skeleton, but my learned friend, Ms Staynings, who probably is the better person to deal with this, as she is the insolvency practitioner, and if it comes to it that will be-- or should be freely available on Companies House, but there is a statement of affairs about that. Within the skeleton, my Lord, the point is dealt with at para.49. Yes, my Lord, and we can get, probably, a (inaudible) report that the statement of affairs expressly shows Taytime as a creditor. (After a pause) Well, my Lord, I heard Mr Maurici say it is not in the evidence, but it is a matter of public record.

THE JUDGE: Yes, well, anyhow. Okay.

MR STREETEN: So, as I say, there is----

THE JUDGE: There are improvements on the land and, therefore, Taytime owes MLL. Is that what----

MR STREETEN: MLL owes Taytime.

THE JUDGE: Yes. Oh, I see. Okay, yes, for the improvements made to the land. Is that the idea?

MR STREETEN: I think I need Ms Staynings to deal with this, my Lord, because I just----

THE JUDGE: No, okay, we will come back to it.

MR STREETEN: I did not mean to deal with it now and I did not mean to be the person who dealt with it, and I just do not feel best placed----

THE JUDGE: No, no, that is fine.

MR STREETEN: -- to make submissions on it.

THE JUDGE: Yes. Just so I understand, the only thing I have got from the-- directly from the liquidators are the September letter and the indemnity. Is that right?

MR STREETEN: Yes.

THE JUDGE: Okay. Both in 2001. Is that right?

MR STREETEN: 2021.

THE JUDGE: Sorry, yes. Okay.

MR STREETEN: So, my Lord, just going back to where I was, I say that Mr Padden's only argument is that Monk Lakes Limited has no interest in the land, but that misses the point. It is misconceived, because there is a critical distinction between a reference to interest in the land and a reference to the outcome of the appeal, and I will leave that to Ms Staynings to deal with.

THE JUDGE: Yes, okay.

MR STREETEN: My Lord, dealing then with the second of my points under this heading, namely that in any event proceedings have validly been begun, my submission is that the test

under s.288 – for my Lord's note, it is tab 2 of the authorities bundle, p.42 – empowers a person agreed by an order or decision of the Secretary of State to bring proceedings. It is perfectly clear from the statement of facts and grounds at paras.6 to 7, which we saw behind tab 2, p.9, that Taytime has an interest in the land and is itself a person aggrieved.

So, my Lord, the statutory test is met whether or not Taytime was acting as agent for Monk Lakes Limited, and so I do say that the claimant's (sic) whole argument on this is irrelevant. The only answer it has, and you will find this in its skeleton at para.20, is to suggest that no application has been made for substitution under CPR 19. In my submission, that serves only to highlight the difficulty of the position the third defendant finds himself in. There is the claimant as listed on the claimant form as Taytime, albeit acting as agent for Monk Lakes Limited, but if it has applied for substitution, all that would happen is it would substitute Taytime for Taytime, delete the "acting as agent".

THE JUDGE: Yes.

MR STREETEN: I mean, if that bit can be (inaudible) so be it, but, in my submission, it is just an attempt to create a distraction in circumstances where, as I have already said, my Lord, firstly, our position is that we do have authority and, secondly, it does not make a difference. My Lord, it is at this juncture that I would like to hand over to Ms Staynings to address the company and insolvency law points, if I may.

THE JUDGE: So, what? Are you then going to go on to the ground----

MR STREETEN: And then I will go on to the Inspector's errors, but because it said these proceedings could not validly be brought by Monk Lakes Limited, I want Ms Staynings to address you now before I go on to deal with that, and then I can deal with it with reference to what she said in the context of the decision letter.

THE JUDGE: Yes. Just in terms of the first point though, what about the point, which I think is raised on the other side, that the letters from September, and even the indemnity, only apply to the proceedings before the Inspector and not to this court?

MR STREETEN: Well, my submission is that that is a misconstruction of those documents, that they empower everything ancillary to those, including this challenge. Dealing specifically with the appointment, and this really is the point, dealing specifically with the appointment, which is in the first letter, you can construe that liberally, my Lord, and I will come onto the detail of it.

THE JUDGE: But you are going to come to this later on?

MR STREETEN: Yes, I will.

THE JUDGE: Okay. Yes.

MS STAYNINGS: My Lord, I am going to deal with paras.43 to 50 of our skeleton and I also (inaudible) answer any question that you might have on the insolvency law position, and this really arises because an attack is made by Mr Padden on the basis that the liquidator was somehow acting unlawfully in appointing Taytime as an agent and they were not able to do that. I will take this point relatively shortly, but I have three key points of response to this.

The first is that this court is the wrong forum to try to challenge a liquidator's decision to appoint an agent. Those challenges should be brought in the Chancery Division, the Business and Property Courts, Insolvency and Companies List. Second, importantly, Mr Padden is the wrong person to try to challenge that decision. He has no interest in the liquidation and, importantly, no entitlement under the Insolvency Act 1986 to ask the court to intervene in the liquidation or the liquidator's decision, and there is a clear statutory scheme, which I will come onto, which sets out who is entitled to ask the court to intervene. My third point is that even if this court does somehow have jurisdiction, it should not intervene. This was a commercial decision for the liquidator, and Mr Padden has not cited any authority in which the court has prevented a liquidator appointing a third party as an agent to conduct litigation in the name of the company, or to take decisions concerning contact of that litigation. On the contrary, the court has repeatedly emphasised that it is extremely reluctant to intervene in liquidator decisions.

Those first two points, my Lord, can really be taken together because the background to this is the scheme of the Insolvency Act, and we have set out at para.44 of our skeleton argument the power of liquidators. So, liquidators act as agents of the company themselves, and they take over the functions of the directors as the decision-making body. In a creditor's voluntary liquidation, the liquidator's powers are regulated by s.165 and, in particular, the liquidator may exercise any of the powers specified in Pts.1 to 3 of Sch.4 of the Insolvency Act. Those are in our authorities bundle. I will not take you to them unless you would like to see them, my Lord, but----

THE JUDGE: Just give me the reference.

MS STAYNINGS: So, it is at tab 1----

THE JUDGE: Yes, thank you.

MS STAYNINGS: -- and that cites the key parts from the Insolvency Act, but the key point is that there are a large number of powers and they are very wide. So, they include the express

powers that we have set out at the top of p.12 of our skeleton. So they have the power to compromise, to bring or defend any action or legal proceeding, to sell the company's property, and to appoint an agent to do any business which the liquidator is unable to do himself.

It is also important that now there is no requirement for a liquidator to obtain any sanction, either of the court or creditors, before exercising their powers or making decisions in the context of the liquidation. On the contrary, it is an important scheme of the Insolvency Act that liquidators are free to conduct the litigation and to exercise their powers as they think fit, and the way that they are supervised is by persons who have an interest in the liquidation being able to apply to the court to challenge those decisions.

My Lord, I will just ask you now to turn to tab 1 of the authorities bundle and to look at s.112 of the Act, which is on p.4. Your Lordship will see that under sub-s.1, 112, "Reference of questions to the court":

> "The liquidator or any contributory or creditor may apply to the court to determine any question arising in winding up of the company."

There is no power there for any third party to do that, and it is common ground that Mr Padden is not a contributory or creditor.

THE JUDGE: The difficulty I have with this submission is someone comes along to this court and says, "I have got authority. I have been appointed," and the other side says, or I, the judge, says, "Well, show me," and if it is relevant, you have to show. It is not going along to the Companies Court or whatever or the Chancery Division and making some sort of enquiry, it is simply, "Show me your authority." It is a common law point.

MS STAYNINGS: Yes, my Lord, and----

THE JUDGE: And this is what has happened here and, as I understand it, they are saying, "Show us." Now, you said, "Look, here is the September letter and here is the indemnity."

MS STAYNINGS: Yes. My Lord, this is addressing a slightly different point, which is that the submission that I anticipate we made, because it is made effectively in the skeleton, is that even if the liquidator did appoint Taytime until this September letter and the indemnity of agents, the liquidator somehow had no power to do that. So I am addressing the specific point that if the court is satisfied that Taytime is appointed as agent because you have all of the evidence of the letter, the indemnity, the fact that the liquidators know about these

proceedings, it is inconceivable that any liquidator being notified of proceedings in the name of the company would not turn up to court and say that these proceedings are being conducted without authority.

THE JUDGE: I think that is evidence.

MS STAYNINGS: Well, that would be a very serious breach of a liquidator's powers and duties to allow proceedings to continue in the name of the company with the----

THE JUDGE: I guess what I am saying is that this court deals with a whole range of matters, and I do not think it is going to be necessarily bound. You are going to have to persuade me that somehow I cannot enter into this. Okay, there is a scheme and this is how you would normally do it, but if it can be dealt with quite easily, this court is not going to say, "Oh, you have to go away and you have to go and you have to make an application to the Chancery Division and so on."

MS STAYNINGS: My Lord, to clarify, what the court can-- actually has to decide is whether the liquidator in fact appointed Taytime as agent. My submissions are not directed to that, because that is obviously a question for this court.

THE JUDGE:

MS STAYNINGS: My understanding is that what Mr Padden is asking you to do is to go even further than that and to say that if you find the liquidator appointed as agent, you are asked to find that they were unable to do that, it was unlawful for them to do that, and that is the specific point that my submission has been addressed to because that, in my submission, is not a question for the court, that if somebody is attacking a decision that the liquidator has made, this is not the proper forum for it.

THE JUDGE: Okay, okay. Well, I think I have just about got the point, but I will have to think about it. Anyhow, look, I interrupted you.

MS STAYNINGS: No, not at all. Not at all, my Lord, and it may well mean that this is something I can take relatively briefly now and deal with it in reply if, indeed, that is a submission that is made to you.

THE JUDGE: That might be better actually, yes.

MS STAYNINGS: In that case, the only other point that I will make in anticipation is my third key point, which is that even if you thought there was somehow an ability for Mr Padden to challenge the exercise of the liquidator's discretion in this court, the court generally will not interfere with the commercial decisions of liquidators, and that is set out in our skeleton on p.12, sub-s.5 by reference to the *Re Longmeade Ltd* [2017] B.C.C. 203 case and sub-s.6 of our skeleton, which, again, it is a matter for the liquidator's own *bona fide* judgment whether

the company carries on business. Given those indications from your Lordship, it may be convenient for me to sit at this point and to deal with----

THE JUDGE: Oh, no, why do we not come back to it, yes. Yes, okay, well, thanks very much.

MS STAYNINGS: My Lord, I should just say in relation to the creditor position, I am hoping that my clerks can bring over a printout of a document that is publicly available on Companies House. Taytime is a creditor of Monk Lakes, and there is an important point there from an insolvency perspective because liquidators obviously act in the interest of the creditors and, if a creditor has an interest in these proceedings, then the liquidator can properly take that into account in deciding what to do and how to exercise their powers.

THE JUDGE: Yes.

MS STAYNINGS: So, it is a very short point, my Lord, and otherwise I will hand back to Mr Streeten.

THE JUDGE: Yes.

MR STREETEN: Yes, my Lord, just one final point following on from that, which is that in the context of legitimate expectation at para.78 to 79 of our skeleton, we also specifically explain that it was Taytime who relied upon that expectation referring to the Insolvency Act. In fact, we did not challenge the decision by MLL's liquidators to discontinue the appeal, and we could only have done that if we were a creditor.

THE JUDGE: Okay.

MR STREETEN: So the point was taken. I did not realise there was any dispute, and we will get you the document just to make it absolutely good.

THE JUDGE: Yes, so where are we going now?

MR STREETEN: Yes, my Lord, so we are now going to the nature of the case, in my submission, namely whether or not the Inspector (inaudible) erred in law. It is not a high bar submission, my Lord, and I do say that you should be especially slow to refuse permission where two public authorities, including the Secretary of State himself, no doubt having taken instructions from the Inspector, accepts the error.

THE JUDGE: Yes. So, well, this is from 52, is it?

MR STREETEN: Yes, my lord, it is.

THE JUDGE: Okay.

MR STREETEN: And I have, essentially, four key points:

(1) that the Inspector failed to distinguish between the making of an appeal and the pursuing of that appeal;

(2) that the Inspector misconstrued the 22 September letter;

(3) that the Inspector made specific errors in relation to the law of agency, and;

(4) that the Inspector breached the claimant's legitimate expectation.

