

STATEMENT OF CASE

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

ON BEHALF OF MONK LAKES LIMITED

LPA REF: 11/1948
PEGASUS REF: P20-0831

DATE: SEPTEMBER 2020

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1. INTRODUCTION

1.1 This Statement of Case (SoC) has been prepared by Pegasus Group on behalf of Monk Lakes Limited (“the Appellant”).

1.2 The Appeal is made pursuant to Section 78 of the Town & Country Planning Act (1990) (as amended), in respect of land at Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU (“the Appeal Site”) and has been lodged against the refusal of planning permission by Maidstone Borough Council for the following development 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.”

1.3 The planning history of the appeal extends nearly a decade. The Planning Application (ref. 11/1948) was validated by Maidstone Borough Council (“the Council” or “MBC”) on 9th December 2011 and granted in accordance with officer recommendation by the Council on 6 September 2012.

1.4 Subsequently, a Judicial Review challenge against the Council’s grant of planning permission was filed in November 2012. The High Court hearing was held in November 2013, and the proceeding judgement on 22nd January 2014, included at **Appendix 1A**, quashed the Council’s grant of planning permission on the grounds of the Council having failed to consider whether there were exceptional circumstances to grant retrospective permission and that the Council had failed to properly investigate potential impact on localised groundwater. Following this, the Council were required to re-determine the planning application. Amended and extensive additional supporting documentation was submitted to the Council in order to address the relevant matters and respond to further comments received during consultation.

1.5 The Application was referred to the Council’s Planning Committee on 23rd January 2020 with a recommendation of approval from the Head of Planning and Development, a copy of which is included at **Appendix 1B**. There were no objections raised from any statutory consultees. Notwithstanding the recommendation for approval, the Council’s Planning Committee resolved to refuse the Application. The decision was deferred until the next meeting in line with the Council’s constitution, on grounds that the Head of Planning and Development, on

the advice of the Head of Legal Partnership present at the meeting, did not consider the reasons for refusal put forward by the Committee were sustainable.

1.6 The Application was subsequently returned to the Council's Planning Committee on 5th March 2020. Officers sought advice from Counsel in the interim period relating to the grounds of the refusal and the risk of costs at appeal, which was presented to the Committee, as detailed in the accompanying Committee Report, attached at **Appendix 2** of this Statement. The report was considered by the Committee who resolved to uphold the refusal of the Application despite the issuing of a 'significant costs warning' and a Decision Notice was issued on 12th March 2020, which is included at **Appendix 3**.

1.7 The Decision Notice included two reasons for refusal as reproduced below:

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; and*
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 on 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.*

1.8 Of note, these matters were considered acceptable by the Council when granting permission for planning application reference 11/1948 in September 2012.

1.9 This Appeal is made on the basis of the drawings, reports and documents listed in **Appendix 4**.

1.10 Subsequently, an updated Proposed Landscaping Plan (ref. P20-0831_02) has been submitted as part of this appeal, which supersedes the Proposed Landscaping Plan (ref. 0183-04/02 Rev D) which was previously submitted to the Council. The updated Landscaping Plan does not seek to alter any new landscaping proposed; instead it merely seeks to accurately reflect the *existing* landscaping on Site which

is proposed to be retained, some elements of which had been mistakenly omitted from the previous Landscaping Plan. 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; and
- Indicative wood chipping areas around Lakes Puma and Bridges.

1.11 The proposed landscaping along the western and southern appeal site boundary remains the same.

1.12 Sectional drawings (ref. P20-0831_01 Sheets 1 – 4) have also been produced to demonstrate the distance between the lakes and Hertsfield Barn and the gradient of the lakes.

Summary of Case

1.13 The reasons for refusal relate to the impact on the heritage assets comprising the Grade II listed Hertsfield Barn through the loss of the open and level historic setting of the Barn, and the impact on amenity through the loss of privacy and perceived overlooking from anglers at an elevated position.

1.14 This Statement of Case demonstrates at paragraphs 6.7 – 6.61 that the proposals satisfy the statutory requirement of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and relevant local policy.

1.15 The residential conversion of the barn has removed its active functional connection with land beyond its now-domestic curtilage, and in addition, the presence of mature trees limit some of the views from the Barn across the Appeal Site. In addition, the shallow slope of the Site allows for continues appreciated of the openness of the wider area and would therefore not have any impact on the heritage significance of the asset.

1.16 Furthermore, the proposals to create lakes to the east of the former complex of buildings, which are now in separate ownership and physically divided, would not

affect the ability to understand and appreciate the relationship between the buildings.

1.17 The Statement of Case demonstrates that the significance of the Grade II Listed Barn is mostly embodied within its remaining physical fabric and historic interest as a rare 15th century former agricultural building. On this basis, the proposals will not impact the interpretation of this aspect of its significance.

1.18 Also, the appeal proposals will have no negative impacts on any of the qualities of the setting that are considered to contribute positively to the significance of the Listed Building; the ability to appreciate the tranquil, verdant and riparian surroundings and the historic former functional relationship between the barn and other buildings formerly comprising the Hertsfield agricultural complex, will continue to be understood. The site only forms a part of the wider setting, and its limited contribution to the significance of the Barn through setting, will be preserved.

1.19 The proposals would result in 'no harm' to the significance of the Grade II Listed Barn; however, should the Inspector identify 'less than substantial harm', the public benefits provided by the proposed development would outweigh the less than substantial harm. The public benefits of the scheme include:

- Strengthening the local economy and strengthening the Borough's tourism industry, with Monk Lakes identified as one of the main tourist attractions within the Maidstone area, as listed on the 'VisitMaidstone' website¹;
- Supporting healthy lifestyles through the provision of recreational activities, with angling contributing towards mental health benefits and has been used by the NHS in as part of mental health therapy² ;

¹ <https://www.visitmaidstone.com/things-to-do/monk-lakes-fishery-p12471>

² <https://www.telegraph.co.uk/politics/2020/05/03/let-anglers-fish-coronavirus-lockdown-improve-residential-health/> (accessed September 2020)

<https://www.getfishing.org.uk/tag/fishing-for-mental-health/> (accessed September 2020)

<https://www.heraldscotland.com/news/13030397.fishing-on-the-nhs-for-mental-health-patients-its-a-good-sense-of-achievement-when-we-catch-a-fish/> (accessed September 2020)

<https://www.nhsggc.org.uk/about-us/media-centre/news/2011/9/mental-health-patients-find-fishing-rewarding/> (accessed September 2020)

<https://www.getfishing.org.uk/carp-fishing-ptsd-military-veterans-icarp/> (accessed September 2020)

- Providing the opportunity for social interaction through the provision of a meeting place and leisure activity;
- Contributing towards the well-being of the local community and the users of the site;
- Providing the opportunity for social interaction through the provision of a meeting place and leisure activity;
- Provision of accessible activities, with the facility providing the largest disabled access fishery in the country, with previous links to Pads Army (a charity that assists disabled anglers to go fishing) and the provision of a number of fishing platforms which are specifically for disabled anglers;
- Contributing to the quantity and quality of the Borough's sporting facilities; and
- Providing environmental benefits through the provision of additional landscaping features which provide additional habitat opportunities for local wildlife, including a dedicated river enhancement scheme (included at **Appendix 28**).

1.20 The Statement of Case also demonstrates that the proposed development will not cause an unacceptable impact on the amenity of the houses and gardens of Hertsfield Barn, and numbers 3, 4, 5 and 6 Hertsfield Farm Cottages.

1.21 Based on their siting, the setback of the embankments and the proposed landscaping, the proposed development will not result in an adverse impact on amenity through unacceptable loss of privacy and perceived overlooking from anglers which is demonstrated in paragraphs 6.62 – 6.78 of this Statement of Case. The lakes are a considerable distance from the adjacent residential properties and their rear gardens/amenity space.

1.22 In addition, the relatively gentle gradient of the embankment will ensure the crest of the embankment, which will be utilised by anglers walking along to reach the lakes, will also be setback a sufficient distance from the curtilage of neighbouring properties. Therefore, whilst views will be possible at an elevated position, these are considered significantly far away that there will be no undue overlooking or loss of privacy to Hertsfield Barn and numbers 3-6 Hertsfield Farm Cottages.

- 1.23 Notwithstanding this, in reality anglers will spend the majority of their time situated closer to the lake and facing inwards, rather than outwards to the neighbouring residences, further reducing any perceived overlooking. In addition, the proposed planting will also provide additional screening between the cottages and the anglers.
- 1.24 It is also worth noting that the proposed development has not been subject to any significant changes since the development was previously approved by MBC in September 2012.
- 1.25 Overall, the proposal is considered to be in accordance with the policies contained in the Development Plan. On this basis, it is considered that the Appeal made pursuant to Section 78 of the Town & Country Planning Act (1990) (as amended) should be allowed.
- 1.26 This Statement of Case comprises the following sections:
- Site Description;
 - Site Background and Planning History;
 - The Appeal Proposal;
 - Law and Policy;
 - The Case for the Appellant;
 - Conditions and Section 106 Obligations; and
 - Conclusion.

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 A copy of the Site Location Plan is enclosed at **Appendix 5**. 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.

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. Recreational fishing tends to attract individual anglers, or small groups or two of three, and is of a less intensive nature than the competition angling which takes place at Match Lakes 2, 3 and 4, and tends to accommodate anglers for shorter durations.

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 A Schedule of Site Photographs is included at **Appendix 6**.

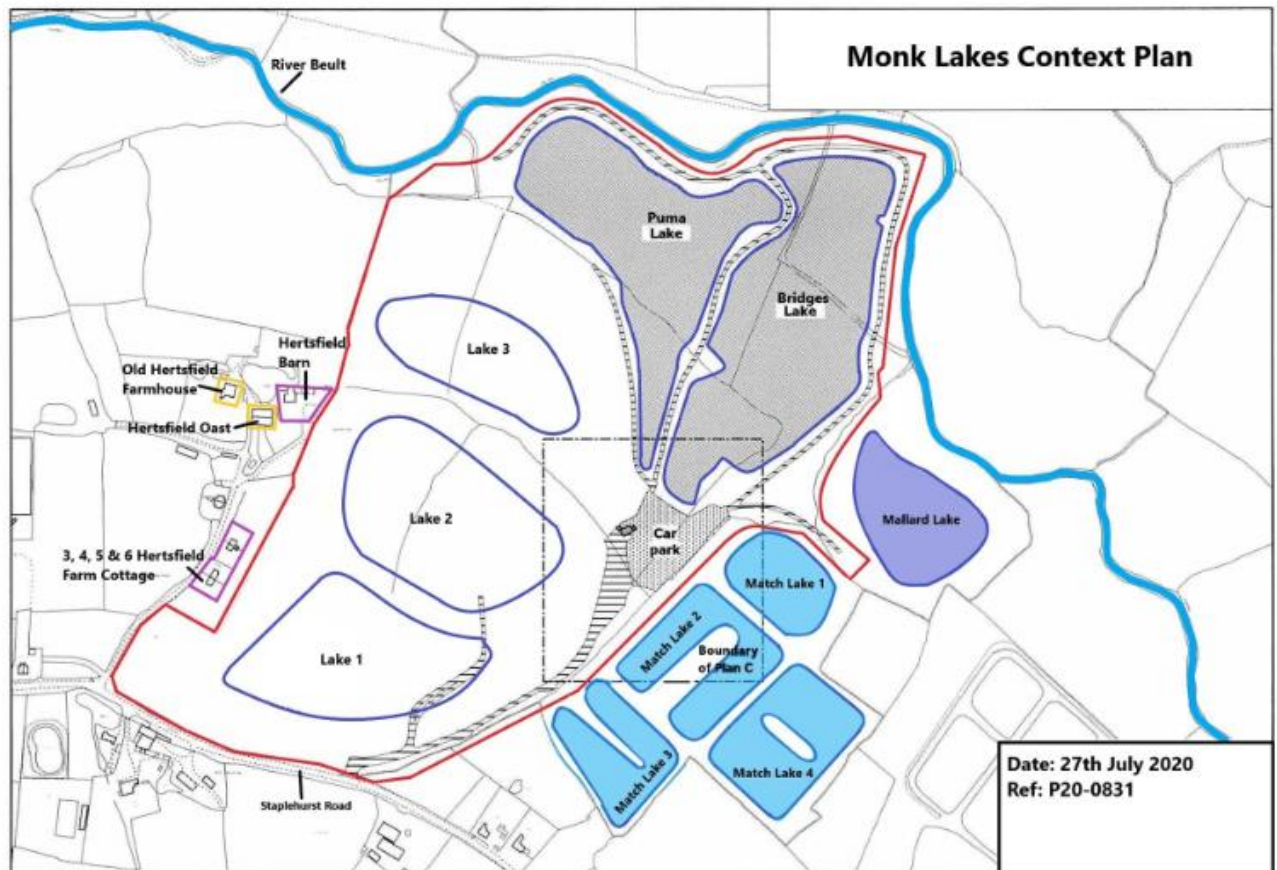


Figure 1: Appeal Site Context Plan

2.7 **Figure 2** below shows the area of car parking and clubhouse within the Appeal Site.



