

**PROOF OF EVIDENCE OF EMILY HARRISON OF TAYTIME LIMITED ACTING AS APPOINTED  
AGENT FOR THE APPELLANT MONK LAKES LIMITED (IN LIQUIDATION)**

**PLANNING APPEAL REF: APP/U2235/W/20/3259300**

**LAND AT MONK LAKES, STAPLEHURST ROAD, MARDEN, MAIDSTONE, KENT, TN12 9BS**

**Proof of Evidence Specifically Regarding Exceptional Circumstances for Retrospective EIA  
Development at Monk Lakes**

**1. INTRODUCTION**

1.1 This proof of evidence addresses the exceptional circumstances surrounding the planning history of the Monk Lakes site, which justify the retrospective planning application for Environmental Impact Assessment (EIA) development. This evidence draws from the Appellant's original Statement of Case, their recent Proof of Evidence on the reasons for refusal and Rule 6 matters, and relevant case law, particularly *R(Ardagh Glass) v Chester City Council*.

**1.2 Background of the Site's Planning History**

The Monk Lakes site has a complex and protracted planning history, with multiple applications, permissions, and enforcement actions dating back to 2000. This history is crucial in establishing the exceptional circumstances that warrant consideration of this retrospective application.

1.3 The following key events establish the unusual and complex situation regarding the development of the site and demonstrate why it should be viewed as an exceptional case:

The site's planning history begins with permissions granted in **2000** and **2003** for the creation of fishing lakes. These permissions indicated an acceptance of the principle of raised lakes in this location by the local authority. Specifically, permission reference 03/0836 allowed for the change of use and physical works to facilitate an extension of the angling complex and approved plans which indicated "above-ground lakes" with a 50m 1 in 8 bank of earth along the Eastern boundary.

In **2008**, an enforcement notice was issued because pre-commencement conditions were addressed, but not formally discharged, and the works were being carried out in a different configuration than on approved plans, despite assurances of approval from the local planning authority (LPA).

In **2009**, planning permission (ref. 09/1380) was granted for the change of use of some of the lakes (both raised and ground-level) to recreational angling. Subsequently, in **2012**, planning permission (ref. 11/1948) was granted for the creation of additional lakes and associated works.

In **2014**, this permission was quashed following a Judicial Review, due to a failure by the council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for EIA development, and a failure to adequately consider groundwater flooding within the EIA process.

## 2. EXCEPTIONAL CIRCUMSTANCES AND RETROSPECTIVE EIA DEVELOPMENT

- 2.1 The case of *R(Ardagh Glass) v Chester City Council* established that retrospective planning permission for EIA development is permissible only in exceptional circumstances, requiring a "particularly compelling case". The circumstances at Monk Lakes justify such a finding due to:
- 2.1.1 **Previous Acceptance of the Principle:** The local authority has previously accepted the principle of raised lakes on this site through multiple planning permissions in 2000, 2003, 2009 and 2012. These permissions demonstrate that the principle of raised lakes has been consistently accepted as appropriate development in this location.
- 2.1.2 **Unique Procedural History:** The site has been subject to a protracted process of planning applications, appeals, and enforcement actions, culminating in a Judicial Review. This unusual chain of events distinguishes the site from a standard planning application. The enforcement notice in 2008 was issued because pre-commencement conditions were addressed, but not formally discharged, and the works were being carried out in a different configuration than on approved plans. The 2012 application (11/1948) sought to regularise previous works carried out and sought permission for additional lakes and associated works.
- 2.1.3 **Remedial Actions:** Following the High Court decision, the applicant has undertaken significant additional assessments, including an updated Environmental Statement (ES), a supplementary ES in 2015, and a new ES in 2019, with an addendum in 2022. The applicant has also responded to a formal Regulation 22 request and entered into a Section 106 agreement with LPA. These efforts demonstrate a commitment to addressing the concerns raised by the Court and ensuring a thorough assessment of the development's impacts. The applicant also undertook a detailed assessment against a pre-2003 baseline.
- 2.1.4 **Addressing Previous Concerns:** The current application directly addresses the High Court's concerns from the 2014 Judicial Review, through the implementation of comprehensive environmental safeguards and robust mitigation measures. This includes a detailed assessment against a pre-2003 baseline. The application, with its comprehensive groundwater monitoring programme and mitigation strategy, is also supported by a groundwater assessment from Mott MacDonald, confirming the proposed mitigation is appropriate, and the Council's Landscape Officer has confirmed there will be no adverse landscape impacts with appropriate conditions.
- 2.1.5 **Public Benefits:** The development would deliver substantial public benefits including:
- Environmental benefits through additional habitat opportunities and river enhancement scheme
  - Strengthening the local economy and Borough's tourism industry, with Monk Lakes identified as one of the main tourist attractions within the Maidstone area
  - Supporting healthy lifestyles through recreational activities, with angling contributing towards mental health benefits and being used by the NHS as part of mental health therapy

- Provision of accessible activities, with the facility providing the largest disabled access fishery in the country
- Contributing to the quantity and quality of the Borough's sporting facilities

2.1.6 **Proportionality:** The measures taken by the applicant are proportionate to any alleged breach of the regulations.

2.1.7 **Context of Enforcement Requirements:** While not presented as a reason to grant permission, it is relevant to note the implications of enforcement as context for considering regularisation. Recent technical assessment has established that enforcement would require:

- Movement of 503,478m<sup>3</sup> of material through 85,538 heavy goods vehicle movements
- Implementation period of over 6 years due to technical and practical constraints
- Generation of over 6,134 tonnes of CO2 emissions
- Loss of established habitats adjacent to SSSI land
- Removal of a facility serving 30,000 annual visitors including disabled anglers
- Significant disruption to the local highway network and landfill capacity

2.2 *R(Ardagh Glass) v Chester City Council* also highlights the need to ensure that developers do not gain an advantage by pre-emptive development. However, in this case, the extensive planning history, the length of time that the construction was underway prior to Enforcement, involvement of statutory bodies such as the Environment Agency and Maidstone Borough Council, and the applicant's commitment to addressing the High Court's concerns suggest that this is not a case of a developer seeking to circumvent the planning process. Furthermore, according to the case of *R (Baker) v Bath and North East Somerset Council*, a planning authority is not always compelled to issue an enforcement notice immediately for EIA development, if retrospective permission can be considered.

### 3. CONCLUSION

3.1 The planning history of the Monk Lakes site is, without question, both unusual and exceptional. The history, encompassing multiple permissions, enforcement actions, a judicial review, and significant remedial efforts, clearly demonstrates that the circumstances warrant consideration of the current retrospective planning application.

3.2 The site's history justifies the application of the "exceptional circumstances" provision, particularly given that the current scheme incorporates comprehensive environmental safeguards and mitigation measures, demonstrating that the developer is not simply seeking to bypass planning process requirements.

3.3 It would be illogical to take enforcement action against a development for which the principle has been accepted multiple times, particularly since the applicant has sought to address the concerns raised. The evidence provided demonstrates that the proposed development is appropriate for the site, subject to the conditions and Section 106 agreement, which will also mitigate potential impacts.