So, the first of those, my Lord, the error in finding that the appeal was not validly made, this is a ground accepted by my learned friend, Dr Bowes, on behalf of the Secretary of State on a reasons basis.

DR BOWES: Well, can I just clarify our concession on that? It is not the-- it is the reasons for the continuation of the appeal which is our concession. I do not think that necessarily makes a difference, but just so that is absolutely clear.

MR STREETEN: So, my Lord, just so I can be clear what I am referring to and there is no issue, it is para.9 of Dr Bowes' skeleton argument, and this is as I understand the concession to be: namely that even if the Inspector were correct that Taytime was not the appointed agent for Monk Lakes Limited, there remained a valid appeal by Monk Lakes Limited which had not been withdrawn and which remained an active company at the point of decision. The Inspector felt (inaudible) for dismissing the appeal on its merits. In my submission, I adopt that. That is absolutely right. The concession is properly made. Firstly, and we have seen this from the face of the decision letter, it says in words of one syllable at paras.7, 8, and 9----

THE JUDGE: Just let us go back.

MR STREETEN: So, that is-- my Lord, if we could have it open in front of us and look at it again together. It is behind tab 3, mercifully short, p.20. Firstly, it says:

> "…there is no valid appeal capable of being determined… [Secondly, it says] I have found the appeal to be invalid… [Thirdly, it says] the planning appeal was not correctly made and thus not capable of being lawfully determined under Section 78…"

THE JUDGE: Yes.

MR STREETEN: The short point, my Lord, is that there is no ambiguity in any of that. The Inspector is saying there is no valid appeal before him and therefore nothing to determine, and that is wrong in law. It is a very easy and simple point.

THE JUDGE: Yes.

MR STREETEN: Section 78 controls who brings the appeal by a notice. No dispute by anyone, that notice was validly given by Monk Lakes Limited. Monk Lakes Limited is in liquidation but not dissolved, so it is still capable of pursuing an appeal and it is common ground, my Lord, that that appeal has never been withdrawn; see decision letter para.7.

THE JUDGE: Yes.

MR STREETEN: So, my Lord, in those circumstances, in my submission, it was absolutely impossible for the Inspector to find that the appeal was not correctly made, or no valid appeal was before him capable of being determined. Mr Padden's response is that the Inspector cannot possibly have concluded that the appeal was not validly made because that would make no sense. I accept the second point, that does not make any sense to have found that, but it is what the Inspector found. In order to make that submission good, my learned friend has to seek to rewrite the Inspector's decision letter, para.3 of his skeleton.

I do say that is hopeless for the following reasons. Firstly, inspectors' decision letters are read with reasonable benevolence, but I do emphasise the word "reasonable". You cannot make them mean whatever you want them to mean. This is, to borrow the phrase from the construction policy, not the land of Humpty Dumpty, and you cannot take three very clear statements in the decision letter and say they do not mean what they say. Secondly, it is not what the Secretary of State, who has taken instructions from the Inspector, says it means. The Secretary of State is not arguing for the construction Mr Maurici identifies. The simple fact that the error seems obvious to a lawyer does not mean that the error was not made.

My Lord, Mr Maurici's second argument in response to this is that even if the error was made, it was irrelevant, and again I say that is not a tenable position for two reasons. Firstly, even if Taytime's actions were a nullity, that would not have provided a lawful basis for dismissing the appeal. I just note, my Lord, and we saw it earlier at p.23, the liquidator's letter ends by saying, "Should you have any queries in this regard then please do not hesitate to contact me." The Planning Inspectorate never did contact them. The Inspector was clear at para.7 of the decision letter that MLL had not withdrawn the appeal and, my Lord, on that note, I do essentially endorse what my learned friend, Dr Bowes, says at para.9 of his skeleton.

THE JUDGE: Yes.

MR STREETEN: The second point is that s.78 restricts who can bring an appeal, not who can pursue it. My Lord, it may be helpful just to turn up s.78, which is behind tab 2 on p.28 of the bundle, and I just ask my Lord to read s.78(1).

THE JUDGE: Sorry, you said 28, did you not?

MR STREETEN: Page 28 of the authorities, yes.

THE JUDGE: (After a pause) Yes.

MR STREETEN: So, my Lord, in my submission, it is perfectly clear that what that focuses upon is the bringing of the appeal by notice, the procedure for which my Lord will find behind tab 3 of the bundle. It is in the Development Management Procedure Order. My Lord, essentially, I say that once the procedure in Art.37 of the Development Management Procedure Order has been followed, there is a valid appeal.

THE JUDGE: Yes.

MR STREETEN: My Lord, in my submission, there is no authority whatsoever for the proposition that once validly brought, such an appeal can be dismissed other than on its merit, nor, my Lord, is there any authority whatsoever for the proposition that such an appeal, if validly brought, cannot be assigned. It is not my primary case, obviously, that there is any assignment, because my case is that this is an agency relationship.

My learned friend's submission is that that is wrong in law and that, in fact, as a matter of law, there was an assignment. My submission is even if he makes that good, it does not mean that that there was not a valid appeal being pursued. It is not a legal impediment to the appeal proceeding, and he has identified no authority to suggest that there cannot be an assignment. To be clear, I am not aware of any authority directly on the point but, in the context of s.289-- and that is why I handed up s.289, my Lord. It is at the back of tab 2, and that is a statutory right to appeal to this court under the 1990 Act, which is restricted to a specific class of appellants, namely the appellant-- the local planning authority or any person having an interest in the land. You can see that from 289(1). An assignment can be made, and you will see that from the case of *Muorah v Secretary of State* [2023] EWHC 285 (Admin) which is behind tab 22 of the authorities bundle. You will see paras.50 to 53.

So, I say, my Lord, that even if Mr Padden is right in everything he says and you accept his submission at para.36(1) of his summary grounds of resistance that there was an assignment to Taytime-- obviously it is not my primary submission but even if that is right, there was still a valid appeal which had to be determined on its merits. Certainly, my Lord, I say that that is something which is arguable for the purposes of today's hearing. This is not a final hearing.

THE JUDGE: Yes.

MR STREETEN: My second point, my Lord, is that the Inspector misconstrued the 22 September, letter.

THE JUDGE: Yes.

MR STREETEN: My Lord, three preliminary points relating to the law on this, and I think I can take them reasonably quickly. The first is that the test is whether the principal has placed the agent in a situation that, according to ordinary usage, the agent would understand themselves at the principal's authority to act on the principal's behalf, and my Lord will find that in *Bowstead* behind tab 42 of the authorities at para.2-031.

THE JUDGE: Do we go there, or----

MR STREETEN: We can, but it does not say any more than I said.

THE JUDGE: No, no. Okay.

MR STREETEN: So, it is 2-031 and my Lord can look at it. Secondly, whether or not that test is met turns on the construction of the document relied upon, which is a question of law. In my learned friend's summary ground, it was said this is all a matter of judgment. In my submission, that is just wrong. See *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 behind tab 7 of the authorities bundle, p.104, 502 of the report. From my learned friend's skeleton, it would appear that that point might now be agreed.

Thirdly, my Lord, in this case, my submission is that the relevant document is the letter of 22 September 2021. That comes before the indemnity, and so my submission, in short, is that the Inspector, at least arguably, misconstrued that letter. My submissions on this are at para.69 of my skeleton but, in summary, firstly, that letter uses the word "appoint"----

THE JUDGE: Yes, where?

MR STREETEN: Page 23 of the bundle, my Lord, and we know that the use of the word "appoint" is deliberate from tab 20, p.245 in the correspondence where Taytime specifically requested that that be the word used.

THE JUDGE: What page is it?

MR STREETEN: Page 245, my Lord.

THE JUDGE: Yes.

MR STREETEN: I do say that that is significant, not least because the power in para.12, Pt.3 of Sch.4 of the Insolvency Act specifically refers to a power to appoint made, and we might just look at that. It is tab 1, p.26.

THE JUDGE: Yes.

MR STREETEN: Secondly, my Lord, I say that that is reinforced within the letter by the following paragraph and the reference to being best placed to manage that process. Thirdly, the letter, my Lord, is not a deed and, in those circumstances, the test is only to show that the

construction relied upon is one that the letter is capable of bearing, and that, my Lord, arises from the case of *Ireland v Livingston* [1972] LR 5 HL 395 behind tab 8, p.134 of the authorities bundle.

THE JUDGE: Yes.

MR STREETEN: Fourthly, my lord, I say it is supported by the other relevant facts and circumstances and, just to be clear, these were before the Inspector, and I think we do not really need them to get where we are going because all that matters is the construction of that letter, but insofar as it is referred to, it is supported. Firstly, the correspondence showing that Monk Lakes Limited are fully aware of their ability to withdraw the appeal at any time. My Lord, for your note, that is behind tab 20, for example, p.249 and pp.258-9.

THE JUDGE: Sorry, give me the page again.

MR STREETEN: Sorry, yes, 249 and 258-9.

THE JUDGE: Yes.

MR STREETEN: Secondly, it is clear from the indemnity itself. Firstly, as I said earlier, there is no point in an indemnity if Monk Lakes Limited does not see itself as the appellant. Secondly, there is no need for them to agree, sign, permit, and so forth if the appeal has been assigned because it would no longer be theirs. Thirdly, it uses the words "have conduct" rather than "transfer to," and conduct is very clearly implying an agency relationship, in my submission, rather than an assignment.

Fourthly, my Lord, Mr Padden's submission that an indemnity is inconsistent with an agency relationship, which he makes at para.37 of his skeleton, is simply, in my submission, wrong. There is no authority to support it, and the question is whether it is in the interest of Monk Lakes Limited to allow the appeal to proceed at Taytime's cost. That, I do say, is a matter of judgment for the liquidators with which this court should not interfere and, my Lord, I identify at this point the submission my learned friend, Ms Staynings, made to you, namely that if someone wants to interfere with the judgment of a liquidator, then they have to go through the Chancery Division. That is not the same as saying my Lord does not need to consider the agency relationship but, if you want to interfere with their judgment, there is a statutory process for doing that and it is not judicial review.

THE JUDGE: Yes.

MR STREETEN: In addition, my Lord, just to finish off on this point, I do say that insofar as we need it, the validation principle supports our position, mainly that the letter should be construed as validly appointing. It is perfectly clear no one intended to abandon or withdraw

the appeal. Fourthly, the point I have already dealt with, the reference to no interest in the land does not assist my learned friend. It is simply a point of fact, namely no freehold/leasehold option or whatever. The liquidators act in the interest of the creditors, and Taytime was a creditor. So, for those reasons, my Lord, I do say it was at least arguable that the Inspector misconstrued the 22 September letter.

THE JUDGE: Yes.

MR STREETEN: My Lord, turning then to the other specific points, and I think I can take these reasonably shortly, there are essentially two arising from para.5 of the decision letter. Again, that, my Lord, is behind tab 3, pp.19 to 20. The first one is that the Inspector relies on the Taytime signing a statement of common ground (inaudible) suggests that Taytime was not acting as agent. In my submission, that misunderstands the law because, of course, an agent can sign a document on behalf of the principal even if the principal is undisclosed. My Lord will see from *Bowstead,* tab 42, para.2-036 that English law is unusual in that respect. You do not have to disclose your principal.

Secondly, my Lord, the Inspector suggests----

THE JUDGE: A cause of great difficulty in the law, undisclosed principal, yes.

MR STREETEN: Yes. The paragraph in *Bowstead* (inaudible).

THE JUDGE: Yes, well, I am well aware of the principal, yes.

MR STREETEN: I am grateful. Secondly, my Lord, in terms of sub-agency, the appointed agent is the Pegasus Group, is what the Inspector says, and in my submission, that fails to recognise the ability to appoint a sub-agent, seemingly because the Inspector conflates the planning consultant with the agent and it is a fact of the planning and appeal website that you can only put one agent in, although there was only Monk Lakes Limited and Pegasus at the time that was done.

THE JUDGE: But what are you saying, that Taytime is a sub-agent?

MR STREETEN: Well, no, I am saying Pegasus is a sub-agent, as would Mr Pereira have been, and that is not at all unusual. If you appoint an agent – for example, a litigation funder – to conduct the litigation, they would appoint solicitors who in turn will appoint counsel, and you will have, in reality, a series of sub-agencies and there is nothing unusual in that. That is just litigation.