Figure 2: Existing Car Park and Ancillary Building Context Plan

- 2.8 The Appeal Site lies to the north of the Staplehurst Road (A229), approximately 3.5km south of Linden 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.
- 2.9 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**. The details of the Listed Buildings are set out further below in this Statement. There are also a number of residential properties to the south of the Appeal Site, on the opposite side of Staplehurst Road (A229).

- 2.10 There are also 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.
- 2.11 Also, 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.
- 2.12 The Appeal Site is bound by the River Beult to the north which is a Site of Special Scientific Interest (SSSI). The Monk Lakes facility benefits from fishing rights in this river.
- 2.13 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

- 2.14 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.

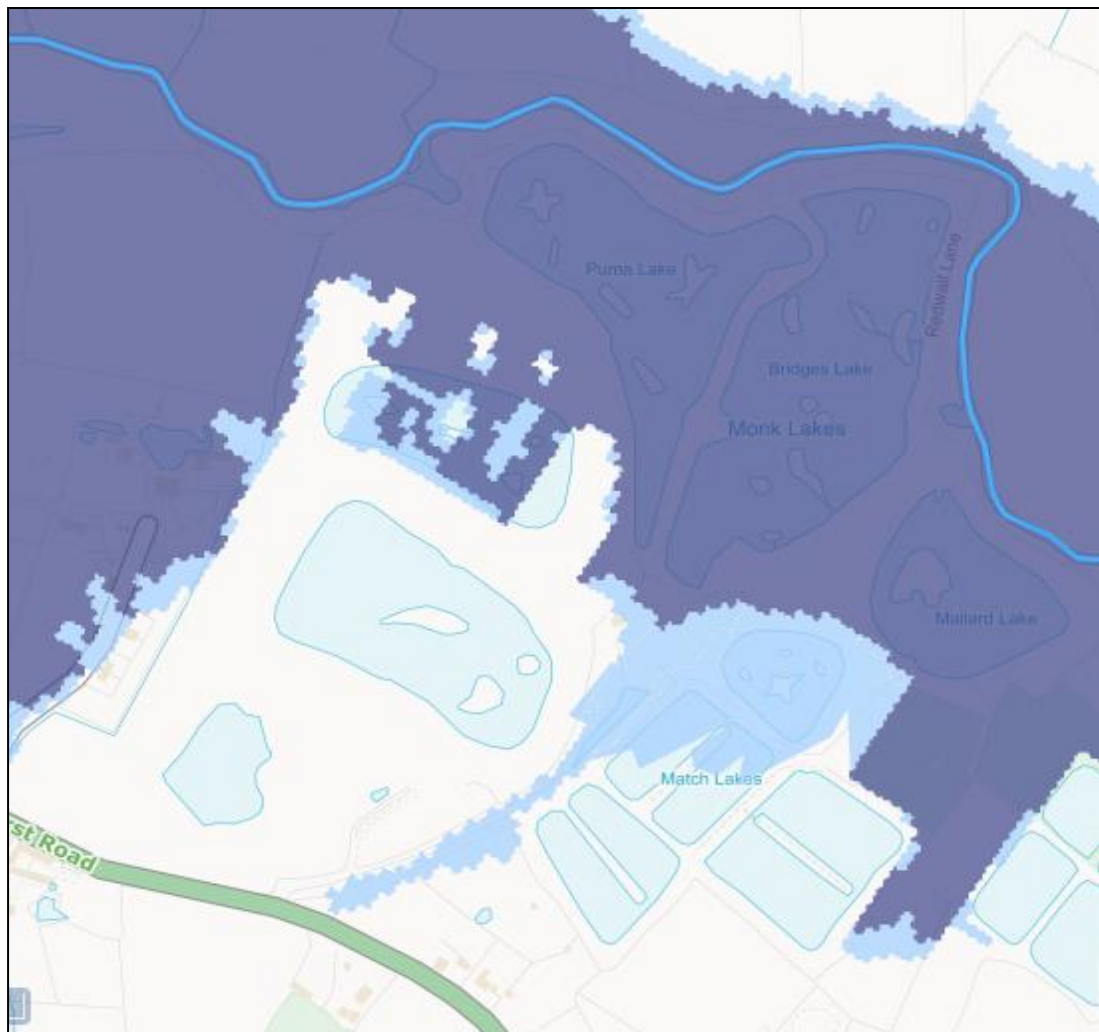
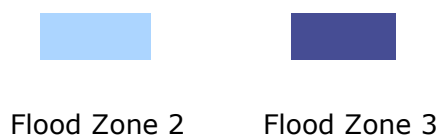


Figure 3: Extract of Environment Agency's Flood Map



Landscape Character

- 2.15 The Appeal Site is of an average level of 18.0m AOD which slopes towards the river bank for the River Beult which is approximately 14.0m AOD. The general level around Lakes 1, 2, and 3 has been increased as a result of construction to 22.0m AOD.
- 2.16 The landscaping scheme for the lakes has been designed to integrate the man-made lakes into the surrounding landscaping. This includes extensive hedgerows and tree planting which include native species. The Maidstone Character

Assessment (March 2012 amended July 2013) advises that the fishing ponds should be integrated into the landscape with appropriate plant species.

- 2.17 The surrounding landscape is characterised by native hedgerow field boundaries with mature oak trees. The wider area comprises mixed agriculture with large fields which includes arable cultivation and smaller riverside pasture fields. Sparsely scattered small woodlands are also present within the wider landscape.

Ecological Designations

- 2.18 The River Beult forms the northern boundary to the Site which is a Site of Special Scientific Interest (SSSI).

Trees

- 2.19 There are no trees covered by Tree Preservation Orders within the Site.

Historic Environment

- 2.20 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 made reference to the Grade II Listed Barn about 50 metres east of Old Hertsfield Farmhouse.

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 events associated with this site are set out in the table below:

Application 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	2 nd 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	22 nd September 2003
LDMB/LEG06/00504	Enforcement notice served	Subsequently appealed	12 th 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	26 th 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	4 th 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	6 th September 2012
		Permission quashed by the High Court	22 nd 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)	18 th May 2015
11/1948	Part retrospective planning application for the retention	Supplementary Environmental	July 2015

	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	Statement submitted to the Council	
		New Environmental Statement submitted to the Council	February 2019
		Subsequently refused by the Council at Planning Committee	12 th March 2020

3.3 A history of the surrounding area, including the site, can be found in **Appendix 7**.

Site Background

3.4 An overview of the Site background, including the Appellant’s involvement in the site, is set out below to provide context to the lengthy planning history.

3.5 Following the subdivision of the farmland associated with Hertsfield Farm, as shown in the Historic Background in **Appendix 7** the Site fell under the ownership of the wider Riverfield Fish Farm complex, which included part of the Appeal Site in addition to land located immediately to the south-east of the Site (comprising Match and Mallard Lakes, shown in between the two demises below). The current demise of Riverfield Fish Farm is shown in **Figure 4** below:

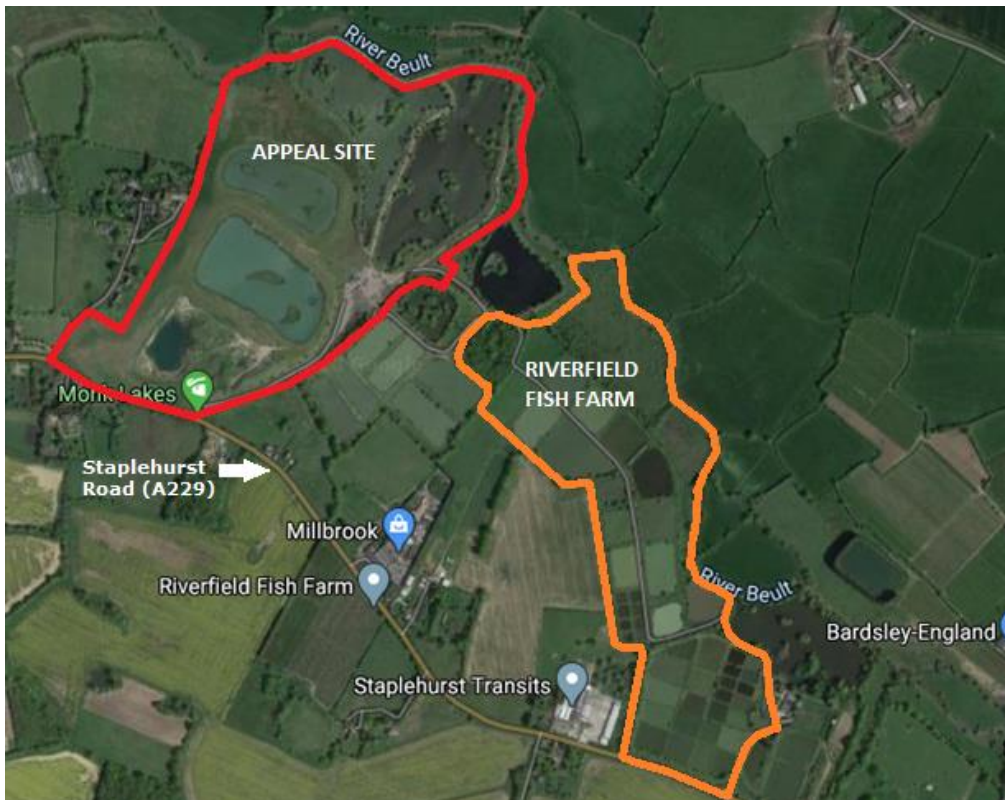


Figure 4: Aerial View of Appeal Site in context with Riverfield Fish Farm (July 2020)

- 3.6 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.
- 3.7 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.
- 3.8 The Appellant bought the Appeal Site in good faith in 2007, on the understanding that the planning status for the Site was satisfactory, and that the Council were in agreement with this. This was notwithstanding that the configuration of the lakes differed to that approved. However, it then came to light that the whilst the previous owner had addressed the pre-commencement conditions attached to the 2003 permission, they had not been formally discharged. MBC subsequently served an Enforcement Notice (ref. LDMB/LEG06/00504) for the Site in September 2008 on the grounds that between 2003 and 2008 the previous owner of the Site commenced works in connection with the permission granted under application reference 03/0836 which differed from the approved plans. The Enforcement Notice was subsequently appealed by the Appellant. A copy of the Enforcement Notice is included at **Appendix 8**.
- 3.9 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. These were all works which were listed in the Enforcement Notice, and the Enforcement Notice was superseded to that extent.

- 3.10 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.
- 3.11 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, Mr David Padden of Hertsfield Barn, who has been a consistent objector to the further development of the site.
- 3.12 The permission was quashed by the High Court in January 2014. The 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.*
- 3.13 Following this, the Hearing for the appeal against the Enforcement Notice was held in early 2015. The Appellants acted in person at the appeal. Clarification over the status of the appeals, requests for an Environmental Impact Assessment, and various extensions to deadlines to provide the requested information by the Planning Inspectorate resulted in the appeal process taking an extended length of time.
- 3.14 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 only applied to works that required material to be removed or used to fill holes and depressions and restore the land, amending it to allow for 22 months (to April 2017). A copy of the Appeal decision is included at **Appendix 9**.
- 3.15 Notably, MBC's Enforcement team held any action regarding the Enforcement Notice in abeyance pending the re-determination of the application.

3.16 Since this time, the Appellant has worked to satisfy the issues raised by the High Court and provided a significant amount of further information as requested by MBC to progress the re-determination of the application. On-going correspondence and a number of meetings took place between the Appellant and the Council during this time whereby the Appellant worked proactively to address the Council's requirements for additional information.

3.17 The additional information included the submission of an updated Environmental Statement by the Appellant in July 2015. For completeness, a summary of the history relating to the Environmental Statement element of the application is referenced below.

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: <ul style="list-style-type: none"> - 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

3.18 Further details of the Environmental Statement are included later in this Statement.

- 3.19 Of note, Lakes 2 and 3 were largely completed and made good after planning permission was granted in 2012, prior to the High Court judgement which quashed the permission. Works subsequently ceased and therefore these lakes were unable to be fully completed in accordance with the approved 2012 scheme. Since this time, minor revisions have been made to the proposed scheme (now subject of this Appeal) in order to update the drawings to reflect the existing form of Lakes 2 and 3, hence the retrospective planning permission now being sought for these lakes. This will have the additional benefit of avoiding further works adjacent to the nearest neighbouring properties. Lake 1 remains partially complete.
- 3.20 Having previously approved the development in September 2012, the application was presented to MBC's Planning Committee for re-determination on 5th March 2020, where it was resolved to refuse the application. This was against Officer recommendation and following advice having been sought from Counsel regarding the reasons for refusal and risk of costs at appeal, as presented in the accompanying Committee Report, included at **Appendix 2**. A Decision Notice for the refusal of the application was issued on 12th March 2020.
- 3.21 Following the refusal of planning application on 12th March 2020, MBC's Enforcement team has held any actions in abeyance following the outcome of this current appeal.
- 3.22 For completeness, the relevant planning history of the Appeal Site including descriptions of development is set out below:
- **Ref. 00/1162** – *Change of use of land and engineering works to create an extension to the existing fish farm and provision of temporary works access, as shown on drawing no. 674/2E received on 30.06.2000 and drawings no. 674/1J received on 17.11.2000* – Granted 2 January 2001
 - **Ref. 03/0836** – *Change of use of land and physical works to create an extension in the Riverside 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-I 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 674/VIII-I 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 – Granted 22 September 2003

- **Ref. 09/2027** – *Retrospective planning permission for the retention of buildings and mobile facilities to serve recreational angling use for a temporary period of three years as shown on drawing nos. 1728, 9, 10, 11, 12, 13 received on 06/11/09 – Granted 10 November 2009*
- **Ref. 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 as shown on drawing numbers 1728/1, 1728/2, 1728/3 AND 1728/6 received on 31/07/09 and 03/09/09 – Granted 26 November 2009*

Note this related to change of use of Match and Mallard Lakes, which fall outside of the Appeal Site, in addition to retention of the car park and main access route from Staplehurst Road, which form part of the Appeal Site.

- **Ref. 10/0762** – *Planning application for erection of clubhouse included decking area, solar photovoltaic tiles and associated works to replace existing buildings on site – Withdrawn*
- **Ref. 10/0766** – *Planning application for creation of lakes for use for recreational fishing – Withdrawn*
- **Ref. 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 – Refused 12 March 2020*

The permission was originally granted planning permission on 6 September 2012; however, this was subsequently quashed by the High Court on 22 January 2014. Following this, the application was refused by Maidstone Borough Council on 12 March 2020 following Planning Committee on 5 March 2020.

- **Ref. 13/1866** – *Application for discharge of conditions in relaxation to MA/11/1948 (Conditions 19 and Condition 24) – Awaiting determination (submitted prior to 11/1948 being quashed in the High Court)*

4. THE APPEAL PROPOSAL

- 4.1 The Planning Application, now 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 specific elements of the proposal are detailed further below. Photographs of each of the elements of the proposals are included within **Appendix 6**.

Lakes 1, 2, and 3

- 4.1 Lakes 1, 2, and 3 comprise three raised lakes proposed within the western section of the Site for recreational angling purposes.
- 4.2 Lakes 2 and 3 are complete, and planning permission is sought for these lakes in their current form. Planning permission is also sought for Lake 1, for which works have begun, with further works required to allow for completion; namely raising the levels of the lake bed in order for it to be used as a fishing lake, and minor reductions in the levels of the lake banks.
- 4.3 Of note, Lakes 2 and 3 were largely completed and made good after planning permission was granted in September 2012, prior to the High Court judgement which quashed the permission. Owing to the Judicial Review, these lakes were unable to be fully completed in accordance with the approved 2012 scheme. Since this time, minor revisions have been made to the proposed scheme (now subject of this Appeal) in order to update the drawings to reflect the existing form of Lakes 2 and 3, hence retrospective planning permission now being sought for these lakes. This will have the benefit of avoiding further works adjacent to the nearest neighbouring properties. Lake 1 remains partially complete.
- 4.4 The current proposed development is similar to that which was previously approved by MBC in September 2012, with only minor alterations made between the two schemes. These alterations consist of lower sloped banks around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in place of no more than 1m. The height of the lake crests for Lakes 2 and 3 have not significantly changed; where there have been changes this has been marginally lower. The western banks begin to rise around 6m closer to the western boundary in some places. The corners of



Figure 6: Extract of Proposed Site Plan (2012)

4.6 The approximate surface area and water level of the lakes as referenced in the Design and Access and Planning Statement submitted with the original application in November 2011, is proposed to be as follows:

- Lake 1: 28,000 sq m / 2.8ha (21.40m AOD)
- Lake 2: 36,000 sq m / 3.6ha (21.16m AOD)
- Lake 3: 20,000 sq m / 2.0ha (18.29m AOD)

4.7 The lakes have a maximum depth of 2m and includes a number of islands positioned within them. Photographs of Lakes 1, 2, and 3 are included below.



Figure 7: View from north west of Lake 1 looking south



Figure 8: View from north west of Lake 1 looking east along embankment with Lake 2 (on left) and Lake 1 (on right)



Figure 9: View of Lake 2 from its mid-western boundary looking east



Figure 10: View from plateau adjacent to Lake 3 looking east



Figure 11: View of Lake 3 from western boundary looking east

Lake Bridges and Puma

- 4.8 Lakes Bridges and Puma are located to the north-east and north of the Site respectively. Retrospective planning permission is sought for the retention of these two lakes.
- 4.9 Planning permission was previously granted for the Site in September 2003 (ref. 03/0836) when under previous ownership, for change of use of the land and physical works for recreational fishing and physical works to create an extension to the Riverside Fish Farm. This included the formation of ponds and lakes, which includes the area now covered by Bridges and Puma. Whilst the lakes were built out in a different form to the approved plans, the principle of the use of the land for lakes for recreational fishing purposes has been established.
- 4.10 The lakes are excavated below ground, with their water level just below ground level. The approximate surface area of the lakes is set out below:
- Puma: 38,000 sq m / 3.8ha
 - Bridges: 49,000 sq m / 4.9ha

4.11 The lakes have been completed over 15 years ago and have a naturalised appearance, with associated planting also introduced at that time. The current landscaping therefore has a mature and established appearance and comprises extensive vegetation which has integrated into the Site. for recreational fishing purposes. Photographs of Lake Puma and Lake Bridges are included below.



Figure 12: View across Lake Puma from north



Figure 13: View across Lake Puma of one of the islands contained within



Figure 14: View of Lake Bridges



Figure 15: View of Lake Bridges

Clubhouse

- 4.12 Planning permission is also sought for a new timber clubhouse, which is proposed to the east of Lake 2. The new clubhouse will provide ancillary facilities to support the predominant use of the Site for recreational fishing. These include a dining area, office, shop, storage and toilets for the visitors to the fishing lakes.
- 4.13 The location of the club house has been set away from neighbouring residents to ensure no adverse impact on amenity. It will be broadly in the location of the existing (albeit unlawful) shop/café building, sited slightly further to the west, adjacent to Lake 2 and accessible directly from the car park. It should be noted that the orientation of the clubhouse has been altered since the application was originally approved by the Council in September 2012 however it will be broadly in the same location, to the east of Lake 2 and the scale, form and design remains unchanged.
- 4.14 The proposed clubhouse has been designed to a high quality with a timber and clay tile finish, the traditional and natural materials of which will respect the surrounding landscape character of the Site. The design of the clubhouse will incorporate elements of the traditional form and features of a barn, including trusses, which will also ensure it respects the character of the surrounding area.
- 4.15 In addition to the 2012 approval, it should be noted that a clubhouse was granted under the original planning permission ref. 03/0836 in association with the use of the land for recreational fishing lakes. Furthermore, the retention of buildings and mobile facilities to serve recreational angling in the location of the existing car park, have also previously been granted permission under planning application reference 09/2027. The proposed clubhouse would replace the existing buildings, including the small shop/café, and provide enhanced facilities. Whilst the application was granted on a temporary three-year basis, the principle for the provision of facilities ancillary to the use of the Site for recreational fishing in this location is clearly well established.

Landscaping

- 4.16 The Site forms part of the wider recreational Monk Lakes fishing facility. The landscaping proposals have been designed to sensitively integrate the proposed lakes into the existing landscape and the wider surrounding area. Planting that was carried out between 2003 and 2008 for which permission is sought is now well

established and mature, providing biodiversity benefits for wildlife as well as visual screening. A Landscaping Plan was submitted to the Council in December 2019 which formed part of the refused documents as set out in **Appendix 4**. An updated Landscaping Plan has subsequently been produced, shown in **Figure 16** below and included at **Appendix 10**, which sets out the proposed landscaping scheme for the site. It should be noted that the amendments to the previously submitted Landscaping Plan are minor and have been made to ensure that the Landscaping Plan reflects the existing planting on Site and the proposed landscaping along the western boundary.



Figure 16: Proposed Landscaping Plan (ref. P20-0831_02)

4.17 An area of planning is proposed along the western boundary of Lakes 1, 2, and 3 and the southern boundary of the site abutting Staplehurst Road. This will soften views of the lakes from the surrounding residential development and from Staplehurst Road. An area planting is also proposed around Lakes 1, 2, and 3; extending to the south-west of Lake Puma. Islands within all five lakes will also incorporate native shrubs and trees.

- 4.18 There is also an area of self-sown willow and scrub planting adjacent to Lake Puma and an area of tree planting around both Lakes Puma and Lake Bridges. In addition, there are islands located within each of the lakes which will have a natural appearance.
- 4.19 The proposed landscaping has been designed to be wholly appropriate for the area and to assimilate with the existing vegetation on site and in the wider surrounds.

Access and Car Park

- 4.20 Access into the Site is provided from Staplehurst Road (A229) to the south. The car parking area and main access track leading to it from Staplehurst Road benefit from planning permission (ref. 09/1380) and will be retained, albeit this application seeks to formalise the layout of the car parking area. The proposed car park will comprise 75 demarcated car parking spaces. The car parking area is located within close proximity to the proposed clubhouse and can be accessed using the internal track leading from Staplehurst Road to the south.
- 4.21 Planning permission is sought for the internal tracks within the Site which provide vehicular access from the car park leading around Puma Lake and Bridges Lake, and an additional access from the Site to Mallard Lake/Match Lakes.
- 4.22 Photographs of the car parking area and access into the site are included below.



Figure 17: View of the main access track to the Site from Staplehurst Road



Figure 18: View of car park looking northwards, with access track between Lakes Puma and Bridges beyond



Figure 19: View of car park looking eastwards, towards access track leading to Mallard Lake

Drainage

- 4.23 The investigations carried out on site by the Appellant confirm that there are no groundwater issues associated with the site. Notwithstanding this, the drainage scheme has been designed to ensure that if there were any issues, the proposed mitigation set out in the Groundwater Monitoring Report (July 2015) and Drainage Strategy Report (July 2015), prepared by Peter Brett Associates and submitted as part of the Supplementary Environmental Statement, would adequately address and resolve these.
- 4.24 It is proposed that the drainage scheme will be implemented in accordance with the scheme prepared by Peter Brett Associates which includes a groundwater inceptor drainage ditch and a surface water drainage system. These measures are considered sufficient to mitigate any flood risk and any potential ground water impacts arising from the proposed development. Foul drainage associated with the clubhouse served by a Klargestor system and will be subject to an appropriately worded planning condition.

5. LAW AND POLICY

- 5.1 This section sets out the legislation and planning policy considerations and guidance contained within both national and local planning guidance which may relate to the Appeal Site.
- 5.2 All documents referred to will be included in the list of 'Core Documents'.
- 5.3 The decision notice refers to the key policies which will be referred to within the evidence provided by the Appellant. The Appellant also reserves the right to refer to additional policies which may be relevant.
- 5.4 The Appellant will respond to the reasons for refusal stated on the decision notice in evidence, and through this will demonstrate that the proposed development accords with national and local planning policy.

National Planning Policy

- 5.5 National policy and guidance is set out in the Government's National Planning Policy Framework (NPPF) published in February 2019. The NPPF sets out the Government's economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The NPPF continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.
- 5.6 Paragraph 11 sets out the presumption in favour of sustainable development (the 'presumption') which sets out the tone of the Government's overall stance and operates with and through the other policies of the NPPF. Its purpose is to send a strong signal to all those involved in the planning process about the need to plan positively for appropriate new development; so that both plan making and development management are proactive and driven by a search for opportunities to deliver sustainable development, rather than barriers. Conserving historic assets in a manner appropriate to their significance forms part of this drive towards sustainable development.
- 5.7 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF sets out three "objectives" to facilitate

sustainable development: an economic objective, a social objective, and an environmental objective. The presumption is key to delivering these objectives, by creating a positive pro-development framework which is underpinned by the wider economic, environmental and social provisions of the NPPF. The presumption is set out in full at Paragraph 11 of the NPPF and reads as follows:

"Plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

5.8 The NPPF continues to recognise that the planning system is plan-led and that therefore, Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application.

5.9 With regard to the economy, Paragraph 80 states that:

"Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future."