THE JUDGE: Okay, yes.

MR STREETEN: So, again, my Lord, I say both of those specific points are arguable. Finally, my Lord, legitimate expectation. I think I can take this reasonably shortly. PINS position in

the letter-- sorry, the email on p.94 of the claim bundle said, and we can look at it again, perhaps, tab 13.

THE JUDGE: Well, this says, "It will continue." Is that the----

MR STREETEN: Yes. Well, it is not just, "It will continue," it is, "unless the appeal is withdrawn, or PINS is notified that the second notification letter has been published in the Gazette," and it is that specificity that I say is of particular importance because it identifies the triggers, i.e. withdrawal by Monk Lakes Limited or notification of dissolution, essentially. I do say that that is clear, precise, and unambiguous. My learned friend says, "Well, it says, 'continue to determine'," and that somehow introduces ambiguity, but in my submission it does not. I do not see what ambiguity it creates, bearing in mind that it must be read in the context of the two (inaudible) identified.

Secondly, I would say it was relied upon for the reasons set out at para.79 of our skeleton argument, and that is the point that had there been a withdrawal, that could have been challenged in insolvency proceedings. Thirdly, I say that the expectation was legitimate, essentially for the reasons given by my learned friend, Ms Staynings, the point being that MLL could lawfully pursue the appeal, and that brings us back to the distinction she was drawing between the question of agency, which absolutely is before this court, and the legitimacy of decisions taken by the liquidators, which is not, in my submission, before this court.

THE JUDGE: Yes.

MR STREETEN: So, my Lord, in my submission, all of those grounds are arguable. The Secretary of State and the local planning authority both agree that, and this is not the case which should be brought to a halt today.

THE JUDGE: Yes, okay.

MR STREETEN: Unless I can be of further assistance.

THE JUDGE: No, thanks very much. So, Mr Bowes, just explain. Just explain to me what you are saying. Are you saying there is an appeal that has begun----

DR BOWES: Yes.

THE JUDGE: -- and somebody comes in and then the person who started it off wanders off, I put this all very colloquially, and someone comes through the door and says, "Well, I am going to continue it." It is still a valid appeal, or if there is no one there at all?

DR BOWES: Yes, so it depends on what my Lord means by "wandered off" in that context, because if the valid appellant-- so if the applicant for planning permission who is the person fixed with the power to appeal----

THE JUDGE: MLL in this case.

DR BOWES: MLL in this case. If they cease to exist, then there may be a question about pursuit of the appeal. So, in my submission, just because the appeal is valid and fired off under s.78, does not mean that that issue can raise its head without jurisdiction at a later stage. In this case we say that the problem arose in the decision letter because paras.5 and 6 give rise to at least an arguable substantial doubt as to whether the Inspector understood the implications of the letter to the Planning Inspectorate in September 2021. Secondly, importantly, there was in this case a valid appeal that had been made, and was still before the Secretary of State, and was dismissed without reasons on its merits and, just to clarify a submission my learned friend, Mr Streeten, made to you, there is a power to dismiss an appeal otherwise than on the merits of the case, and that is found in s.79(6A) of the Town and Country Planning Act 1990, and that is a power, if it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may:

> "(a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
>
> (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly."

So there is a procedural power to boot out an appeal that is not being pursued.

THE JUDGE: But what you are saying is that if MLL exist, even though they take no interest in the appeal, it continues?

DR BOWES: Yes.

THE JUDGE: And has to be determined on the merits?

DR BOWES: Absent that procedure being followed but was not in this case.

THE JUDGE: Okay.

DR BOWES: So the Secretary of State, or more likely the Planning Inspectorate, or the administrative people in the Planning Inspectorate, could have written to the appellant and said, "We think you are responsible for undue delay in the prosecution of this appeal. Here is a notice requiring you to take relevant steps, i.e., crack on and pursue this appeal. If you do not, it is going to be booted out," and it was not. That procedure was not followed.

THE JUDGE: Yes, but what I put to you was that MLL does nothing, but someone else has come in and is pursuing the appeal.

DR BOWES: So, if MLL were to do nothing and were not to make a lawful decision to appoint an agent to pursue the appeal on its behalf, then that would potentially give rise to a situation where there was a valid appeal which was not being pursued and the Secretary of State----

THE JUDGE: But does it have to be pursued by MLL?

DR BOWES: Well, yes, because they are the applicant for planning permission and it is in them in which it is fixed.

THE JUDGE: So they have to maintain some sort of interest in the appeal?

DR BOWES: But they can do that for appointing an agent.

THE JUDGE: Yes.

DR BOWES: And that is distinct from an agent in the planning agent sense, the Pegasus, who are the planning consultants----

THE JUDGE: Oh yes, yes, yes, but, I mean, the point is, as I understand it-- one of the arguments is, in this case, Taytime, whatever it is called, came along and then took over the reins.

DR BOWES: Yes.

THE JUDGE: And so was no longer an agent. That is the argument as I understand it. I mean, I have not heard it from Mr Maurici.

DR BOWES: Indeed, yes, but in light of the letters to the Planning Inspectorate explaining the context in which they were taking-- for instance, if you take the liquidation situation to one side and imagine a hypothetical case where person A has the right to pursue an appeal, but (inaudible) and does not want to take any part in it, and appoints person B, a company or an individual, or whatever, to marshal, to pay the people, to be in the jurisdiction, make sure everything goes ahead, there is absolutely nothing wrong, in my respectful submission, with that process because person A is still the appellant and person B is doing all the running, making sure people are paid, making sure the right documents are submitted, making sure everyone turns up on time, all of those things. That is perfectly appropriate to do that provided there remains an agency relationship.

THE JUDGE: That is the point. Okay.

DR BOWES: Our concession is on the basis that in light of the letters to the Inspectorate, which you have and my learned friend, Mr Streeten, has taken you to at p.23, we accept that our Inspector did not give sufficient reasons for why he was of the view that was not the case here.

THE JUDGE: Does the agency relationship have to continue? That is the point. Okay, we appoint someone as the agent to run it.

DR BOWES: Yes.

THE JUDGE: We are living abroad. We appoint someone.

DR BOWES: Yes.

THE JUDGE: Then we take no interest and there is no longer an agency relationship.

DR BOWES: Well, it depends on the terms in which that agency was created, in my submission, but that is (inaudible) outside my expertise, but if you have a principal who says to an agent, "I want you to go ahead, manage everything about this appeal, and just let me know when it is done," that that is the terms of the arrangement and there is nothing wrong with that.

THE JUDGE: Yes, okay.

DR BOWES: In light of the letter explaining that, we accept that there were in fact the reasons given at paras.5 and 6 in the decision letter. We also say, as I set out in para.9 of our skeleton, that in this case there was a valid appeal, which had not been withdrawn and a procedure at s.79(6A) had not been followed, which has been dismissed without argument on its merits. Certainly, the Inspector does not give reasons as to why on the planning merits, the evidence having been heard, that appeal was dismissed, or that procedure of s.79(6A) was not followed. So that we accept is an additional reasons point. If the only error, if I can just clarify this point because I did interrupt my learned friend, just to clarify this point, if the only error was at para.9 where the Inspector says, "I conclude the planning appeal was not correctly made," well, I do accept that on its own would be sufficient because you have to read the decision letter as a whole.

He explains in the header, under the bullet points, first page, "This appeal is made by Monk Lakes Ltd." He explains that para.4 the original planning application was made by Monk Lakes Limited and, therefore, you know-- and also, you read the substance and why he has come to that conclusion that we see in the paragraphs. His concern, rightly or wrongly, was about the pursuit of the appeal, not whether it was made correctly in 2020 or not. So really that, what is said at para.9, if that was the only point, that would be an infelicity that, in my submission, the court could, reading the decision letter benevolently, forgive. What the Inspector's concern here was, when we read the decision letter in substance, was whether it was being pursued by someone who could be pursuing the appeal.

THE JUDGE: Yes, okay.

DR BOWES: My Lord, you did not hear submissions on Ground 1. You have seen what we have said about that. This was not something that fell within the preclusions and therefore it is not out of time. So we assume that point is not being pursued.

MR STREETEN: No.

DR BOWES: I am grateful. On Ground 3, our simple point here – Mr Maurici, I am sure will develop it – is just to say here from us why we say we do not accept that. Page 93 and 94 is the PINS Planning Inspectorate email. The final paragraph where they say:

> "…confirm that the issue of the status of the appellant company has also been considered and unless the appeal is withdrawn or PINS is notified that the 'Second' notification letter has been published…the Inspector will continue to determine the appeal."

In our submission, the termination of the appeal would include determinations for jurisdiction, or indeed initiating a procedure in s.79(6A) of the Town and Country Planning Act. So that cannot be-- and, if it was, it was a matter of fettering, in my respectful submission, as to the Inspector's proper determination of the appeal under 79. So that determination is not just a determination on its merit. It could include determinations for jurisdictions. So we are not (inaudible) consent on that basis.

THE JUDGE: Yes, thank you.

DR BOWES: On (inaudible), my Lord, we accept the (inaudible) claim. You were told, just incidentally, that the point about having an interest in the land, in my submission, there is case law on that point, and it is not before the court, but an interest in the land does not really help you either way on its own for a 288 appeal. You can have an interest in the land but having not participated in the appeal, you are not a person aggrieved, and there is a pretty harsh decision of this court which comes to that conclusion, but we accept that Taytime did participate in the appeal and therefore they are aggrieved by the outcome and entitled to bring the claim, but their interest in the land is a factual part of that conclusion, but is not self-determinative and could not be.

THE JUDGE: Yes. Okay, well, thanks very much.

DR BOWES: Thank you, my Lord.

THE JUDGE: Yes. So, Mr Maurici, yes.

MR MAURICI: My Lord, as my learned friend, Mr Streeten, explained, we have agreed the security for costs position and will provide your Lordship in due course with the relevant wording to go in the order for that. That is agreed. My Lord, the remaining issues are of course permission for the three grounds that are pleaded, one of which we know is not

pursued, Ground 1, and then the preliminary issue that we raise about the authority to bring these proceedings and, my Lord, just on that, we say we are entitled, as a defendant to these proceedings, to question the authority to bring these proceedings. My Lord, the fact that there are procedures, as your Lordship pointed out, the fact that there are procedures in the Chancery Division that would allow these issues to be aired, does not mean that this court cannot also consider whether there is authority to bring these proceedings on behalf of the named parties.

Now, my Lord, before I leap right into it with what I am going to do, there is obviously a very big overlap between the issue we have raised about authority for these proceedings and Ground 2(ii) of the judicial review. That is whether there was an agency relationship in place between Taytime and MLL; those issues are related. My Lord, as you know, Mr Streeten has said to you that he puts forward two arguments for why there is authority to bring these procedures. The first one is that Taytime are agents. So that directly and very clearly overlaps with Ground 2(ii) of the judicial review. His second and alternative contention that Taytime is in and of itself a person aggrieved, my Lord, that is different. That does not overlap with the judicial review (inaudible). That is an entirely separate point, and I will deal with those.

My Lord, can I begin by saying that I am going to deal with these two points together, which is the authority to bring the proceedings, and the question of whether there is an agency relationship, which effectively is Ground 2(ii) of the judicial review. My Lord, what I want to do is just give an overview of what we say is the clear factual position here and, my Lord, can I start with MLL? MLL was the company in liquidation. They were the applicant for planning permission in 2011. Now, Mrs Harrison has always said that that was actually an error and it should have been Taytime but, nonetheless, it was MLL who brought the application. Secondly, it was of course MLL who brought the appeal before they went into liquidation under s.78 when they were refused planning permission by the planning committee and it had to be MLL because, as your Lordship has been told, quite correctly, s.78 only allows an appeal by somebody who was the applicant for planning permission.

Now, my Lord, there are two crucial things about MLL's position. One is we know they have no interest whatsoever in the land. We know that because that is what they say on p.23 in the liquidators' letter in 2021, but, my Lord, what Mr Streeten has tried to suggest to you

today in his oral submissions and in his skeleton is that that is different from saying that they had no interest in the planning application and the appeal in relation to that application. My Lord, that is incorrect and, my Lord, can I ask you to go to p.278 of the bundle, please, which is the indemnity agreement, and there is a passage which my learned friend did not read to the court from E. So, my Lord, 278, Recital E. My letter friend read from the end of E but, my Lord, look at the beginning of E:

> "On the basis that the planning application should have been in the name of Taytime ..."