5.10 The NPPF goes on to state at Paragraph 83 that planning decisions should enable:

- a) *"the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;*
- b) *the development and diversification of agricultural and other land-based rural businesses;*
- c) *sustainable rural tourism and leisure developments which respect the character of the countryside; and*
- d) *the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship."*

5.11 Further to this, Paragraph 84 states:

"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any

opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."

5.12 Section 8 provides the approach which should be taken for promoting healthy and safe communities. Paragraph 91 states that planning decision should aim to achieve healthy, inclusive and safe places which:

- a) *"promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;*
- b) *are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and*
- c) *enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling."*

5.13 In addition, Paragraph 2 states that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) *"plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*
- b) *b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;*
- c) *c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;*
- d) *d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and*

e) e) *ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.*"

5.14 With regard to open space and recreation, Paragraph 96 states:

"Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities."

5.15 Heritage Assets are defined in Annex 2 of the NPPF as:

"A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including Local Listing)."

5.16 The NPPF goes on to define a Designated Heritage Asset as a:

"World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under relevant legislation.³" (our emphasis)

5.17 As set out above, significance is also defined as:

"The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance.⁴"

5.18 Section 16 of the NPPF relates to 'Conserving and enhancing the historic environment' and states at Paragraph 190 that:

"Local planning authorities should identify and assess the particular significance of any heritage asset that may be

³ NPPF Annex 2, MHCLG, 2019

⁴ Ibid.

affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal."

5.19 Paragraph 192 goes on to state that:

"In determining planning applications, local authorities should take account of:

a) the desirability of sustaining and enhancing the significance of heritage assets by putting them to viable uses consistent with their conservation;

b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) the desirability of new development making a positive contribution to local character and distinctiveness".

5.20 With regards to the impact of proposals on the significance of a heritage asset, Paragraphs 193 and 194 are relevant and read as follows:

"193 – When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."

"194 – Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional."*

5.21 In the context of the above, it should be noted that Paragraph 195 reads as follows:

"Where a proposed development would lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use".

5.22 Paragraph 196 goes on to state:

"Where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against public benefits of the proposal, including, where appropriate, securing its optimum viable use".

- 5.23 The NPPF also provides specific guidance in relation to development within Conservation Areas and World Heritage Sites, stating at Paragraph 200 that:

"Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably."

- 5.24 Paragraph 201 goes on to recognise that *"not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance"* and with regard to the potential harm from a proposed development states:

"Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole" (our emphasis)

- 5.25 Turning to design, Paragraph 127 of the NPPF explicitly states that officers should not, unreasonably prevent appropriate design and confirms that planning policies and decisions should ensure that developments:

"are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change" (our emphasis)

- 5.26 Paragraph 130 goes on to explain that:

"Where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development."

- 5.27 The Appeal Proposals have sought to ensure that the quality of the Site and the built form within is in fact enhanced and improved, through the enhanced quality

of the external appearance of the building and its continued use as a single-family dwelling.

- 5.28 The design and external appearance of the building also accords with the guidance given in Paragraph 131 which reads as follows:

"In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help to raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings." (our emphasis)

- 5.29 Overall, the NPPF confirms that the primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent it. Local Authorities should approach development management decisions positively - looking for solutions rather than problems so that applications can be approved wherever it is practical to do so.

National Planning Practice Guidance

- 5.30 The National Planning Practice Guidance (PPG) sets out a full and consolidated review of planning practice guidance documents and are to be read alongside the NPPF.

- 5.31 The PPG has a discrete section on the subject of the 'Historic Environment' which confirms that the consideration of 'significance' in decision taking is important and states:

"Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals⁵".

- 5.32 In terms of assessment of substantial harm, the PPG confirms that whether a proposal causes substantial harm will be a judgement for the individual decision

⁵ MHCLG, Planning Practice Guidance, paragraph 007 (ID: 18a-007-20190723 revision date 23.07.2019).

taker having regard to the individual circumstances and the policy set out within the NPPF. It goes on to state:

"In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting⁶.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm"
(our emphasis)

- 5.33 The PPG also confirms at Paragraph 018 that within each category of harm, being substantial or less than substantial, the extent of harm may vary and should be clearly articulated⁷.

The Development Plan

- 5.34 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.
- 5.35 At the time of writing, the Statutory Development Plan covering the Appeal Site comprises:

⁶ MHCLG, Planning Practice Guidance, paragraph 018 (ID: 18a-018-20190723 revision date 23.07.2019)

⁷ Ibid.

- 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

5.36 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 20** below.

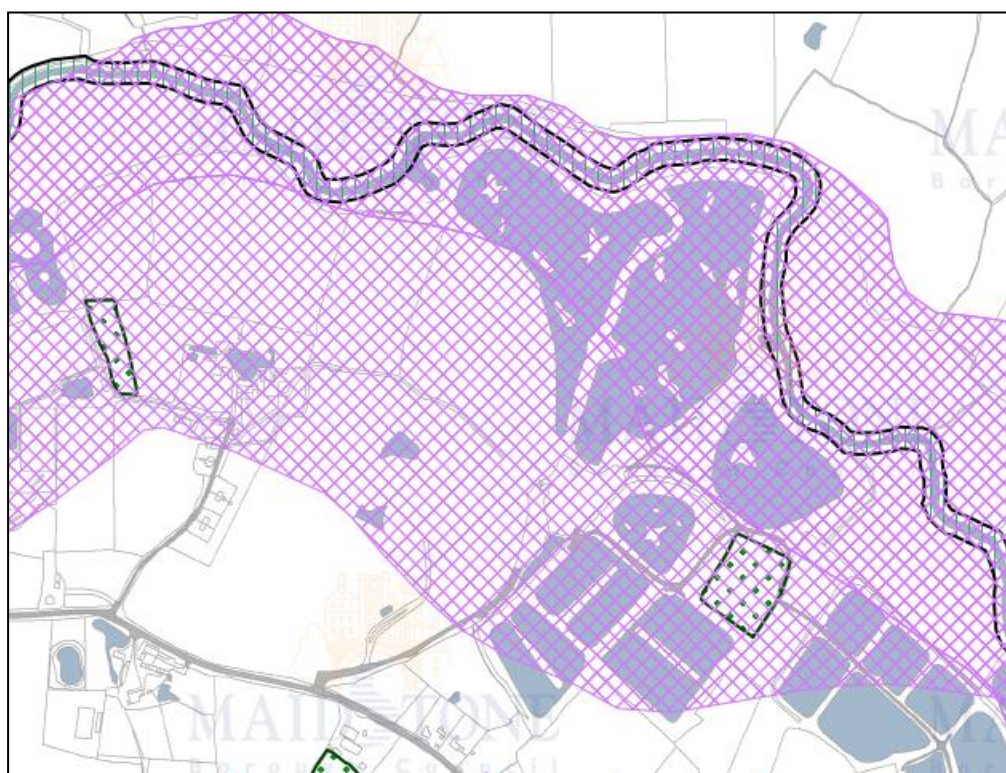




Figure 20: Proposals Map Extract – KCC Minerals Safeguarding Areas.

 KCC Minerals Safeguarding Areas  Ancient Woodland

5.37 The key Local Plan policies of relevance to this Appeal are:

- Strategic Policies:
 - SS1 – Maidstone borough spatial strategy
 - SP17 – Countryside

- Heritage Policies:
 - SP18 – Historic environment
 - DM4 – Development affecting designated and non-designated heritage assets
- Economic Policies
 - SP21 – Economic development
 - DM37 – Expansion of existing businesses in rural areas
- Transport Policies
 - SP23 – Sustainable transport
 - DM21- Assessing the transport impacts of development
 - DM23 – Parking standards
- Design Policies:
 - DM1 – Principles of good design
 - DM2 – Sustainable design
 - DM30 – Design principles in the countryside
- Environmental Policies
 - DM3 – Natural Environment
 - DM7 – Safeguarding Mineral Resources

Neighbourhood Plan

- 5.38 The Site is located within the boundary of the Marden Neighbourhood Plan. The Marden Neighbourhood Plan (2017-2031) was submitted to MBC in May 2019 and a six-week consultation took place between 14th June 2019 and 26th July 2019.
- 5.39 The Examiner's Report was issued in October 2019 and MBC's Strategic Planning and Infrastructure Committee resolved that, subject to modifications, the Marden

Neighbourhood Plan should proceed in local referendum in November 2019. The referendum took place on 27th February 2020.

5.40 On 9th June 2020, MBC's Strategic Planning and Infrastructure Committee resolved to make the Marden Neighbourhood Plan. On 15th July 2020 at a Full Council meeting, MBC resolved to make the Marden Neighbourhood Plan (2017-2031) under Section 38A (4) of the Planning and Compulsory Purchase Act (as amended) and it was subsequently adopted that day.

5.41 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 A2 – Open Space
- Policy E1 – Business and Employment

Supplementary Planning Documents

5.42 Where relevant, reference will also be made to the following supplementary planning documents, guidance and relevant advice, which are material to the determination of this Appeal:

- Kent Design Guide (adopted 2005).

Legislation

5.43 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.

5.44 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".

5.45 In the 2014 Court of Appeal judgement in relation to the Barnwell Manor case⁸, Sullivan LJ held that:

"Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise."

5.46 A judgement in the Court of Appeal⁹ ('Mordue') has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular Paragraph 134 of the 2012 version of the NPPF, the requirements of which are now given in Paragraph 196 of the revised NPPF, see below), this is in keeping with the requirements of the 1990 Act.

5.47 With regards to development within Conservation Areas, Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

"In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned

⁸ East Northamptonshire District Council v SSCLG (2015) EWCA Civ 137 – Appendix 11

⁹ Jones v Mordue Anor (2015) EWCA Civ 1243 – Appendix 12

in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

- 5.48 In addition to the statutory requirements set out within the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

Heritage Methodology

Assessment of Significance

- 5.49 In the NPPF, heritage significance is defined as:

“the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting¹⁰. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”

- 5.50 Historic England’s Historic Environment Good Practice advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment¹¹ (henceforth referred to as ‘GPA 2: Managing Significance’) gives advice on the assessment of significance as part of the application process. It advises understanding the nature, extent, and level of significance of a heritage asset.

- 5.51 Historic England have also prepared advice in respect of the preparation of Statements of Heritage Significance within their Historic Environment Good Practice Advice in Planning Note 12: Statements of Heritage Significance: Analysing Significance in Heritage Assets¹² (henceforth referred to as ‘GPA 12: Statements of Heritage Significance’), which advocates considering the three types of heritage interest as set out in Paragraph 006 of the national Planning Practice Guidance

¹⁰ NPPF Annex 2, MCHLG, 2019

¹¹ Historic England, 2015, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment* – Appendix 13.

¹² Historic England, 2019, *Historic Environment Good Practice Advice in Planning Note 12: Statements of Heritage Significance: Analysing Significance in Heritage Assets* – Appendix 14.

(PPG): archaeological interest; architectural and artistic interest; and historic interest as defined below.

- **Archaeological Interest:** *"as defined in the Glossary to the National Planning Policy Framework, there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point"*
- **Architectural and Artistic Interest:** *"these are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skill, like sculpture"*
- **Historic Interest:** *"An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity"*

5.52 Significance results from a combination of any, some or all of the interests described above. These consolidate the four types of heritage value an asset may hold as identified in Historic England's Conservation Principles: being evidential, historical, aesthetic and communal.

5.53 Listed Buildings and Conservation Areas are designated for their special architectural and historic interest.

Levels of Significance

5.54 In accordance with the levels of significance articulated in the NPPF, four levels of significance are identified:

- **Designated heritage assets of the highest significance**, as identified in paragraph 194 of the NPPF comprising Grade I and II* Listed buildings; Grade I and II* Registered Parks and Gardens; Scheduled Monuments; Protected Wreck Sites and Registered Battlefields (and also including some Conservation Areas);

- **Designated heritage assets of less than the highest significance**, as identified in paragraph 194 of the NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);
- **Non-designated heritage assets.** Non-designated heritage assets are defined within the Government's Planning Practice Guidance as "*buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets*"¹³.

5.55 Additionally, it is of course possible that sites, buildings or areas have **no heritage significance**.

Assessment of Harm

5.56 Assessment of any harm will be articulated in terms of the policy and law that the proposed development will be assessed against, such as whether a proposed development preserves or enhances the character or appearance of a Conservation Area, and articulating the scale of any harm in order to inform a balanced judgement/weighting exercise as required by the NPPF.

5.57 In order to relate to key policies, the following levels of harm may potentially be identified:

- **Substantial harm or total loss** - It has been clarified in a High Court Judgement of 2013¹⁴ that this would be harm that would 'have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced';
- **Less than substantial harm** - Harm of a lesser level than that defined above; and
- **It is also possible that development proposals will cause no harm or preserve the significance of heritage assets** - A High Court Judgement of 2014¹⁵ is relevant to this. This concluded that with regard to preserving

¹³ MHCLG, Planning Practice Guidance, Paragraph: 039 (ID: 18a-039-20190723 Revision date: 23.07.2019)

¹⁴ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council – Appendix 15.