So that is the point I made to your Lordship a moment ago that Mrs Harrison has always said that it was some kind of mistake, that it was brought in the name of Taytime and, this is the crucial part, my Lord:

> "… that Monk Lakes Limited had (and has never had) any interest therein, the Liquidators have agreed to permit Taytime to adopt the planning appeal against the decision."

So, my Lord, that is, in the recitals, a complete disavowal by MLL's liquidators, not just of interest in the land, but of interest in the application. My Lord, it is clear as day that that is the position. Now, my learned friend has made the submission to the contrary. My Lord, that is, in my submission, clearly, clearly wrong, and the position is they have no interest in the land, nor do they have any interest in the application and, my Lord, in the bundle, if I can ask you to take it one step further, my Lord, p.152 in the liquidators' report. Well, in 152, at the top of the page, "Leasehold Land," this is the passage which Mr Streeten took you to. It says:

> "… the Company's accounts showed leasehold land with a book value of £77,163. However, on further investigation it appeared that this related to improvements made by the Company. The land is owned by Taytime Ltd, and is subject to an ongoing legal case with the local Council who stated that significant remedial works were required. No realisations are therefore anticipated."

So they are not expecting to obtain any financial gain for the creditors from the land and, I would say, from the application. That is their statement that they are making under their statutory duties: there are going to be no realisations from this land. My Lord, can I just say, so it is clear, the liquidators' own position is crystal clear, no interest in the application but,

my Lord, that follows in any event as a matter of planning law because planning permission, as your Lordship knows, runs with the land. So any benefit, any benefit at all, that arises from planning permission being granted would accrue to Taytime. It would not in any way accrue to MLL who are in liquidation. There is no money that can be obtained by the liquidators for their creditors' benefit, in my submission, from this position.

Now, my Lord, I know it has been suggested today, for the first time in my submission, that Taytime itself is a creditor of MLL. I will await the documents that we had not seen before but, my Lord, the liquidators' notice that you have got, as I showed you earlier, my Lord, p.159, that is the evidence we actually had before the court and that does not, in my submission, show (p.159) that Taytime is a creditor. My Lord, in any event, I am not really sure where that goes because, my Lord, what lies at the heart of this, my Lord, is whether there is any basis upon which MLL's liquidators could gain anything through the pursuit of a planning appeal and, my Lord, in my submission, it is absolutely clear there is nothing for MLL to gain. There may be something for Taytime to gain, but that is a completely different point. The liquidators must look to the interest of all the creditors. They are not there to serve one creditor. They have to realise the assets and value of MLL as best they can. There is nothing, nothing, for MLL in the pursuit of this application: no interest in the land, no interest in the application.

My Lord, can I ask your Lordship then, please, to go to p.430 of the bundle?

THE JUDGE: Yes.

MR MAURICI: My Lord, the first point we simply make, before I show you this, my Lord, is that given that there is no value in this for MLL, we say quite simply that the liquidators could not, could not, as a matter of law do anything (inaudible) pursue the appeal because there is no gain for MLL in so doing but, my Lord, in any event they have shown no inclination at all to actually do anything to pursue the appeal and, my Lord, at p.430, this is a letter that my instructing solicitors wrote to the liquidators back in January of this year and, my Lord, we had no reply, no reply, but if you look at question 3:

> "iii. In the event that the High Court Claim is successful please confirm whether MLL would wish to continue to pursue the remitted planning appeal as the appellant?"

My Lord, this is relevant to a point I am coming to, and no reply, no reply but, my Lord, look at the first two questions we asked to which we also had no reply:

> "i. Please confirm whether you, as liquidators, have granted Taytime Limited authority to bring the High Court claim 'as the appointed agent'… Please provide evidence that this authority was provided prior to the filing of the High Court Claim…
>
> ii. If this authority has been granted please explain on what basis this has been deemed to be in the interests of MLL's creditors."

Now, my Lord, your Lordship rightly pointed out to my learned friend, the court has nothing, nothing, and, my Lord, that is extremely odd for two reasons. One is liquidators, as your Lordship knows, are officers of the court. It is extraordinary they have not responded in these circumstances but, my Lord, secondly, if my learned friend is correct, MLL is a party to these proceedings, a party to these proceedings, and the liquidators run that company. They are under the duty of candour, duty of full and frank disclosure to the court and they have not fulfilled it. They have entirely failed to respond or to clarify their position. So, my Lord, in my submission, the position is this appeal could not be properly pursued by MLL and its liquidators as a matter of insolvency law, and my learned friend will deal with that further to the extent it needed to be dealt with but, my Lord, in any event, there is no evidence at all that the liquidators of MLL would actually take any action to pursue this appeal if it was down to them to do so.

My Lord, can I just say the other odd point about all of this, that email which my learned friend showed you from his instructing solicitor apparently notifying the liquidators yesterday of this hearing and referring to previous discussions about which we have no evidence at all, my Lord, the reason that is significant is, again, we made requests for disclosure under the duty of candour in relation to a series of questions, my Lord, which I think it would be useful if I could just show your Lordship those. So, in the hearing bundle, my Lord, if you go to tab 22, my Lord, p.325 first of all, this is a letter from my instructing solicitors to my learned friend's instructing solicitors on behalf of Taytime and you will see it refers at the beginning of the letter to the fact that in our summary grounds, which were filed in January, we asked for responses to a series of requests and those requests are repeated in the letter at the bottom half of that page, my Lord. You will see:

> a. Details and copies of all communications between the Claimant Company, MLL, the liquidators…
>
> b. Details … of communications between the Claimant Company, MLL, liquidators and/or their advisors and/or agents [etc.]… authority to issue these proceedings; and
>
> c. Confirmation that the Claimant Company is in fact authorised to act as the agent for MLL in these proceedings and, if so, when that authorisation was granted, on what terms, and what considerations were considered."

Now, my Lord, after much chasing, and I will not go through all the correspondence, the response we got to all of that was the first witness statement of Mrs Emily Harrison, which you have in the bundle at tab 20 but, my Lord, can I just make this submission? This is a negative submission. She does not refer in the witness statement at all to there being any authority granted by the liquidators to bring the proceedings and she says nothing about that at all. Secondly, none of the documents produced, none of them, go into the issue of authority to issue these proceedings. Complete absence of a response.

My Lord, there was further correspondence in that same tab I just showed you, which is tab 22, letters and emails regarding disclosure of documents. My Lord, towards the end of tab 22 there was a series of exchanges about whether there had been compliance with the duty of candour by the claimant, i.e., they had given us everything that was relevant to this issue. So, my Lord, you will see, for example, p.335, a letter from my solicitors, third paragraph:

> "We will proceed on the assumption that there is no further documentation or information of any sort which falls within the scope of our request and which has not been disclosed, given the Duty of Candour that applies to your client in these proceedings."

The response we got at 336 was to say, well, "The duty of candour," "full of frank disclosure," does not mean we have to produce "every document." Our response, my Lord, at 338 was to set out what the law actually says about the duty of candour, which is that there is a requirement to provide all material facts and there needs to be disclosure of all the material available. My Lord, we have proceeded then on the basis that there is nothing else, and so what your Lordship has is nothing at all, nothing, that supports there being any authority granted by the liquidators for the bringing of these proceedings.

Now, my Lord, I will return to that in a moment, my Lord, but the email that was sent yesterday notifying, you were told there was a response, but it is privileged. My Lord, frankly, the privilege would have been waived by the production of that letter and what was said by my learned friend but, in any event, I cannot see how the response of the liquidators to that email can be privileged but, my Lord, it matters not. The position is you have nothing, no evidence at all, to support the authority to bring these proceedings having been granted by the liquidators. So, my Lord, that is MLL's position.

My Lord, can I just turn to Taytime's position? Here, I am probably going to focus back slightly more in relation to the planning appeal to start with. We know Taytime owns the land, the subject of the planning application, and we know it alone stands to benefit if planning permission is granted by reason of the increase of the value of the land which it owns. My Lord, we also know it has taken all the steps necessary in pursuing the appeal, at least since MLL went into liquidation back in July 2021. Now, my Lord, bizarrely, if you go back to the liquidators' letter, my Lord, at p.23 of the bundle.

THE JUDGE: Yes.

MR MAURICI: My Lord, the second paragraph, three lines down.

THE JUDGE: Sorry, which page?

MR MAURICI: Sorry, my Lord, p.23. It is back to the liquidators' letter.

THE JUDGE: Yes.

MR MAURICI: Having said that they have no interest in the land whatsoever, the liquidators then say this, third line in the second paragraph:

> "The representatives of Taytime Limited believe the application should have been placed in their name in the first place, they [so Taytime] were the party that instructed Pegasus Planning [so that is the planning consultants who pursued the appeal] and James Pereira [of counsel]… for the submission of the appeal and they had an Asset Purchase Agreement in place for the rights to any planning permission, application or appeal associated with their land."

So, in other words, my Lord, what this is suggesting is even before MLL went into liquidation, even before it went into liquidation, the submission of the appeal was on the instruction of Taytime, not MLL, and of course this goes back to Mrs Harrison's consistent line that actually it should have been Taytime's application of appeal, but some kind of mistake was made.

My Lord, so Taytime has instructed and paid for counsel. It submitted the appeal and, my Lord, it also signed the Statement of Common Ground, which your Lordship has rightly seen is not in the bundle but, my Lord, it was recorded in the submission I made to the planning inspectors, it is correct, that not only did they sign the Statement of Common Ground, but at para.1.2 it stated in terms, "The appellant is Taytime." That is what it said, "The appellant is Taytime." So the Inspector, not surprisingly, did rely on that, but the problem with all of this for Taytime is that they are not able to pursue this appeal in their own name and in their own right because they were not the applicant for planning permission and under s.78 only MLL in liquidation can pursue the appeal.

Now, my Lord, assignment. There is no power in s.78 that allows you to assign or transfer the planning appeal or to substitute in a new appellant. My Lord, to suggest that such a power can be implied, which must be my learned friend's position, would drive a coach and horses through s.78. So you have to be the applicant to bring the appeal, but once you have put in appeal, you can assign it to anyone you like and they can pursue it. My Lord, that cannot be right in my submission. That cannot be correct. My Lord, it was our understanding, up until the skeleton that we received last week, that there was no dispute that assignment was impossible and, my Lord, that was the basis upon which the discussions took place at the planning inquiry. My Lord, we have covered that in the evidence, my Lord, p.348 of the bundle, p.348, para.38.

THE JUDGE: Yes.

MR MAURICI: This is Mr Padden's witness statement.

THE JUDGE: Yes.

MR MAURICI: "…there is reference in the skeleton argument to the possibility of the assignment of the planning appeal. I do not understand"----

THE JUDGE: Which paragraph, sorry?

MR MAURICI: Sorry, my Lord, para.38, bottom of the page.

THE JUDGE: 38, sorry.

MR MAURICI: Yes, sorry, my Lord. Bottom of p.348.

THE JUDGE: Yes, I have got it.

MR MAURICI:

> "…there is reference in the skeleton to the possibility of the assignment of the planning appeal. I do not understand this. I attended the planning hearing that took place last year. In the oral

> submissions made, it was agreed by all three Leading Counsel (for Taytime, myself and the Council) that assignment was not possible in respect of an appeal under s.78 of the Town and Country Planning Act 1990. This is why as I understood matters those acting for Taytime instead argued that it was an 'agent.'"

So, my Lord, that was the agreed position and, my Lord, there is no pleaded case in the Statement of Facts and Grounds that assignment is possible. So, my Lord, assignment was a red herring, in my submission, and we can move on from that.

Now, my Lord, in a moment I will make just a few brief further submissions about why we say, as a matter of law and fact, Taytime is not MLL's agent for the purposes of the planning appeal and that the Inspector was entirely correct so to find, and, my Lord, frankly, with all respect to the Secretary of State's consent, whether his reasons were as good as they should have been is irrelevant. I mean, in my submission, they were good enough but, my Lord, even if they were not, it matters not. My Lord, I say that for this reason. Can we just pause for a moment and consider what the position is if I am right about this, my Lord, if I am correct that Taytime was not an agent acting on behalf of MLL?