¹⁵ EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle – Appendix 16.

the setting of a Listed building or preserving the character and appearance of a Conservation Area, 'preserving' means doing 'no harm'.

- 5.58 Preservation does not mean no change; it specifically means no harm. *GPA 2: Managing Significance* states that "Change to heritage assets is inevitable but it is only harmful when significance is damaged". Thus, change is accepted in Historic England's guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.
- 5.59 As part of this, setting may be a key consideration. For an evaluation of any harm to significance through changes to setting, this assessment follows the methodology given in *GPA 3: The Setting of Heritage Assets*, described above. Again, fundamental to the methodology set out in this document is stating 'what matters and why'. Of particular relevance is the checklist given on page 13 of *GPA 3: The Setting of Heritage Assets*.
- 5.60 It should be noted that this document states that:
- "setting is not itself a heritage asset, nor a heritage designation"¹⁶**
- 5.61 Hence any impacts are described in terms of how they affect the significance of the heritage asset, and heritage values that contribute to this significance, through changes to setting.
- 5.62 With regards to changes in setting, *GPA 3: The Setting of Heritage Assets* states that "conserving or enhancing heritage assets by taking their settings into account need not prevent change".
- 5.63 Additionally, it is also important to note that, as clarified in the Court of Appeal¹⁷, whilst the statutory duty requires that special regard should be paid to the desirability of not harming the setting of heritage assets (such as a Listed Building), that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.

¹⁶ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets (paragraph 9)* - Appendix 17.

¹⁷ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061 (04 November 2016) - Appendix 18.

5.64 Development proposals may also result in benefits to heritage assets, and these are articulated in terms of how they enhance the heritage values and hence significance of the assets concerned.

Emerging Local Plan Review

5.65 The Appellant will continue to monitor the progression of the emerging Local Plan Review and the weight that this holds. The Council undertook an Issues and Options consultation in July – September 2019 and the latest Local Development Scheme (published July 2018) states that the Council aim to adopt the emerging Local Plan in April 2022, with the first stage of consultation on the key growth strategies scheduled for October 2020. The emerging plan therefore currently carries no weight. The Appellant will also draw on relevant supplementary planning documents (SPDs). The Appellant will also refer to material considerations in respect of the proposal and the context of the Site within evidence, where relevant.

6. THE CASE FOR THE APPELLANT

6.1 A draft Statement of Common Ground (SoCG) has been submitted as part of the Appeal in order to narrow down the issues that are likely to be in dispute.

6.2 It is anticipated that the final SoCG will record that the Appellant and MBC are in agreement on the following issues:

- i) Format of Planning Application and Supporting Material;
- ii) Development Plan Designations;
- iii) Flooding, Groundwater Impact & Drainage;
- iv) Environmental Impact Assessment;
- v) Design, Layout & Landscaping;
- vi) Landscape & Visual Impact;
- vii) Ecology & Biodiversity;
- viii) The reasons for refusal relate solely to the impact on amenity and heritage relate solely to that arising from Lakes 1, 2, and 3;
- ix) Highways and access considerations, including that the existing main access from Staplehurst Road and construction of a car park was permitted under planning permission ref. 09/1380; and
- x) The scheme has only been subject to minor amendments compared to the scheme previously granted by MBC in 2012 under planning permission reference 11/1948.

Matters Not Agreed

6.3 The Appellant anticipates that the following matters will remain in dispute and that they will become the main focus for the Appeal Hearing in terms of discussions between the main parties:

- **Issue 1 – Impact on Heritage Assets**
- **Issue 2 – Impact on Amenity**

The Main Issues

6.4 The Appellant's case on Issue 1 can be summarised as follows:

- 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 lakes, is not agreed;
- The assessment prepared by the Appellant has concluded that the significance of the Grade II Listed Barn lies in its historic interest as a rare late 15th or 16th century barn and its architectural interest in its surviving early fabric and form;
- Elements of the setting which are considered to contribute include the other buildings forming the former agricultural complex, including the Grade II Listed Hertsfield Farmhouse, and the ability to perceive the bucolic and verdant character of the wider area, which lacks any considerable built form and has a sense of tranquillity;
- The application site is considered to contribute to the setting of the Listed Barn by virtue of its riparian character and lack of any considerable built form; and
- Given the proposed development would retain the sense of openness, tranquillity and the overall riparian and verdant character, it would not result in any impact on the significance of the Grade II Listed Barn through a change in setting.

6.5 The Appellant's case on Issue 2 can be summarised as follows:

- The impact of the development on amenity, based on the height and proximity of the raised lakes along the western boundary of the site, is not agreed. This is inclusive of the loss of privacy and perceived overlooking from the anglers at an elevated position to the houses and gardens of Hertsfield Barn, and numbers 3, 4, 5, and 6 Hertsfield Farm Cottages, which is also not agreed;
- The distance from the Site boundary to the nearest house is considered to be a significant distance from the edge of the Lakes;

- Given that the anglers who use the site are to be looking inwards at the Lakes and not towards and the residential properties, and that there is a plateau at the edge of the Lakes, there will not be any perceived overlooking into the neighbouring properties;
- The relatively shallow gradient of the raised banks (around 1 in 8) will ensure that the flattened crest of the bank, which anglers will walk along to reach one of the lakes, will be set back a considerable way from the Site boundary;
- It is accepted by the Appellant that no night time fishing is to occur along the western boundary of Lakes 1, 2, and 3 which ensures that there will be no perceived overlooking during this time of day; and
- The proposed landscaping will serve as a screen between Lakes 1, 2, and 3 and the adjacent properties.

6.6 The case for the Appellant in response to the two Main Issues and Other Matters is set out in more detail below.

Issue 1 – Impact on Heritage Assets

6.7 The first Reason for Refusal stated:

"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."

6.8 The following section provides an assessment as to the heritage significance of the Appeal Site, within the context of the Grade II Listed Barn about 50 metres east of Old Hertsfield Farmhouse, and the contribution which the site may make to its setting and thus significance. This has been informed by the historic development found in **Appendix 7** and has utilised the methodology outlined in **Section 5**.

6.9 Following the significance assessment, an impact assessment of the proposals is provided to understand the impact the proposals may have upon the significance of the Grade II Listed Barn about 50 metres east of Old Hertsfield Farmhouse through a change in setting. As described in Section 4, the proposals comprise the *"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."* Lakes 1, 2, and 3 comprise three raised lakes proposed within the western section of the Site for recreational angling purposes.

6.10 Firstly, the conclusions of the Local Authority with regards to heritage impact since 2011 will be presented.

6.11 When the application was originally submitted and determined in 2011/2012, the Conservation Officer was consulted, raising no objections, and stated:

"The existing and proposed lakes have no adverse impact on the settings of listed buildings in the vicinity. However, given the substantial amount of excavation proposed I would recommend that we consult with KCC heritage section regarding archaeological impact prior to determination."

6.12 A copy of the Committee Report for the 7 June 2012 for application reference 11/1948 is included at **Appendix 19**.

6.13 It should be noted that over the course of the second consideration of the application, the Conservation Officers at Maidstone Borough Council were again consulted. The first consultation available was in 2016 and stated:

"Although the bunding relating to the creation of one of the lakes lies close to the listed Hertsfield Barn the impact on its setting, which I have viewed from the property, is not damaging to its significance in my opinion."

6.14 A copy of the Conservation Consultation, dated 22 December 2016, is included at **Appendix 20**.

6.15 In 2019, the Conservation Officer was consulted again, albeit a different Officer, and stated the following:

"Having reviewed the submitted documents and visited the site, I concur with the conservation officer comments dated 22.12.16, and I am of the opinion that the development is not harmful to the setting and significance of the nearby Hertsfield Barn, which is Grade II listed."

6.16 A copy of the Conservation Consultation, dated 21 November 2019, is included at **Appendix 21**.

6.17 Finally, in 2020, the Conservation Officer was consulted with regards to the potential impact of the proposals on the Grade II Listed Old Hertsfield Farmhouse, which again, did not form part of Reason for Refusal 1. The Officer stated:

"Old Hertsfield is a Grade II listed farmhouse dating from the 18th century or earlier (list entry number 1281781). The building is separated from the development site by Hertsfield Oast and Hertsfield Barn (Grade II), which together with their associated landscaping limits any potential inter-visibility. In my view the development therefore has a negligible impact on the setting and significance of the farmhouse."

6.18 A copy of the Conservation Consultation, dated 2 January 2020, is included at **Appendix 22**.

6.19 Therefore, it is clear that Maidstone Borough Council Conservation Officers considered the proposals for the lakes to cause no harm worthy of consideration to the significance of the Grade II Listed Barn.

6.20 Consequently, the Officer recommended the application for approval, and provided a Committee Report summarising the planning history of the Site and highlighting that permission was granted in 2003 for the creation of fishing lakes. With regards to heritage, it stated:

"Hertsfield Barn, a timber framed barn of 15th Century or early 16th Century age with attached 19th Century cattle shelter, is adjacent to the site and is seen in the context of part of the proposed development. The site previously provided a generally flat and open setting to the east of the Barn. This would be changed to grassed banks that would be planted with vegetation. Whilst the land to the east was

previously generally level and largely open and this formed part of the historic setting of the barn, I do not consider the application site is an important part of the listed barn's significance and this derives more from the fabric and architectural merit of the building itself, and its group value and association with the Old Hertsfield, and Hertsfield Oast as a small farm complex. The development would not affect this group value or association and therefore the barn's significance. Old Hertsfield Farmhouse is 18th century, possibly with earlier core, and the listing record states that part of the reason for the listing is for its group value. This building is separated from the site by Hertsfield Barn and Hertsfield Oast such that the proposed development is not clearly seen in the context of the listed building and for this reason the development would not harm the setting or significance of the building. The application site is also not an important part of this listed building's significance similar to Hertsfield Barn. Nor is it considered that introducing sloped grassed and landscaped planted banks would represent a development feature that would be harmful to, or incompatible with, the listed building's settings."

- 6.21 The Committee voted to refuse the application for two reasons, the first Reason for Refusal being related to heritage and as follows:

"The size, height and proximity of the raised lakes particularly the western boundary 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."

- 6.22 The Council sought subsequent advice from Counsel and a report was prepared outlining the implications and strategy of each reason for refusal (**Appendix 2**). This document reiterated that a different viewpoint has been taken in comparison

with the 2012 application, which found the proposals to be acceptable in heritage terms, and that the minor changes of the proposed development since would be *"difficult to rely on [...] as a reason for taking a different view."*

6.23 The report ultimately concluded that:

"In the case of heritage it is advised that there is a reasonable evidence base to allege harm provided Members demonstrate that they consider the open and level historic setting of the Grade II Listed Barn forms an important part of its significance and setting and enhance attention to the duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 could be cited."

Significance Assessment

6.24 The Barn was added to the National List on 19th May 1986. The List Entry description states:

"Barn. C15 or early C16. Timber framed, weatherboarded, on ragstone plinth. Plain tile roof. 4 timber-framed bays, with midstorey to second bay from north. South end bay shorter than rest. Steeply-pitched hipped roof with gablets. Low gabled weatherboarded porch to east. Lean-tos to east and west sides of two south bays. Single-storey C19 weatherboarded cattle shelter with plain tile roof, running east from north end, open to south side with posts on tapering padstones, and retaining wooden feeding troughs at time of re-survey. Interior: gunstock jowls to principal posts. Arch-braced tie-beams. Plain crown posts, each with two foot and two head braces. Lapped collars. Full-height intermediate posts to bays flanking midstorey. Stave, lath and daub infilling above midrail to east side of two south bays. Tension braces. Threshing - floor brace."

6.25 The full List Entry description can be found in **Appendix 23**.

6.26 The barn in its current form has a two storey central nave, which forms the historic core of the structure. As described in the List Entry, the wings have origins in the 19th century (Figure 22). The north-western wing, shown in yellow in Figure 22, is

seen on the 1841 Tithe Map and later in the 1885-94 Ordnance Survey map and therefore gates from earlier in the 19th century. The north-eastern wing, however, only appears in the 1897 Ordnance Survey map.



Figure 21: The eastern elevation of the Grade II Listed Barn when viewed from the Appeal Site as at June 2020 (NB. this view is zoomed in and should not be used to demonstrate the proportional distance)



Figure 22: Morphological drawings showing the dating of the three main parts of the barn.

6.27 The barn no longer retains its original function as agricultural building, having been given permission to be converted on 29th September 1986 to a residential property. Therefore, there have been considerable alterations to the physical fabric both internally and externally to accommodate the fit-out of the building as such. The approved plans, Decision Notice and Officer's Report for the original conversion (ref. 86/1149) can be found in **Appendix 24**.