My Lord, this is where we get to Dr Bowes' skeleton at para.9. So can I just ask you to look at the Secretary of State's skeleton argument, para.9?

THE JUDGE: Yes.

MR MAURICI: That is where he says, my Lord, "In any event----

THE JUDGE: Sorry, let me just look at it.

MR MAURICI: Sorry, my lord. It is p.3 of the skeleton, para.9.

THE JUDGE: Yes.

MR MAURICI:

> "In any event, even if the Inspector were correct that Taytime was not the appointed agent for Monk Lakes Ltd (in-spite of its submissions to the contrary) there remained a valid appeal made by Monk Lakes Ltd, which had not been withdrawn, and which remained an active company at the point of the decision. The Inspector failed to supply any reasons for dismissing the appeal on its merits."

Now, my Lord, just thinking about this for a moment, suppose I am right on no agency, if Taytime are not MLL's agent, then Taytime can do nothing more in relation to this appeal. So, if your Lordship was to quash this decision of the Inspector and remit it, it would be

utterly pointless so far as Taytime is concerned because they could not take any further action. They are not agents. That would be the outcome. They would not be able to do anything. It would be the end of the story for them. So all we would have was the possibility, and this is what Dr Bowes' was referring to in para.9, the possibility that because MLL still exists, the appeal could be pursued by MLL but, my Lord, they had no interest in the land, they had no interest in the application. In my submission, it would be improper and impossible for the liquidators to pursue this appeal.

Moreover, my Lord, they have taken no action themselves in the years that have gone by, at any point, to progress the appeal and, my Lord, as you will have seen, we wrote to them specifically asking them whether they would pursue an appeal if the matter was remitted. Would they pursue it in their own name? No answer. No answer at all. So, my Lord, what would that mean? It would mean have an appeal that was there but which no one could pursue, neither Taytime, nor agents, nor MLL because there would be no reason for them to pursue it and there is no evidence whatsoever that they would pursue it. Now, my Lord, in that circumstance, Dr Bowen, is absolutely correct to refer to the power in s.79(6) to dismiss an appeal for delay, effectively for want of prosecution. He is also correct to say that what that provision says is that you should write to the parties, telling them that they must do X or the thing will be dismissed but, my Lord, what is the point in this situation of writing to MLL, because we know there is no good reason why they would pursue the appeal, nor have they over all the years taken any action to pursue the appeal. They had no interest in the appeal. That is their own stated position in the recitals.

So, my Lord, my submission would be to your Lordship that frankly, even if there was anything in any of the grounds related to this point, there is no point quashing for the reason given by the Secretary of State at para.9 because, in the end, this appeal will have to be dismissed for the prosecution because if your Lordship quashes the Inspector's decision and it is remitted back, then there is no one to pursue the appeal, so long as I am right on the agency thing, and I will come into that in a moment.

So, my Lord, authority, just summing up, authority to bring the proceedings. My Lord, there is no evidence, nothing, to support that there is authority being granted by the liquidator to pursue these proceedings. My Lord, in my submission, the indemnity agreement and the letter – the liquidators' letter – are concerned with the planning appeal and, my lord, it would

be, in my submission, quite extraordinary for the liquidators, given their duties, to have entered into an open-ended provision that would allow effectively the pursuit not just of this planning appeal, but a further High Court proceedings without any input or consideration by them and, my Lord, I may just come back to that point just very briefly in a moment but, my Lord, it would be very strange, but there is nothing about High Court proceedings in those documents from 2021.

My Lord, more importantly, there is absolutely nothing in terms of a scrap of evidence, as I have said, that has been provided to support the view that authority was granted and, my Lord, what is strange about that is that if you look at what is said in relation to this in my learned friend's skeleton, it says, well, the liquidators know about the proceedings. They know about them. Well, why do they know about them? Well, as Mr Streeten kindly tells us, because my client, my client, has written to them asking them whether they have granted the right to bring proceedings. So they know about it, but they have not actually answered the question, which they really should have done, both to us and to the court, actually.

THE JUDGE: Yes.

MR MAURICI: My Lord, the only other reason they know about the proceedings, the only other evidence your Lordship has, is the email from yesterday notifying them of the proceedings and referring to previous discussions about which your Lordship has no evidence whatsoever. My Lord, if there were previous discussions, I do not accept that they are privileged and, in any event, in my submission, the privilege will be waived by what has been said but, my Lord, if there were previous discussions, they should have been disclosed under the duty of candour through Mrs Harrison's witness statement and they have not been. Now, my Lord, that leaves my learning friend's remaining residual point on which Dr Bowes (inaudible) said it supported him, which is that if I am right on all of that, that really there is no possible basis upon which agency gives rights to any authority to bring these proceedings, and there is no evidence to support that there is authority to bring these proceedings on behalf of MLL, it does not matter because Taytime itself is a person aggrieved.

My Lord, can I ask you to just look again back at the Statement of Facts and Grounds. Could we actually start maybe with the form itself? Page 2.

THE JUDGE: Yes.

MR MAURICI: My Lord, in s.1, you know this is repeated in the grounds themselves, in the title, it says Taytime Limited as "the appointed agent for and on behalf of MLL." Now, my

Lord, you put this point to my learned friend; if this was an agency relationship, if it was, that wording means one thing and one thing only: the claimant is Monk Lakes Limited. The principal is the claimant. Now, my Lord, I have never seen in a judicial review or any other type of proceedings a claim brought with this form of words because either a claim is brought in the name of the principal, or it is brought in the name of the agent, perhaps undisclosed, but what I have never seen is this wording, which is extremely odd, that it is Taytime "as the appointed agent for and on behalf of Monk Lakes Limited."

So, my Lord, it does not help my learned friend in my submission to say that Taytime Limited could, could, have brought s.288 in their own name as a person aggrieved because they owned the land, because they took part in the appeal, because they are aggrieved by the decision that they are not agents. It does not help them because these proceedings were not brought, they were not brought, in the name of Taytime Limited. They were brought in the name of Monk Lakes Limited. Taytime's role is simply, as they say, as an agent and on the face, I say, entirely consistent with-- if you go to p.9, my Lord-- firstly on p.8, again, you will see the heading is the same, but p.9 my learned friend took me to, 5:

> "Taytime itself also has an interest in the land."

Well, that is correct:

> "There can be no doubt, therefore, that Taytime is a person aggrieved for the purposes of section 288 of the 1990 Act."

Well, my Lord, that is not correct, as Dr Bowes pointed out, because one needs more than an interest in the land to be a person aggrieved but, my Lord, even assuming that Taytime can be a person aggrieved these purposes, these proceedings are not brought in by them. They are brought in the name of Monk Lakes Limited, hence the submission that I made in the skeleton, which Mr Streeten sought to counter, which is that they needed to make an application to substitute Taytime as the claimant in place of Monk Lakes Limited and they have not done so. No such application has been made to this court. So, my Lord, for those reasons, I say there is no authority to bring these proceedings.

My Lord, my learned friend's only remaining point is that the burden of proof is on my client. Well, my Lord, the evidence strongly supports the position, in my submission, that

there is no authority. One, because there is simply nothing that has been put forward to support the authority but, secondly, we have asked direct questions to MLL, prior to the proceedings, about that position and they have failed to confirm the position, absolutely failed to confirm the position. My Lord, in those circumstances, in my submission, burden of proof gets one nowhere. There is no evidence at all, my Lord, to support the view that these proceedings have been authorised by the liquidators and, my Lord, again, it would be very strange, in my submission, if they had authorised them because they have no interest in the land and no interest in the application, hence no interest in the appeal and hence no interest in these proceedings.

Now, my Lord, all the indemnity agreement does is protect them against costs. Well, my Lord, that might make it cost neutral for the liquidators for this claim to be pursued. It may make it cost neutral but, my Lord, it does not give them any benefit. The creditors will not get anything out of this, even if permission is granted. So, my Lord, in my submission, the position is clear – there is no authority to bring the proceedings.

THE JUDGE: What about this creditor position?

MR MAURICI: Well, my Lord, I do not know how they-- I am not entirely sure how this is said to help, my Lord, because the reality is that liquidators must act in the interest of all the creditors, all the creditors. So I do not see why acting for the benefit of one creditor is really going to assist. My Lord, it might be better-- can I let my learned junior follow on this because once we delve into the depth of insolvency law, I am out of my depth, my Lord? I will ask my junior in a moment to just deal with that specific point about the creditor position.

THE JUDGE: Yes, and sorry, just before you resume your seat, I mean, Mr Streeten says that-- so you say in terms of the person aggrieved point, okay, yes, they could be a person aggrieved, but they did not act in that capacity.

MR MAURICI: Correct and, my Lord, when we challenged them on this, it would have been open for them to make an application, perhaps even in the alternative, to substitute themselves as the claimant, but they did not do that. They did not do that. There is a power, my Lordship will know, to substitute a new claimant under s.288, albeit the court is quite strict about when it allows that out of the six-week time limit, but it does happen, but no such application has been made.

THE JUDGE: Yes.

MR MAURICI: So, my Lord, can I then just-- well, that really deals with the submissions that I make on the authority point and very largely, I think, also deals with my submissions about Ground 2(ii), which is the agency point but, my Lord, I do have to return to agency just briefly in a moment to deal with the fact that the other reason I say that this is not an agency relationship, and, my Lord, you have this submission from us, is that control is a key aspect of the agency relationship. A principal cannot cede all control to the agent. That is contrary to the principles of agency and we have cited *Bowstead* and I can take your Lordship to it if it would assist. My Lord, maybe we should actually go to *Bowstead* on this point. My Lord, it is tab 42, the tab that was replaced this morning.

THE JUDGE: Yes.

MR MAURICI: My Lord, if you go to para.1-018 under the heading "Control."

THE JUDGE: Yes.

MR MAURICI: My Lord, about two thirds of the way down that paragraph, there is a paragraph that starts towards the end of it, towards the right-hand side. Nevertheless:

> "…if the principal gives up all control of the supposed agent the relationship is only doubtfully one of agency.'"

Then there are some authorities cited in relation to that but, my Lord, also while we are here, can I ask you to go back to 1-001 on the first page:

> "Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations…"

"On his behalf". My Lord, the reality of the arrangement between MLL and Taytime is that Taytime is pursuing this appeal on its own behalf, for its own interests. MLL, as I have said, no interest in the land, and avowedly, on their own position, no interest in the application, hence no interest in the appeal. They stated that in terms in the indemnity agreement. In that situation, there cannot be an agency relationship because the reality is Taytime are not acting on behalf of MLL, who have no interest in the matter on their own assertion. They are acting on their own behalf and that is not an agency relationship.

So, my Lord, can I very briefly deal with the other grounds for judicial review?

THE JUDGE: Sorry, can you just deal with Mr Bowes' point again?

MR MAURICI: Yes.

THE JUDGE: I mean you dealt with it once, but just so I have got it firmly in mind from your point of view.

MR MAURICI: Yes.

THE JUDGE: I mean-- sorry.

MR MAURICI: My Lord, it is para.9 of Dr Bowes' skeleton. My Lord, the position that is being taken by Dr Bowes is he is dealing with the alternative----

THE JUDGE: Do you accept that?

MR MAURICI: Do I accept that position?

THE JUDGE: Yes.

MR MAURICI: No, I do not because, my Lord, I do not-- well, my Lord, I accept some of what he says. So let us just go through what he says.

THE JUDGE: Wait a moment. Let me get it so I have got it. Yes.

MR MAURICI: So, my Lord, he begins by saying-- this is a conditional submission: if the Inspector was correct that Taytime were not the appointed agent, obviously that is my starting point, so say I am correct, he says:

> "…there remained a valid appeal made by MLL which had not been withdrawn and which remained an active company at the point of decision."

Now, my Lord, that is all factually true, I do not dispute that, and indeed the Inspector specifically says that is the position, but it says:

> "The Inspector failed to supply any reasons for dismissing the appeal on its merits."

But, my Lord, my answer to that is the answer that I suggested to your Lordship earlier, which is that if – if – Taytime are not agents for MLL, Taytime cannot pursue the appeal if it was remitted to the Inspectorate and MLL cannot and will not pursue the appeal. They had no interest in the land, they had no interest in the application, on their own case, no interest in even on their own case and, my Lord, despite many invitations and requests for them to respond, they have not shown any inclination to say that they would pursue the appeal if it was just them and, my Lord, remember, we asked him that specific question in January: "Would you pursue the appeal if it went back to PINS in your own name?" No response five months later.

My Lord, in that situation, while Dr Bowes is correct in the things he says in para.9, I would say that it would be utterly pointless for the court to quash in that circumstance, to send the appeal back to PINS, an appeal that cannot be pursued, and an appeal which will inevitably be dismissed for want of prosecution because there is nobody to prosecute it in that scenario. Taytime cannot because they are not agents. MLL also, we say, cannot, cannot do it but, in any event, will not do it. No evidence at all that they would do it. In fact, it would be very odd if they did, given they have no interest in the application as well as no interest in the land.

My Lord, if I could just say, obviously my learned junior will deal with the creditor point that you asked about but, my Lord, just thinking about that for a moment, even if it were correct, and I have no idea whether it is, that Taytime was a creditor of MLL, even if that were correct, it does not matter because the position has been stated by the liquidators themselves in the indemnity agreement that they have no interest in the application, hence no interest in the appeal. We know they have no interest in the land. So, whatever the creditor position, their position is clear: they have no interest in this application, no interest in the appeal. They therefore could not, would not, should not pursue the appeal if it goes back. So, my Lord, that is my answer to the Secretary of State, Dr Bowes, para.9.

My Lord, in terms of the grounds, obviously Ground 1 is not pursued and, my Lord, of course, in due course, your Lordship's order should reflect whatever happens if that is the case. My Lord, Ground 2 is in two parts, and, my Lord, the best way to make that clear, my Lord, is can I ask you to go to the Secretary of State's draft consent order at p.110 in the bundle?

THE JUDGE: Yes.

MR MAURICI: Now, my Lord, it is p.111 that sets out the schedule of reasons and, my Lord, this is obviously agreed by both the claimant and also the Secretary of State because both of them have signed it, and indeed also by the council, p.112. If you look at para.4, it provides a really useful summary of the three grounds. So Ground 1 is the ground that is not pursued. Ground 2 is in two parts:

> "(i) the Inspector made an error of law to conclude that the appeal was not correctly made."

So that is 2(i) and then 2(ii):

> "…was in error to find that Taytime Ltd were not acting as Monk Lakes Ltd's agents."

My Lord, if you then look at 5:

> "The 1st Defendant has carefully considered the Claimant's claim and accepts the Inspector failed to supply adequate reasons for his conclusion that Taytime were not acting as the appointed agent."

So, my Lord, the Secretary of State, Dr Bowes sought to make this clear to your Lordship, the consent is limited just to 2(ii), not 2(i) and, my Lord, as Dr Bowes said to your Lordship, if you look at the decision letter as a whole, particularly the heading of the decision letter, and I think it is para.4 of the decision letter, my Lord, if we just look at that briefly. Paragraph 4:

> "The original planning application was made by MLL. MLL has since entered into liquidation proceedings. However, the Gazette notice has [still] not yet been issued, which is the point at which MLL would be dissolved. MLL therefore still exists as a going concern and can, in principle, pursue the appeal as the appellant."

So, my Lord, it is absolutely crystal clear, whatever may be the infelicities of what was said later, if there is an infelicity at all, the Inspector understood that the appeal had been properly made. The point Dr Bowes emphasises to your Lordship, the point is he was concerned about whether it had been properly pursued but, my Lord, that means that Ground 2(i), in my submission, is unarguable. That is also the Secretary of State's position, quite clearly and rightly so.

Then, my Lord, the other ground, Ground 3, which is the penultimate thing I was going to deal with, Ground 3 is the legitimate expectation argument. My Lord, again the Secretary of State does not offer to consent on this ground. It does not offer their consent on this ground and, my Lord, rightly so because that letter, the matter for this continued determination, cannot possibly give rise to a legitimate expectation that the Planning Inspectorate is not entitled to revisit whether this appeal should be dismissed for other reasons. That would, as Dr Bowes said, be a fetter. It would be extraordinary for PINS to write a letter that would have to be effectively a fetter on their ability to just deal with particular matters and, my Lord, the matter is particularly egregious to my client because – and we explain this in the

skeleton – on the chronologically what happened was we raised this issue back in 2020 about the ability to pursue the proceedings and this caused, in due course when PINS questioned it, the liquidators to write the liquidators' letter and it was following the receipt of the liquidators' letter that the PINS wrote saying the appeal will continue.

My Lord, the problem was nobody sent the liquidators' letter to my client until a year later and a week before the appeal was due to start. So, my Lord, it would be extraordinary in that situation to think that PINS could have bound itself not to consider procedural matters in circumstances where we had not actually been sent the relevant correspondence in relation to the pursuit of an appeal and had not had a chance to make our representations on it. So, my Lord, in my submission, the Secretary of State is right to say there is nothing in the ground, Ground 3.

Then, my Lord, can I just, on the grounds-- I think, finally on the grounds, I just need to clear one other thing, but on the grounds, my Lord, if you look back at the consent order that we were looking at a moment ago, the draft consent order, at p.111.

THE JUDGE: Yes.

MR MAURICI: My Lord, you will see that what is said is:

> "The Secretary of State accepts that the Inspector failed to supply adequate reasons for his conclusion that Taytime Limited were not acting as the appointed agent."

So it is not the Secretary of State's position that Taytime were the agents. It was that the Inspector failed to give sufficient reasons for that.

Now, my Lord, Mr Streeten's submission, which I do not fully support, but it is his submission, is that whether Taytime are agents of MLL is entirely a question of the law. My Lord, I do not accept it is entirely a question of the law. It may very largely be a question of the law, predominantly a question of the law, but if that is true, my Lord, then I would invite your Lordship, invite the court to decide on whether there is an agency relationship here but, if there is not, frankly the fact that the Inspector has not given sufficient reason for it, even if he has not, is irrelevant. It goes nowhere because if they are not agents, they are not agents. If the Inspector was correct in his conclusion that they were not agents, in one sense, if it is all a matter of law, as Mr Streeten says it is, or even if it is predominantly a matter of law,

which I would accept to be the case, predominantly but not fully a matter of law, then the position is no different. The is no point quashing it because the result will be the same.

My Lord, those are my key submissions. My Lord, beyond that, my Lord, we have in the skeleton, my Lord, at para.34 onwards, made a series of submissions, which I know your Lordship will have seen, making a series of detailed points about further submissions on the agency point and, my Lord, can I just draw your attention-- I am not going to go through them now, because there is not going to be time, but, my Lord, can I just draw attention to the key points that we make there in-- it is paras.34 through to 41?

My Lord, the first one at para.35 is this huge focus on the word "appoint" in the letter from the liquidators but, my Lord, we say three things about this, my Lord. First of all, we do not accept that the letter itself is the basis for any alleged agency relationship. One really must look now at the indemnity agreement. That was the actual agreement between the parties – this was a letter to PINS – and that is a deed which needs to be construed narrowly rather than broadly. It would be a deed and we made submissions on that in the skeleton. My Lord, secondly, the point we also make here is that the word "appoint" was added in at the request of Mrs Harrison at the last moment because that is how she clearly wanted to present the relationship to PINS. Then, my Lord, thirdly, and related to that point, and again this is in para.35, it is not how the parties label their relationship that matters, and we have cited the *Secret Hotels2 Ltd v Revenue and Customs Commissioners* [2014] UKSC 16 case there, what matters is what the actual relationship is.

My Lord, that leads us onto para.36, which is when you look at the letter, it says, "Taytime is appointed to take over full responsibility" because MLL has "no interest in the Site." And indeed, as we have said, my Lord, no interest in the application and, for that reason, my Lord, as I have already said, no agency because it is complete abdication of control to the alleged agent, and that is inconsistent with there being an agency relationship.

Then, my Lord, thirdly, para.37, look at the indemnity agreement. It does not use "appoint." It does not use the word "manage" which my learned friend also relies on. It says, "The Liquidators' agreement to permit Taytime to adopt the appeal." Adopt the appeal. Now, my Lord, the Inspector did not have the benefit of this indemnity agreement because it was not

provided to the Inspector, almost certainly it should have been, in my submission, but it was not and, my Lord, "adopted" is not consistent, we say, with any kind of agency relationship.

Then, my Lord, fourthly, and I have already made this point, the Inspector was right to look at the Statement of Common Ground where the appellant is described in terms as being Taytime. The Inspector was surely entitled to rely on that in understanding what the position is. My Lord, fifthly, and this is where my learned junior will come in very briefly, we say the key point where insolvency law comes in is, my Lord, (inaudible) understand whether there is an agency relationship in interpreting the indemnity agreement and the letter, your Lordship can rightly assume that the liquidators would act in accordance with insolvency law, that they would not do things like pursue appeals over which they have no intertest, over which there is going to be no realisation, over which they record an indemnity agreement they have no interest. They are not going to behave improperly by taking risk, pursuing things that do not actually benefit their creditors and we say that is a really important way to feed into and understand whether there is an agency relationship here or not.

Then, my Lord, finally the sixth point is, as I have said, I have emphasised to your Lordship how surprising it is that the liquidators have not written to the court or to us to confirm the position of their authority but, my Lord, the same is true, in my submission, in respect to the planning appeal because we sent our application to dismiss the appeal, which we made several days in advance of the hearing, to the liquidators, making it clear that we were challenging the basis on which the appeal was being pursued, saying that it could not be pursued, and we also wrote to the liquidators.

THE JUDGE: When was that, sorry?

MR MAURICI: My Lord, that was in advance of the appeal (inaudible). So we wrote----

THE JUDGE: Which appeal, sorry?

MR MAURICI: The planning appeal.

THE JUDGE: The planning appeal, thank you.

MR MAURICI: We sent them the application and, my Lord, we made requests of them back then as well and, my Lord, they did not – we thought they would – we thought what they would do is they would respond and they would explain the position to the Planning Inspector because we put them on notice of our application but, my Lord, that did not happen and no response was made by the liquidators as to what their position was. My Lord, you can

see, my Lord, if you go to p.100 of the bundle, we have not got all the documents here, but there is reference to them.

THE JUDGE: Yes.

MR MAURICI: You will see that there is a list of documents attached to my-- this is an application that I made to the Inspector that led to the dismissal of the appeal. At 6, which is at the bottom of p.100, there is a letter from Richard Max & Co – that is my solicitors – to the liquidators dated 22 September. So that is the week before, and then you will see there is also number 7:

> "Letter from Richard Max & Co to liquidators dated 27 September 2022."

So we were writing to them, we were challenging the position, and we sent this application as well, and what we never got-- what the Inspector never got the benefit of was any response from the liquidators to clarify or explain their position, or to contradict what we say. The most we got from them, my Lord, was when we wrote to them on the 22nd. That is when they sent the liquidators' letter that they had sent a year before in September 2021 to PINS that we have never seen before. They simply sent us that letter. They did not respond to any of our substantive comments. They did not send us anything in return.

So, my Lord, I am going to allow my learned junior briefly just to follow on on the credit appointment insolvency. I do not think there was anything-- it was just that one point. My Lord, unless I can assist you, those are my submissions and, my Lord, I am inviting your Lordship to rule that there is no authority to bring these proceedings and alternatively, my Lord, that the grounds are unarguable. Thank you, my Lord.

MR STREETEN: My Lord, just before my learned friend rises, I do not have that statement of affairs, and it might be helpful if I see it before he rises.

MR MAURICI: You are drawing my attention to?

MR STREETEN: "Intercompany" and then Taytime.

MR MAURICI: £2,771.10.

MR STREETEN: Yes.

THE JUDGE: Where are we? Which page?

MR MAURICI: My Lord, the very last page. I think my learned-- Oh sorry, the penultimate page.

THE JUDGE: Yes.

MR MAURICI: My Lord, you will see it seems to be dated July 2021 and, my Lord, the point that is made there is that Taytime is listed as a company creditor for a very small amount of money, £2,771.10. Now, my Lord, I am not sure because, in my submission, this has not been made before, I am not sure where this has been said to go but, my Lord, your Lordship will have to consider it alongside the liquidators' report. So, my Lord, if you could go back to the bundle because this document, and correct me if I am wrong, does appear to be dated July 21.