6.28 The Officer's Report stated that:

"This is a five bay, oak framed, crown post barn, probably dating from the C15th with hipped roof and two wagon entrances. There are two crown posts and 2 curved braces to the tie beams. There is evidence that the upper section of the barn was plastered. Part of the traditional floor is in place. There are added outshoots to the west and east.

The buildings to the east and west are C19th constructed of softwood with side purlin strutted roof and open front with timber partitions and stone basins. The building is of good Grade II quality and this has been recognised in the draft

revised statutory list. The building, therefore, complies with RS4 policy criteria for conversion.

The design of the conversion has been amended to my satisfaction and the proposal is acceptable."

- 6.29 In 1991, a Listed Building Consent application was submitted proposing alterations to the 1986 application and providing further detail of the construction of and repairs to some elements. Notes on the drawings included the following:

"3. Existing external walls to be stripped of weatherboard. Studwork to be checked, overhauled and repaired as necessary. New PV feather edged weathervoard supplied and fitted, dark stained, over breather paper, over 100m fibreglass insulation fixed between studs. Internall, 9.5mm duplex plasterboard fixed to existing studwork and set.

[...]

7. Strip off existing roof tiles and battens. Overhaul and repair as necessary existing plates and rafters. New roof to be a "warm roof" construction, clay tiles on 19x38 treated roofing batten on 32x50 counter battens on slaters felt on 35mm rigid foam insulation as Polyfoam Plus roof board by Lin Pac Insulation Products fixed in accordance with manufacturers recommendations.

[...]

9. Existing timber frame to be repai17

red as necessary, timber treatment applied by specialists, oak beams, posts and braces expressed where possible, sand blasted and sealed with clear Sadolin finish."

- 6.30 The drawings can be found in **Appendix 25** (ref. 91/1464).
- 6.31 This application highlights the further alterations that took place to the building to accommodate its new use. Ultimately, the remaining original fabric of the building is likely to only be its core structure. The building, however, does retain a traditional appearance, with much of the newer fabric designed to match.

6.32 As part of an appeal in 1995 regarding the materiality of proposed rainwater goods, the Inspector stated:

"Hertsfield Barn is a particularly fine example of a Kentish timber-framed barn. The essential characteristics of a barn of this type include large sweeping roofs and walls which are punctuated only by a minimum number of openings. Clearly, the conversion of a barn of this nature to a residential use will, to some extent, affect its simple character."

6.33 A copy of the PINs Decision (ref. MA/94/1612) is included at **Appendix 26**.

6.34 There is only one indication within the original planning submission about retaining a potential historic partition through the solid colouring of a ground floor partition in comparison with the hatched treatment of the proposed new partitions, so it is presumed that this was a previous feature and remains the only retained internal partition. However, there is no evidence that other features were retained, such as animal stalls, or the wooden feeding troughs mentioned in the List Entry, so they are presumed to have not been retained in the conversion, if even present previously. Therefore, considering the notes on drawings related to the conversion, it is considered that remaining historic fabric is limited to the structure of the building.

6.35 According to the approved plans, the conversion retained a double-height space within part of the main barn in the area of the opposing doors. This does not extend fully across the space with a partition separating through-views at first floor level, but it allows for the appreciation of the significant internal space in one location. The openness of the eastern wing as well as the presence of glazing somewhat retains its openness to the south.

6.36 The barn retains much of its historic bulk and form and is clearly read as a previous agricultural building. The architectural interest is eroded by the loss of historic fabric and features, and the incorporation of features that would not have been historically present, such as glazing within the historic openings and the creation of windows on all sides of the building. However, the presence of crown posts, its overall retained historic structure and the ability to understand the original form of its three main parts mean the building has high architectural interest.

6.37 Moreover, the ability to appreciate its original form contributes to its historic interest as a 15th century or early 16th century barn. As suggested in Historic England's *National Farm Building Types* document, the Grade II Listed Barn about 50 metres east of Old Hertsfield Farmhouse is the oldest and largest building in the now-subdivided farm complex, and its potential 15th century dating means it is "of exceptional rarity and importance." However, the loss of its original use, along with the rest of the farmstead, and subsequent alterations that have occurred to remove historic features and fabric, erodes the historic interest.

Setting

6.38 The setting of the asset also contributes to the significance of the asset, although the significance derived from the setting is less than that from its historic fabric. The principal elements of the physical surrounds and experience of the asset (its 'setting') which are considered to contribute to its heritage significance comprise the Grade II Listed Old Hertsfield Farmhouse and the Oasthouses, with which the Barn formed a group; and remaining open areas of the former farm complex, such as the pond to the west. These give legibility to the probable origins of the barn as part of the Hertsfield Farm complex.

6.39 Whilst there are examples of outlying field barns and outfarms, according to Historic England's *South East Farmsteads Character Statement*, such outlying farm buildings of this age are extremely rare with most outfarms dating from the 19th century. Therefore, it is likely that the barn was erected to support the nearby Old Hertsfield Farmhouse, which dates from the "18th century, possibly with an earlier core," according to the List Entry description, and was also "included for group value". The full List Entry description can be found in **Appendix 27**.

6.40 The agricultural complex can be seen on the Tithe Map of 1841 with a considerable surrounding landholding under the same ownership (Dean & Chapter of Rochester St Saviours Churchwardens & Overseers of the Poor of (Lessees)) and occupied by the same tenant (William Spicer), including land now within the boundaries of the Appeal Site.

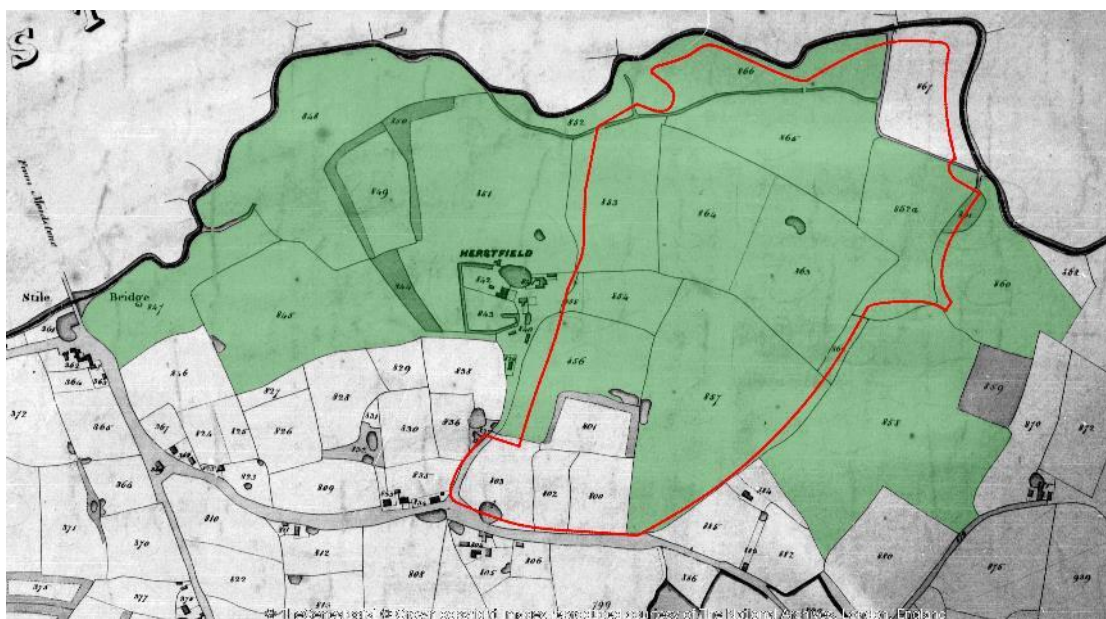


Figure 23: 1841 Tithe Map with the same ownership and tenant shown in green. The Appeal Site is outlined in red.

6.41 This map is one of the earliest maps to also show a more accurate arrangement of the farmstead. It does not have a regular, formal layout and instead comprises a number of buildings dispersed across the farmstead. Historic England's *South East Farmsteads Character Statement* describes a dispersed cluster layout as follows:

"These are loosely arranged groups of buildings, often with no defined yard area, set within an irregular paddock. They are strongly associated with areas of smallest farms and smallholdings close to former rough land and common and areas of irregular fields resulting from the clearance of woodland in the medieval period. Occasionally this plan type is found on larger farmsteads associated with areas of ancient enclosure. This plan type is particularly characteristic of the High Weald and the Kent Low Weald and Wealden Greensand, with small examples found in heathland fringe areas such as around the New Forest."

6.42 Old Hertsfield was formed by three large structures, comprising the farmhouse, oasts and the barn. Other smaller structures are indicated with triangles across the property. It is clear that the layout of the agricultural buildings were more irregular, but positioned to take advantage of access to the complex. As a result of this layout,

it is very unlikely that there were formal, designed views between any of the buildings.

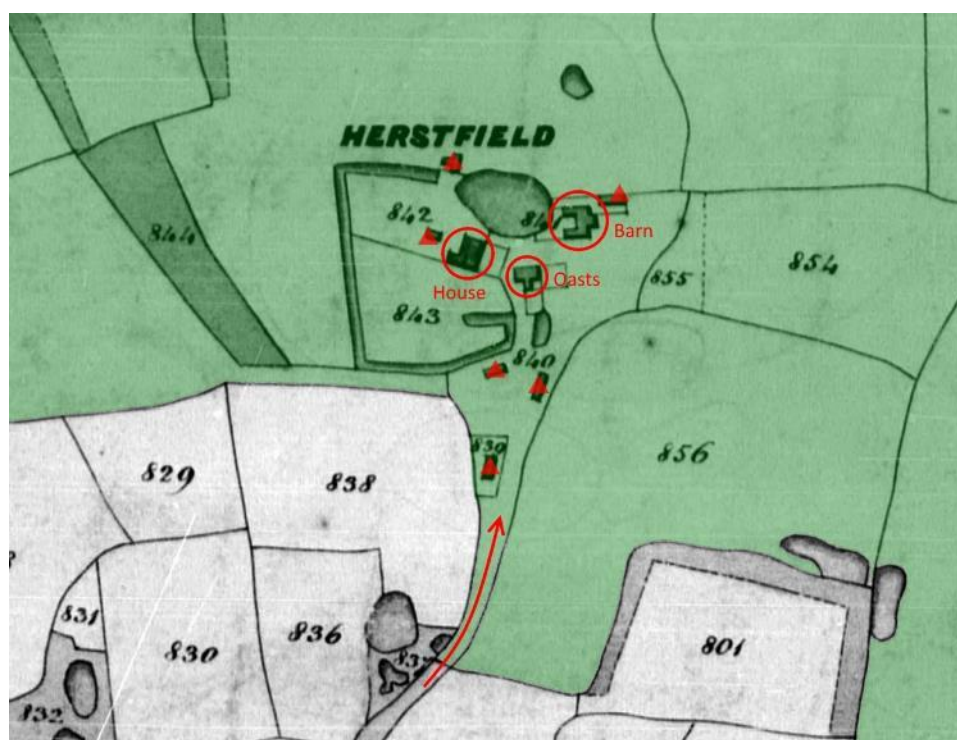


Figure 24: Closer view of the 1841 Tithe Map.

- 6.43 Later maps, as seen earlier in this Appeal Statement, show the changes that occurred to the agricultural complex over time, as well as the farmland surrounding it. The 1885-94 Ordnance Survey Map demonstrated that the land surrounding the farmhouse was intentionally planted to create a distinct separation from the agricultural buildings to the east. This further reinforces the lack of any formal, designed views between this building, the ancillary buildings and the land beyond. The maps also show that the principal means of accessing the Site and its surrounding lands was from the south and branched out closer to the farm.
- 6.44 Despite the formal planting to separate the domestic building from the utilitarian agricultural buildings, there was still a functional relationship between the two areas of the Site, and given the long history of the Site as an agricultural complex, there is group value with the remaining historic buildings, i.e. the Grade II Listed Old Hertsfield Farmhouse and the converted oasthouses.
- 6.45 Later mapping and the buildings present within the complex indicate changes of land use of the wider landholding throughout the history of the complex. The

earliest available mapping described above appears to show arable, pasture or meadow use of the land combined with strips of woodland and numerous ponds; the buildings of the complex indicate pasture (the cattle shelter shed), arable (the threshing element of the barn) and hop-growing (the oasts); later mapping and aerial photographs indicate a prevalence of orchards which were then removed at the end of the 20th century.