MS STAYNINGS: Yes.

MR MAURICI: Yes. So there is then-- if you go to page 145, this is the notice of the liquidation progress report and, my Lord, p.146 you will see this document is dated September 2022. So that is over a year after the document that we have just been handed and, my Lord, you have my point in relation to this document, 159. My Lord, maybe it is not just 159 but, my Lord, I would ask you to look at the whole document. As far as I can see, and I have word searched, I cannot see Taytime.

THE JUDGE: (Inaudible).

MS STAYNINGS: (Inaudible).

MR STREETEN: So on p.148, "Intercompany," "(2,771.10)" and on p.159, "Intercompany," (2,771.10)."

MR MAURICI: Sorry, can you show me?

MR STREETEN: That one.

MR MAURICI: Just "Intercompany"?

MR STREETEN: Yes.

MR MAURICI: And it says "NIL"?

MR STREETEN: No, no, it says, "(2,771.10)."

MR MAURICI: Right, I see.

MR STREETEN: Then if you look in this, you will see "Intercompany," "(2,771.10)" and then that is Taytime, "(2,771.10)."

MR MAURICI: Right. My Lord, do you see any references there?

THE JUDGE: Yes, I can.

MR MAURICI: Yes. My Lord, can I just make these points, my Lord? Notwithstanding that position, my Lord, you have the liquidators' explicit position that they have no interest in either the land or the application of the appeal and therefore the appeal. The indemnity agreement is crystal clear: they have no interest in it. Their position is absolutely clear in relation to that. My Lord, secondly, I am not entirely sure where this point goes for my

learned friends because it is a very small sum that is set to be owed. I do not know if it has been suggested that because of that £2,700 that they are owed that there is some incentive for the liquidators to pursue the appeal. I do not know, but the point is it is going to be made, my Lord, but in my submission, the key point is the indemnity agreement is clear – there is no interest. Those are my submissions, my Lord. Thank you.

THE JUDGE: Thank you. Mr Jones, yes.

MR JONES: Thank you, my Lord. I also add to that, it is plain from p.153, at the bottom, again, in this report that there is no further (inaudible) recoveries expected. The very bottom paragraph along onto p.154, my Lord, that is what my learned friend said. In respect of this argument that Taytime is a creditor, this is new and we can see that it is new because we can helpfully search the claimant's skeleton argument. If you search for creditor in there, you end up with five hits in total across the entire document covering the creditor and creditors. Those appear at para.41, where it said-- this is on the top of p.11, my Lord, at the very end of para.41(4), on the contrary and, as explained below, MLL's creditors, (4):

> "…may well benefit from a successful appeal because were the appeal to succeed, the Liquidator's anticipated realisations would in all probability improve."

Now, that is contrary to the progress report we have just looked at. It is also contrary to the argument that was made orally. The next impact we have is at para.44, which has no relevance. It is the bracketed comment of creditors' voluntary liquidation. Again, para.44(2) says "creditors' voluntary liquidation." Sorry, forgive me, my Lord, I have managed to lose my own search tool.

THE JUDGE: Yes. Well, what you are saying is that there was nothing in play (inaudible)----

MR JONES: This is an entirely new point, and this has not already been made, not an argument, that bringing these proceedings somehow can benefit Taytime, until it was made today.

THE JUDGE: So what about the liquidators' point about appointment?

MR JONES: Sorry, my Lord----

THE JUDGE: I thought you were going to make a point about liquidators appointing someone as agents, were you not?

MR JONES: I am going to, my Lord, yes.

THE JUDGE: Yes.

MR JONES: There are two points to be made in respect of that. The first is that when they are exercising their powers as liquidators, they do so not for the benefit of one creditor, as seems

to have been suggested, but rather they are obliged to exercise their powers for the benefit of all creditors and you can take this from the *Re Longmeade Ltd* (In Liq.) [2016] EWHC 356 (Ch) (2017) B.C.C. 203 authority that my learned friend referred you to in her submissions, para.66(2).

THE JUDGE: Yes, well, I have got that point, yes.

MR JONES: I am grateful, my Lord. Likewise, the various authorities that are referred to in the skeleton argument show that you are acting for the creditors, not for the benefit of one single creditor, and so to take the approach that has been taken by the liquidator in this case is to expose the creditors as a class to no potential benefits because the indemnity agreement does not allow for potential benefits, but only to expose them to potential loss if for some reason the indemnity agreement does not allow for full repayment for whatever reason that might be down the line, so there can be no benefit. The only non-neutral outcome for the creditor as a class is a loss, and so I say that the liquidators could not rationally decide to do this-- bring these proceeding themselves.

THE JUDGE: When you talk about proceedings, do you mean in this court or in the appeal, in the planning appeal?

MR JONES: The liquidators could not rationally decide to bring this application to challenge the planning, which would use their Sch.4, para.1 powers of (inaudible). The third point made in the skeleton argument is that of whether the delegation pursuant to para.12 of Sch.4 of the Insolvency Act can properly be done in this matter in the appointment of an agent. Do you have that point on the skeleton, my Lord?

THE JUDGE: Yes, I have got that, yes.

MR JONES: Yes. The authority refers to-- or you are referred to a quotation at para.22(d), row 1, which is taken from *McPherson & Keay's Law of Company Liquidation*. You will see that on tab 44, p.846 of the authorities bundle. It is worth turning up to look at it in full.

THE JUDGE: Yes, what page?

MR JONES: Page 846 and tab 44.

THE JUDGE: Yes.

MR JONES: Here it is put, my Lord, it is approximately just over 60 per cent of the way down the first paragraph in the middle of the heading, "Duty to exercise discretion". "But this authority is impliedly limited to acts and transactions"----

THE JUDGE: Sorry, where?

MR JONES: It is para.8----

THE JUDGE: There is a quotation.

MR JONES: There is a quotation in the skeleton argument.

THE JUDGE: No, there is a quotation in p.846.

MR JONES: Yes, quotation is starting five lines above the quotation.

THE JUDGE: Above the quotation, yes, "But this authority is impliedly limited," yes, yes.

MR JONES: Yes, and then that quotation you just identified----

THE JUDGE: Is there authority for that?

MR JONES: It is an authority for that proposition, yes.

THE JUDGE: They cite a number of cases, yes.

MR JONES: Yes, and these are old cases, my Lord. These are cases that predate the 1986 Act. My research had only identified one authority citing para.12, but, nevertheless, I (inaudible) it is an obviously right proposition. The liquidator is----

THE JUDGE: Well, it is in a book that was originally written by someone who became Justice of Appeal McPherson of the Queensland Supreme Court. Yes.

MR JONES: Yes. I say that initially the proposition is obviously correct. The liquidators are subject to fiduciary obligations as part of their office, and they have to make appropriate decisions and exercise their powers for the purpose of securing highest returns for the creditors. That is the majority of the roles of office holders. I take that proposition from *Manolete Partners Plc v Hayward and Barrett Holdings Ltd* [2021] EWHC 1481 that is cited in my skeleton argument; no need to turn that authority up at this moment, and to simply abdicate authority to an agent is to actually breach their obligations and to do so is therefore not lawful.

THE JUDGE: What about the point that this is not for this court?

MR JONES: Yes, so I have seen what my learned friend's criticism there is, but I say it is misplaced. If we could turn up s.112 of the Insolvency Act. You will see that that is at p.4 of the authorities bundle.

THE JUDGE: Yes.

MR JONES: Before we go to it, I would take you to the para.21 of my skeleton, paras.21 and 25 as well.

THE JUDGE: Yes. Well, I have read them, yes.

MR JONES: Yes and, as you see here, the written argument criticises the position adopted by the claimant as effectively inverting the proper position. We are a defendant in proceedings that have been commenced by the claimant and my client is quite properly able to say, as was done in the *Zoya Ltd v Ahmed (t/a Property Mart)* [2016] EWHC 1981 party, referred to in the claimant's own written argument, show that you have got authority, we do not think you

have got authority, and that is a position that is open to a defendant to take. It was taken in the *Zoya* Authority. I think we go on in para.25 of the skeleton to say:

> "To be clear none of this is about Mr Padden asking this Court to exercise any power under insolvency law. The issue that arises is whether, as asserted, Taytime has the authority to pursue these proceedings as agent for MLL."

And that can only be answered by reference to points of insolvency law that I have just referred you to, my Lord. So, with those bookends to our written arguments in mind, can we now look to s.112, as I eventually indicated, following (inaudible)?

THE JUDGE: Where was it again?

MR JONES: It was p.4, right at the beginning.

THE JUDGE: Page 4, yes.

MR JONES: At this stage, sub-para.(1):

> "The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court."

Now, what that section does is it gives the liquidators, of which officially we are not, contributories, which we are not, and creditors, an additional avenue to go to the Chancery Division and ask questions in the liquidation to be determined. It would allow a creditor of MLL to turn up and say, "We do not think these are in our best interests. Why are you doing this?" and to ask the Chancery Division to intervene. What it does not say is: "And this also means that no third party being pursued by the liquidator can rely on the normal argument about whether or not the agent had authority to sue." It simply does not say that. That argument that was run in *Zoya* is and remains open to a defendant in proceedings brought by a liquidator to say, "You cannot do this."

THE JUDGE: Yes. Okay, well, I think have got your points. Is there anything more?

MR JONES: Just to confirm the (inaudible), I would refer you back to the written submissions and subject to my learned leader telling me, I do not think so. I think that is everything.

THE JUDGE: Okay, well, thanks very much. So, where do we go? I am a bit concerned about the time.

MR STREETEN: My Lord, I have some points in reply. I would like Ms Staynings to reply also.

THE JUDGE: Yes, yes, of course, yes, but short.

MR STREETEN: Short, short, short, my Lord. So taking it in turn----

THE JUDGE: It was a two-and-a-half-hour appeal.

MR STREETEN: Well, my Lord, the obvious point that arises is that this is a case which should be determined in the final hearing rather than now.

THE JUDGE: That was an open goal for you.

MR STREETEN: It was an open goal, I am afraid, but turning to my reply and taking the points in turn.

THE JUDGE: Yes.

MR STREETEN: Firstly, my learned friend, Mr Maurici, says that Taytime did not bring this claim. He then goes on to accept that Taytime could have brought this claim in its own name for an undisclosed principal, but he says, "Well, that is not what it did." In my submission, he is wrong as a matter of fact that Taytime did not bring this claim. We saw from the claim form that it did, albeit that it disclosed who its principal was, and we see that from the claim form which refers to Taytime as the claimant from the address given, which was Taytime's address, and from the Statement of Facts and Grounds which identifies Taytime as the claimant and which asserts Taytime's standing at para.6. So, in my submission, there is no question that the claimant, albeit acting as agent, could have chosen not to disclose who its principal was but it did disclose it: it is Taytime.

That takes me to my second point, my Lord, which deals with substitution, and it is the point I made before which is who would be substituted? Taytime for Taytime. But, if really that is the nub of my learning friend's point, there should be substitution, then my short submission is in the alternative permission can be contingent upon substitution or an application for it, if that really is the point, and it absolutely would be in the interests of justice to do that.

THE JUDGE: Yes.

MR STREETEN: Turning then to the substance of the matter. My Lord, my third point in reply is that the point being made by Mr Maurici appears to be not that the appeal was not made by MLL, but that it was not pursued by them. My Lord, if that is the case, then the statutory process in s.79(6A) has to be followed and I agree with my learned friend, Mr Maurici, that that is essentially an ability to dismiss an appeal for want of prosecution but that process, all parties agree, was not followed, and so Monk Lakes Limited were deprived of the

opportunity to continue the appeal if it was found that they had failed (inaudible) to appoint an agent. That, my lord, must be seen in the context of what they say in the last couple of lines of their letter on p.23, namely, "If there is an issue, do not hesitate to contact us."

Now, neither PINS nor the Secretary of State have ever contacted them. The third defendant has vigorously sought to correspond with them, and they have taken the approach they have in response to that. My Lord, it is because that is such an obvious legal error that my learned friend, Mr Maurici, although he somewhat disguises it, is forced to submit that, as he puts it, there would be no point in quashing and remitting. It is because essentially that legal error is so patent, and he puts that on two footings. Firstly, he says, well, they could not pursue the appeal lawfully and, secondly, he says, then in any event they would not pursue the appeal.

Taking those in turn, the question of whether they could lawfully pursue those proceedings is a matter of insolvency law, and I will not sit down now, but that is the point upon which Ms Staynings will address you, but, my Lord, just standing back, and this is the point we made in our skeleton at para.45, imagine if the company were solvent, it would be unthinkable that a submission could be made by a defendant that the directors of the company could only rationally do X, Y, or Z in pursuit of the company's interests. In my submission, what you are being asked to do is absolutely to step into the shoes of the Companies Court and that is wholly inappropriate, and then you are being asked to do that by someone who would not have standing to bring a claim in the Companies Court.

So I will leave Ms Staynings to address you further on that, but that leaves only Mr Maurici's argument that there is no evidence that MLL would pursue the appeal. In my submission, my Lord, there is. There is the agency agreement, or the agency letter from September and its conclusion which is that: "If you have got a problem, do not hesitate to contact us."
Now, my learned friend needs to meet the (inaudible) test if he wants to make this good. In my submission, again, absolutely a matter for a final hearing, not for now, but in my submission, my Lord, it is certainly, in circumstances where the liquidators have not done anything to suggest that these proceedings should not be continuing, it would be quite wrong for this court to deprive them of the procedural safeguards under s.79(6A) of the 1990 Act on the basis that Mr Maurici's client says for them, "Well, we do not think they would do anything." It is quite wrong.

My Lord, in the alternative to that, and this is my fourth point in reply, Mr Maurici asserts that what was effected was an assignment and then asserts that there is no power to assign. Now, in my submission, there is absolutely no authority whatsoever to support that submission and he did not take you to any. That would be an important point of law, absolutely, which should go to a final hearing, not least because of the very wide-ranging consequences of accepting his submission. For example, what about the sudden death of an appellant? His submission must be that the appeal does not vest in the trustees in those circumstances. The idea that only the appellant is capable of pursuing it and that there is no power to assign would have very wide-ranging consequences.

In my submission, the only relevant authority before the court, which is the *Muorah* case, deals with s.29, another statutory right of appeal, under the 1990 Act, makes clear that there is in no circumstances a power to assign and to say that it is unarguable is wrong. My learned friend says, "Well, there was no one pleading that this was an assignment," but that is because my submission is that it was an agency relationship. That does not mean, my Lord, that the court can avoid the consequences of accepting Mr Maurici's argument and say, "Well, I accept Mr Maurici's argument that it is an assignment," right, but then what are the consequences equally of that? You have to consider those consequences and, in my submission, all they do is take you to the position that the Inspector was still wrong just for different reasons. It does not get Mr Maurici where he needs to go.

Fifthly, my Lord, Mr Maurici says that there is no evidence at all that Taytime had been authorised by Monk Lakes Limited to bring these proceedings. Two points on that. Firstly, there is – it is sworn and it is in the Statement of Facts and Grounds. Secondly, you see this in *Bowstead* at para.2-031, p.833 of the authorities bundles: silence in and of itself may be relevant, evidentially, when considering whether or not the existence of an agency relationship exists. My Lord, just one factual point to clear up in that context: Mr Maurici said that the letter from my solicitors at the back of the bundle was sent yesterday. That is incorrect. You will see from its face it was sent on 8 June 2023.

Last two points before I sit down, my Lord. Firstly, on legitimate expectation. I am not suggesting any fettering of discretion but what I am suggesting is that bearing in mind that clear and unambiguous promise, at the very least the Secretary of State would have been required to follow the statutory procedure in section 79(6A). There is nothing unlawful in

that. On the contrary, what is unlawful is not following the statutory procedure and depriving the claimant of the procedural safeguards it guarantees.

Finally, for me, my Lord, on the question of the agency relationship and whether that is a matter of law and the effects of that. My submission is, to be absolutely clear, the same as Mr Maurici said, that it is predominantly a question of law but not exclusively, i.e., the interpretation of the document is a question of construction for the court; the surrounding facts are matters of fact and degree in the decision made at first instance, not for this court. It would appear that what Mr Maurici is saying is that the acts of Taytime go beyond the scope of the agency conferred by the agreement on its true construction, but that then is all about the facts rather than about the law.

My Lord, those are my points in reply. If I could sit down and Ms Staynings can address you.

THE JUDGE: Yes.

MS STAYNINGS: My Lord, I am aware of the time. I have a few points to make, but I am equally happy to be led by you if there are particular points on which I can address.

THE JUDGE: Just give me that point that Mr Jones made citing *McPherson*.

MS STAYNINGS: Yes, that was something I was going to take you to. So, my Lord, if you would not mind turning up *McPherson* again. It is at tab 44.

THE JUDGE: Yes.

MS STAYNINGS: It is a slightly obvious point because *McPherson* focuses on Australian law, which is why there is not very much of any English authority cited here.

THE JUDGE: Oh, I think there was in that footnote.

MS STAYNINGS: Primarily A.C.L.R., A.C.L.C cases so they are primarily Australian cases, (inaudible) more than one.

THE JUDGE: There may be nothing wrong with that.

MS STAYNINGS: But actually, the main point is that what is being said here is that a liquidator cannot ordinarily remove themselves from decisions that require them to bring to bear their professional judgment as liquidator, and so that is why it says:

> "… this authority is impliedly limited to acts and transactions of a purely ministerial kind and the discretion of the liquidator is not to be delegated in matters which require the exercise of professional judgment."

My Lord, that is the key point, and in footnote 511, the example is given that a:

> "…liquidator delegated to his staff effective control of the liquidation without giving them adequate instructions and he was [therefore] held liable for breach of duty."

So if liquidators delegate their professional obligations as liquidators, they may be liable for breach of duty and they cannot do that willy-nilly and say, "Well, I have the power to appoint an agent," but there is no authority cited by my learned friend which supports extending that to a decision of a liquidator to authorise a third party as agent to take decisions relating to the conduct of proceedings and bearing in mind, in this case, the appeal was already on foot when the liquidators were appointed. So they did not have to take any decision to institute proceedings. The decision they did have to take, and could still take, would be to withdraw the appeal. They could also take a decision at any time to withdraw the agency relationship.

THE JUDGE: Yes.

MS STAYNINGS: But the idea that a liquidator cannot appoint a third party to take decisions related to the conduct is simply wrong, in my submission, and it is done all the time with litigation funders because litigation funders will take the large part of the benefit of litigation and, in return, they want to be able to conduct that litigation. This is effectively what we have here, is Taytime taking a large part of the benefit, potentially all of the benefit, although that is not accepted, but in return for footing the cost and taking decisions about its conduct. So that is the simple point on *McPherson*.

THE JUDGE: What about when the liquidators have not really said anything to the court? I mean, they have not-- they are being prompted.

MS STAYNINGS: I do want to correct one thing that my learned friend said. I think he was suggesting that voluntary liquidators were officers of the court. With respect, that is wrong. He is confusing voluntary liquidation with compulsory liquidation. So there is no duty on liquidators to report to the court about their decisions or what they are doing.

THE JUDGE: Yes.

MS STAYNINGS: It is also, in my submission, unsurprising. This is a liquidation where there are no current realisations expected. There are no funds there to pay the liquidators and, in my submission, it is wholly unsurprising that they are not spending time, which they are not going to get paid for, dealing with correspondence with Mr Padden, for example.

THE JUDGE: Yes, but I set the court, do I?

MS STAYNINGS: There are no funds to pay in that (inaudible). It is effectively a neutral liquidation. They would need to come to some arrangement, probably with somebody like Taytime, to have their funds paid if, if, that third party wanted them to take administrative steps.

THE JUDGE: Yes.

MS STAYNINGS: A large plank of my learned friend's argument did effectively amount to an attack on the liquidators' decision and their decision to allow the appeal to continue and enter into an agency arrangement with Taytime. My Lord, that is what, in my submission, is not a proper question for this court. There is also the obvious point that the liquidators are not here. They cannot defend themselves or explain their commercial decision, but it is wrong as a matter of insolvency law to suggest that there is anything improper about liquidators entering into an agency relationship with an unsecured creditor who does not expect any return from the liquidation, but who might get a benefit from the liquidators agreeing to allow an appeal to continue on the basis that they are fully indemnified for any costs liability and, to the extent it might be suggested, there is no authority citing support of any suggestion that that is improper. In my submission, it is not.

That is absolutely squarely within a matter that is for the commercial judgment of the liquidators and there may be multiple reasons why they have done that. It may well be that they think, well, this creditor otherwise will not get anything back from the liquidation. This is an opportunity for the creditor to minimise its losses. Then it may even be-- and I do not have any evidence before the court of this, but it may even be that Monk Lakes Limited has some interest in the costs outcome of the appeal if it funded the early stages of the appeal. It could feasibly enter into an agreement with Taytime, where Taytime could promise a return to Monk Lakes if the appeal is successful, and if this court finds that there is not an existing agency relationship, what we certainly cannot say is that Monk Lakes Limited could not enter into a new agreement with Taytime where it does receive something tangible if the appeal is successful. And so my learned friend, I think he said that liquidators could not, would not and should not pursue the appeal. He is simply wrong in my submission. There are many things which the liquidators can take into account in the exercise of their discretion and Mr Padden has no standing to challenge either the prior exercise of that discretion or how they might exercise that in the future. My Lord, I am cognisant of the time unless there is anything else I can assist you with?

THE JUDGE: No, I do not think so. Well, thank you very much. I will need to think about this. Can we come back at about three o'clock?

(1.02 p.m.)

CERTIFICATE

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Planning Inspectorate

Guidance

Procedural Guide: Planning appeals – England

Updated 11 January 2024

Applies to England

directly caused another party to incur expenses that would not otherwise have been necessary.

3.2.3. Costs may be awarded in response to an application for costs by one of the parties. Also, costs may be awarded at the initiative of the Inspector.

3.2.4. There is guidance about costs awards in the Planning Practice Guidance (https://www.gov.uk/guidance/appeals#the-award-of-costs--general). The appellant should read the information about making an application for costs before they make their appeal.

3.2.5. If a party wishes to make a costs application, we provide a template (https://www.gov.uk/government/publications/apply-for-an-award-of-appeal-costs-application-form).

3.3. Eligibility for making an appeal

3.3.1. Only the person who made the planning application can make an appeal.

4. Time limits for making an appeal

4.1. There are different time limits to make an appeal depending on the type of appeal and the circumstances (**if enforcement action has been taken, a shorter timeline may apply – please see paragraph 4.2**):

Type of appeal and circumstance	Time limit
An appeal against refusal of a householder planning application (See 9.2 for what counts as a	We must receive notice of the appeal within 12 weeks from the date on the decision notice

Private and Confidential

To whom it may concern

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30 January 2024

Dear Sirs,

I am writing in my capacity as joint liquidator of Monk Lakes Limited, which entered liquidation on 15 July 2021.

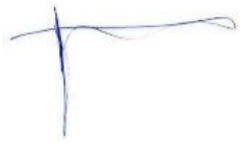
I write to confirm that:

1. It is and always has been the understanding of the joint liquidators of Monk Lakes Limited that Taytime Limited (a creditor of Monk Lakes Limited) had already, prior to the liquidation, been appointed by the directors of Monk Lakes Limited to act as the agent of Monk Lakes Limited in relation to planning appeal reference APP/U2235/W/20/3259300 ("the Appeal"), with authority to act and take decisions in relation to the Appeal (including the appointment of legal advisors and planning agents), and the intention of the liquidators was to allow that agency to continue. To that end that the indemnity agreement dated 27 September 2021 was entered into and the letter dated 22 September 2021 was written to the Planning Inspectorate.

2. Monk Lakes Limited (and its liquidators) has not withdrawn either the Appeal or Taytime Limited's authority to act as its agent in relation to the Appeal.

3. The authority of Taytime Limited to act in relation to the Appeal extends to the proceedings before the High Court in Taytime Limited v Secretary of State for Levelling Up, Housing, and Communities (CO/4860/2022).

Yours faithfully,



Duncan Beat
Joint Liquidator
For and on behalf of Monk Lakes Limited

Licensed in the United Kingdom to act as an Insolvency Practitioner by the Institute of Chartered Accountants in England and Wales