- 6.46 With regards to views out from the farm complex to the wider land, maps including the Ordnance Survey maps of 1897 and 1907 and various aerial photos throughout the 20th century show that the fields to the east of Hertsfield (the Appeal Site) were planted with orchards. The height of the planting, notably in the form of trees over the course of various intervals, would likely have prevented long-distance views from the yard across the Site/fields. Currently, hedges and mature trees are present in some locations surrounding the farm complex. Views in the direction of the Site would have had a riparian quality, and the openness (i.e. lack of significant built form) and tranquillity beyond Hertsfield would have been apparent to the viewer.
- 6.47 In conjunction with the presence of orchards and boundary treatments which would have prevented long-distance views, in the middle of the 20th century two new agricultural buildings were erected within the yard, enclosing it on its south side. This would have curtailed visual connections with some of the surrounding fields.
- 6.48 Immediately following the permission to convert the barn and oasts into dwellings, the fields to the east were largely cleared of orchard trees, thus opening views up. However, by 2003, when the Appeal Site was no longer under the same ownership as Hertsfield, hedge planting had been undertaken along the western boundary of the Appeal Site and the Match Lakes had been constructed further east. Major planting was also incorporated into the wider surrounds by Staplehurst Transits. It is clear that the wider surroundings went through a number of physical modifications following the change in ownership and the removal of the agricultural use.
- 6.49 Whilst there may potentially have been a historic visual connection between fields to the east and the farm at some points in its history, some form of boundary appears to have been present to the east of the farm complex throughout most of its mapped history, and the land use of the farm's historic landholding, whilst largely free of built form, has been subject to change over the history of the

complex, and included some land uses such as orchard that are likely to have themselves restricted views.

- 6.50 The barn was not itself designed to have views out from the structure historically, and would have been largely experienced in a kinetic fashion from its exterior. Due to the subsequent conversion of the Barn to residential, there are now views out from windows. However, through its conversion it has lost its active functional relationship with the land beyond its now-domestic curtilage. The contribution of the wider setting of the barn, i.e. historic landholdings associated with the farm thus has been reduced by virtue of that change of use. Therefore, the contribution of views from within the converted barn outwards or within its immediate surroundings to the significance and understanding of the Listed Building is limited.
- 6.51 As discussed above, over time, the land surrounding Hertsfield has remained largely free of built form but with a variety of uses, now with some naturalised man-made lakes incorporated on both the site and other sites surrounding the former farm complex. Nonetheless, the verdant and tranquil qualities of the area is still appreciated from the former yard area of the barn, now the front driveway.
- 6.52 As such, the land to the east of Hertsfield Barn, i.e. the Appeal Site, is considered to make a limited contribution to the heritage significance of the Grade II Listed Barn through setting through the ability to perceive the riparian and verdant character of the wider area, which lacks any considerable built form and has a sense of tranquillity, with this contribution not contingent on the precise land use of that area. This should also be considered as only one component of the Barn's setting, which also includes the other buildings formerly part of the Hertsfield agricultural complex, and other land surrounding the complex.

Impact Assessment

- 6.53 The significance assessment in the previous section, which was drafted utilising *GPA 3: The Setting of Heritage Assets* concluded that the verdant and bucolic character of the Appeal Site was considered to contribute to the setting and thus significance of the Grade II Listed Barn, in addition to its group value with other nearby buildings. However, it was concluded that this was not contingent on the precise land use of the site, which it has been demonstrated has changed over time. Furthermore, land uses to the east of the complex including orchards and areas of deciduous woodland suggest that the "open and level" surroundings may not have been fully perceived historically. Any openness that would have been

perceived in the area to the east was due to it not being developed with considerable built form and retaining a verdant appearance. However, the levelness would have been difficult to understand given the presence of other features likely preventing long-ranging views.

- 6.54 Furthermore, the residential conversion of the barn has removed its active functional connection with land beyond its now-domestic curtilage.
- 6.55 It should also be noted that mature trees limit some views from the Barn across the Appeal Site (**Figure 25**). Views from the interior of the Barn or its immediate surroundings, i.e. the former yard and now driveway, would change in that a gently sloped bank of land rising approximately 5m with a 1:8 slope would prevent distant views at ground level, as opposed to vegetation doing this, as seen historically. The grassy, shallow sloped bank, would allow for the continued appreciation of the openness of the wider area and the verdant and bucolic character (**Figure 26 and Figure 27**). Sectional drawings have been provided to demonstrate the relationship between the banks and the Barn and adjacent dwellings.
- 6.56 The proposals include a landscaping scheme on the bank, which would create a more naturalised woodland appearance in this part of the site, contributing to the verdancy and tranquillity of the area. This would be in keeping with the historic use of this part of the site as an orchard or agricultural land for intentional planting. This change in the views, particularly considering the change in use of the barn and lack of any functional relationship with the site, would not have any impact on the heritage significance of the asset.



Figure 25: Mature trees present between the Appeal Site and Grade II Listed Barn as well as the hedges seen in previous aerial imagery as at June 2020.



Figure 26: View from the northwestern corner of Lake 2 looking west depicting the shallow bank of the lakes in relation to the Grade II Listed Barn as at June 2020.



Figure 27: View from near Lake 1 looking north including Lake 2 and the Grade II Listed Barn depicting the shallow bank as at June 2020.

- 6.57 Furthermore, the views from the former agricultural complex towards the east are not the sole source of significance for the Grade II Listed Building. Other aspects of the setting that contribute to the significance include the group value with the Grade II Listed Old Hertsfield Farmhouse and the now converted oasthouses. Whilst now all in separate ownership and physically divided from one another to reflect this, reducing reciprocal views, the group value is still embodied in the buildings' close proximity and their historic origins as a single complex. The proposals to create lakes to the east of the former complex would not affect the ability to understand and appreciate the relationship between the buildings.
- 6.58 It should also be reiterated that the significance of the Grade II Listed Barn is mostly embodied within its remaining physical fabric and historic interest as a rare, 15th century former agricultural building. The proposals on the Appeal Site will not impact the interpretation of this aspect of its significance.
- 6.59 Additionally, the appeal proposals will have no negative impacts on any of the qualities of the setting that are considered to contribute positively to the significance of the Listed Building. The ability to appreciate the tranquil and verdant surroundings, as well as the historic former functional relationship between the barn and other buildings formerly comprising the Hertsfield agricultural complex, will continue to be understood. With reference to the levels of harm in the NPPF, the proposals are considered to result in 'no harm' to the significance of the Grade II Listed Barn about 50 metres east of Old Hertsfield Farmhouse.

6.60 Thus, the proposals satisfy the statutory requirement of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and relevant local policy.

6.61 If the Inspector considers there to be harm, this 'less than substantial harm' should be outweighed with the public benefits of the scheme, as per Paragraph 196 of the NPPF. The public benefits would include:

- Strengthening the local economy and strengthening the Borough's tourism industry, with Monk Lakes identified as one of the main tourist attractions within the Maidstone area, as listed on the 'VisitMaidstone' website¹⁸;
- Supporting healthy lifestyles through the provision of recreational activities, with angling contributing towards mental health benefits and has been used by the NHS in as part of mental health therapy¹⁹ ;
- Providing access to the open environment which provides a tranquil setting;
- Contributing towards the well-being of the local community and the users of the site;
- Providing the opportunity for social interaction through the provision of a meeting place and leisure activity;
- Provision of accessible activities, with the facility providing the largest disabled access fishery in the country, with previous links to Pads Army (a charity that assists disabled anglers to go fishing) and the provision of a number of fishing platforms which are specifically for disabled anglers;

¹⁸ <https://www.visitmaidstone.com/things-to-do/monk-lakes-fishery-p12471> (accessed on 04.09.2020)

¹⁹ <https://www.telegraph.co.uk/politics/2020/05/03/let-anglers-fish-coronavirus-lockdown-improve-residenital-health/> (accessed September 2020)
<https://www.getfishing.org.uk/tag/fishing-for-mental-health/> (accessed September 2020)
<https://www.heraldscotland.com/news/13030397.fishing-on-the-nhs-for-mental-health-patients-its-a-good-sense-of-achievement-when-we-catch-a-fish/> (accessed September 2020)
<https://www.nhsggc.org.uk/about-us/media-centre/news/2011/9/mental-health-patients-find-fishing-rewarding/> (accessed September 2020)
<https://www.getfishing.org.uk/carp-fishing-ptsd-military-veterans-icarp/> (accessed September 2020)

- Contributing to the quantity and quality of the Borough's sporting facilities; and
- Providing environmental benefits through the provision of additional landscaping features which provide additional habitat opportunities for local wildlife, including a dedicated river enhancement scheme (included at **Appendix 28**).

Issue 2 - Impact on Amenity

6.62 The second reason for refusal included on the Decision Notice for application reference 11/1948 states:

"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."

6.63 In preparing the draft Statement of Common Ground, officers have confirmed that this reason for refusal relates solely to the impact on amenity arising from Lakes 1, 2, and 3.

6.64 The Committee Report, which included a recommendation for approval, considered the impact on residential amenity at Paragraphs 7.51 – 7.53.

6.65 In respect of the nearest houses to the west of Lakes 1, 2, and 3 (3-6 Hertsfield Cottages and Hertsfield Barn), the Committee Report concludes that *"due to the distance from the nearest houses to the west, 3-6 Hertsfield Cottages (28m) and Hertsfield Barn (30m), the proposed gradient of the banks (around 1 in 8), and the overall height of around 6.2m above neighbouring levels, the lakes would not have an unacceptably oppressive impact upon the houses or their outlook, or result in any significant loss of light."* The Appellant fully supports these conclusions.

6.66 The distance from the Site boundary to the nearest houses is approximately 28m (3-6 Hertsfield Cottages) and 30m (Hertsfield Barn) at the narrowest point. The eastern wing of the barn closest to the Site comprises car garaging, and therefore the nearest habitable windows are situated even further away, providing an additional distance of approximately 5m. Landscaping will also be introduced as detailed further below, which will provide visual screening and serve to protect the amenity of neighbouring residents.

- 6.67 Hertsfield Barn comprises a parking/turning area and associated garden to the rear, abutting the Site boundary. There is land between the rear gardens of 3-6 Hertsfield Cottages and the western Site boundary, however it appears to be associated with the cottages and therefore has been considered as amenity space for completeness in this Statement. The distance from the lakes, where the anglers would sit facing away from the cottages, to the curtilage of Hertsfield Barn and the cottages is approximately 80m and 55m respectively.
- 6.68 Whilst it is acknowledged that there will be views of the residential properties, and from an elevated position, the significant distances between the lakes (where anglers will predominantly be situated) and the curtilage of the adjacent dwellings will comfortably ensure there will be no adverse impact on amenity arising from perceived overlooking, either to the properties themselves or their gardens/amenity space. Landscaping will also be introduced as detailed further below, which will provide visual screening and serve to protect the amenity of neighbouring residents.
- 6.69 In practice, anglers will be situated close to the edge of the lake, along the flattened crest of the bank, and facing towards the lake whilst fishing as opposed to towards the dwellings. This will reduce the extent of perceived overlooking.
- 6.70 Furthermore, the relatively shallow gradient of the raised banks (around 1 in 8) will ensure that the flattened crest of the bank, which anglers will walk along to reach one of the lakes, will be set back a considerable way from the Site boundary. Indeed, even when considering the distance from the nearest edge of the flattened crest of the bank to the neighbouring properties, there remains a clearance of approximately 50m to the curtilage of Hertsfield Barn and 38m to the curtilage of 3-6 Hertsfield Cottages, and 70m and 64m respectively to the properties themselves. As such, whilst the bank will result in views from an elevated position, these will be from considerable distance from the properties to ensure no adverse impact on amenity arising from overlooking. This is supported by the Officer's Report which states that '*as the crest of the banks and therefore the potential area for fishing would be over 50m from the nearest houses and at least 33m from the nearest gardens, there would not be any unacceptable impact upon privacy from people fishing*'. The Appellant agrees with the officer's conclusions set out in the Committee Report, that these distances will ensure no adverse impact on amenity arising from perceived overlooking from anglers.

6.71 Sectional drawings have been provided below which demonstrate the relationship between the lakes, the gradient of the banks, and Hertsfield Barn and Cottages, which are shown below in **Figures 28 – 31** and included at **Appendix 29**.

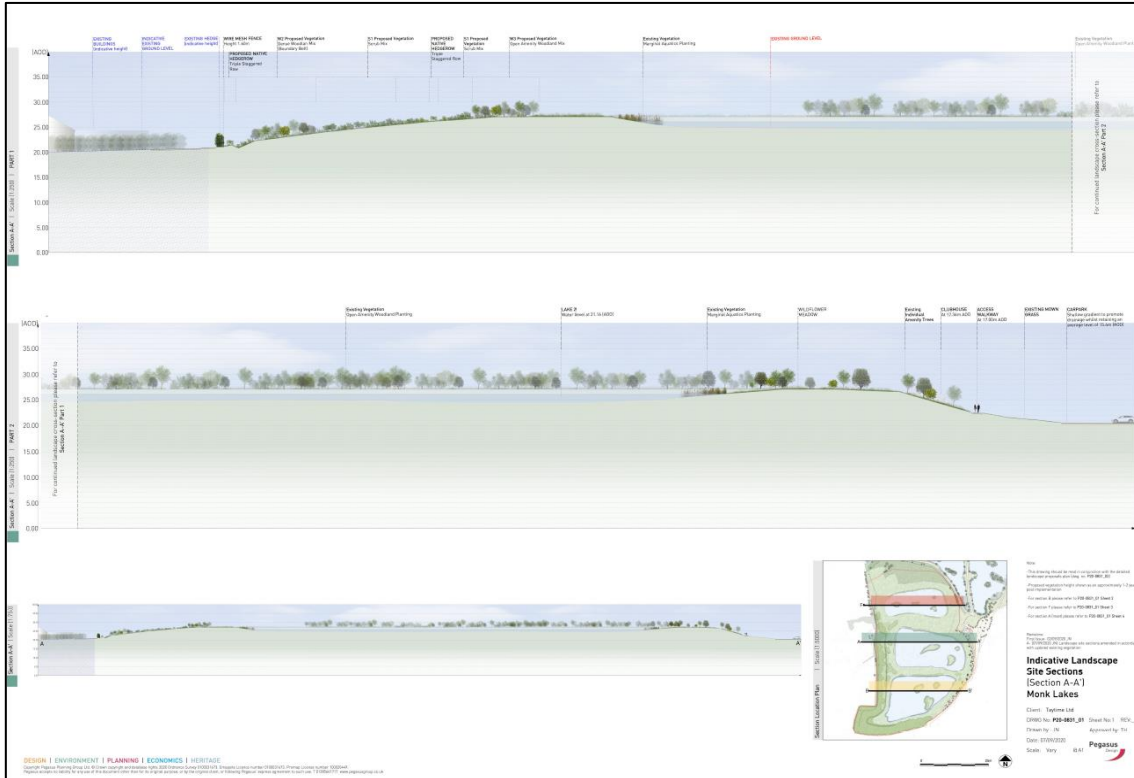


Figure 28: Sectional Drawing Section A-A (ref. P20-0831_01 Sheet 1)

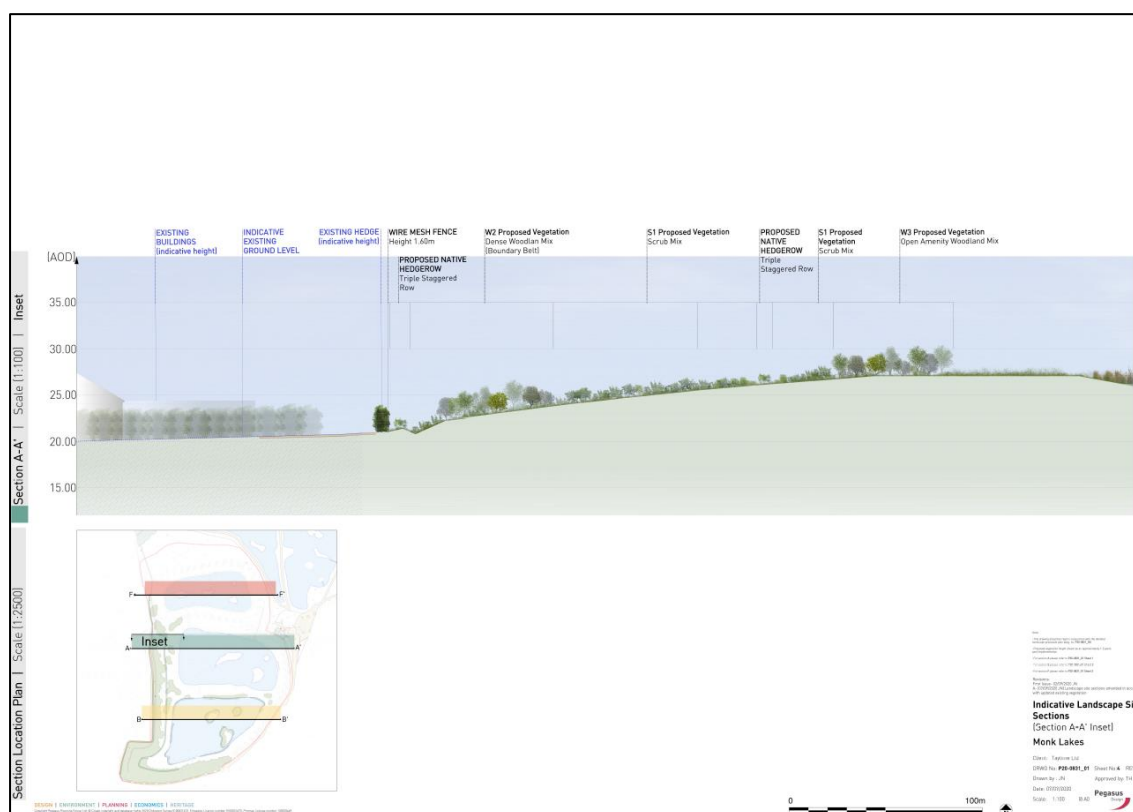


Figure 31: Sectional Drawing Section A-A Inset (ref. P20-0831_01 Sheet 4)

- 6.72 The Committee Report included recommended Heads of Terms and conditions. This included a proposed condition (no18) which states that "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*". The area identified on this plan covers the area along the western boundary of Lakes 1, 2, and 3, closest to the nearby residential properties. The Appellant would be willing to accept this as a condition, notwithstanding that anglers would be predominantly facing away from the nearby properties towards the lake, and substantial screening would be provided through the proposed planting scheme.
- 6.73 By its nature angling is a quiet sport and anglers who come to the site will expect and display the kind of quiet and respectful behaviour that supports good fishing by not scaring the fish. It should also be noted that there are rules and regulations²⁰ associated with the site which are designed to ensure a tranquil setting is provided. The rules include no ball games, dogs, anti-social behaviour, and a restriction to the number of people that use the site. A site manager is on site to monitor anti-social behaviour and anyone causing any anti-social behaviour is banned from using

²⁰ <https://www.monklakes.co.uk/rules> (accessed September 2020)

the facility. At capacity, the site has approximately 320 anglers across the entire site, although it should be noted that the site is rarely at capacity, and for much of the winter months it is empty. There are also dedicated swims which allows for sufficient spacing between groups of anglers to create the designed tranquil setting which does not disrupt the fish.

- 6.74 Also of note, the MBC Residential Extensions Supplementary Planning Document (SPD) (adopted May 2009) provides guidance on appropriate distances between dwellings in order to ensure amenity. In considering residential extensions, it states a window overlooking a private amenity area immediately adjacent to the rear of an adjoining dwelling would be regarded as inappropriate. It goes on to state that MBC will normally calculate a private amenity area as a depth of 5m distance from the rear edge of the property. This is in order to safeguard the privacy of residential occupants and gives an indication of the separation distances which MBC consider acceptable with regard to overlooking to residential properties.
- 6.75 When applying these standards to the Appeal Site, there will comfortably be a depth of at least 5m private amenity area retained to all of the neighbouring properties from the western Site boundary (i.e. where the closest views are possible from the Site). Notwithstanding this, in actuality it is highly unlikely that anglers will veer from the crest of the bank and walk down the embankment to the Site boundary; there is certainly no evident need and landscaping is proposed to these embankments which would further discourage such movement.
- 6.76 The proposed landscaping in itself will also serve to interrupt and screen views of the properties from the top of the banks over time. Notwithstanding this, there is still sufficient setback from the top of the bank from the properties, that there is not considered to be an unacceptable loss of privacy.
- 6.77 It should also be noted that there was no issue raised with loss of privacy or overlooking in grant of the planning permission in September 2012, or during the subsequent Judicial Review. Indeed, a report published by the Head of Planning and Development, which summarised legal Counsel's advice sought by the Council following the January 2020 Planning Committee meeting, states in relation to loss of privacy:

"It is difficult to give a strong reason why a different view is being taken since the 2012 decision. As stated above, it would be difficult to rely on changes to the proposals as a reason for taking a different view. On this basis and taking into

account the legal advice, a refusal on the grounds of loss of privacy is a tenuous reason, and may be difficult to defend at appeal.”

- 6.78 In summary, the proposed Lakes 1, 2, and 3 will respect neighbouring amenity and ensure it is protected in accordance with Policy DM1, contrary to the reason for refusal. Indeed, by reason of their siting, setback of the embankments and proposed landscaping, the proposed development will not result in an adverse impact on amenity through unacceptable loss of privacy and perceived overlooking from anglers. The lakes are a considerable distance from the adjacent residential properties and their rear gardens/amenity space. Furthermore, the relatively gentle gradient of the embankment will ensure the crest of the embankment (which anglers will walk along to reach the three lakes) will also be setback a sufficient distance from the curtilage of neighbouring properties. Therefore, whilst views will be possible at an elevated position, these are considered significantly far away that there will be no undue overlooking or loss of privacy to Hertsfield Barn and numbers 3-6 Hertsfield Farm Cottages. Notwithstanding this, in reality anglers will spend the majority of their time situated closer to the lake and facing inwards, rather than outwards to the neighbouring residences, further reducing any perceived overlooking. Specifically, dense woodland mix (Boundary Belt), open amenity woodland mix, and scrub mix is proposed along the western boundary of the appeal site which will serve to protect neighbouring amenity.

Other Matters

- 6.79 Whilst the application was refused solely on the two reasons for refusal set out previously within this Statement, a number of other matters were raised by third parties throughout the application process. MBC addressed these matters within the Committee Report, and they do not form reasons for refusal. However, for completeness key matters are covered in turn below.

Judicial Review Reasons for Quashing of Previous Decision

- 6.80 Third Party Objections suggested that the supporting information, assessment and Council's recommendation, do not suitably address the reasons which were given by the High Court for the quashing of the previous decision made in 2012. These reasons being:

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.*

6.81 Subsequently to the 2014 judgement, the Appellant has sought to address the reasons for the quashing of the previous decision through additional submissions and reasoning, which included a Supplementary ES in July 2015, which was superseded by a new ES in February 2019, together with a short addendum in October 2019. A summary of the history of ES submissions is provided earlier within this statement, however it is relevant to note that the February 2019 ES submission which was prepared in response to a formal Regulation 22 request (together with the subsequent October 2019 Addendum) supersede previous submission.

6.82 With regard to reason 1, 'exceptional circumstances' needed to justify the grant of retrospective permission, MBC has set out within the Committee Report dated 23rd January 2020 (included at **Appendix 1**) that the Site's history and how it has come to be developed is considered to be an unusual and exceptional case. This is on the basis that the Council granted planning permission for development at the Site in the form of some raised fishing lakes in 2003 and have been involved with the Site ever since. Indeed, this work commenced, which included the importation of materials granted under a licence from the Environment Agency. The Council subsequently served an Enforcement Notice in 2008 as the work was deemed to not be carried out in accordance with the approved development. Following an appeal, the enforcement proceedings took 7 years to conclude. In this time, planning permission was granted under planning application reference 11/1948, and the Appellant therefore implemented some of the approved works. However, following Judicial Review, the permission was subsequently quashed in January 2014.

6.83 It is the Site's history which the Council have deemed to justify exceptional circumstances to enable retrospective permission to be sought for the development.

6.84 With regard to reason 2, groundwater flooding, the ES submitted in February 2019 and its associated Addendum dated October 2019 has provided significant additional information on the matters raised, specifically in relation to concerns regarding

surface water drainage from the Appeal Site and its impact on neighbouring properties. Furthermore, MBC appointed Mott MacDonald to undertake a review of the documentation on their behalf.

- 6.85 Paragraph 7.38 of the Committee Report confirms that Mott MacDonald, in their capacity as an independent consultant, advised MBC that the work undertaken by the Applicant to investigate the potential for off-site groundwater flooding impacts is proportionate to the level of risk and commensurate with their expectations for a proposed development of this nature.
- 6.86 Furthermore, Mott MacDonald agree that if there were any groundwater impacts they will be mitigated through a groundwater interceptor ditch along the west boundary, as set out in the ES, which also provides an outline design. They advised the LPA that the detailed design could be secured through condition, which the Committee Report confirms is acceptable on the basis the principle of such an approach has been sufficiently assessed and found suitable by Mott MacDonald.
- 6.87 Subsequent third party representations by GeoSmart Information Limited, on behalf of a neighbouring resident, were subsequently put forward which disputed the advice provided by Mott MacDonald. Mott MacDonald have reviewed all representations, including the latest from GeoSmart, and maintain their advice and recommendations, and that a condition is appropriate.
- 6.88 Kent County Council, acting as the Lead Local Flood Authority and statutory consultee on surface water drainage matters, raised no objections to the Application. The Environmental Agency also raised no objections (subject to conditions) in respect of the flood compensation measures.
- 6.89 Ultimately, it is considered that the submission of the new ES in February 2019 and addendum in October 2019, have sufficiently addressed the issue set out above. Furthermore, this was concluded within the Committee report which stated "*the supporting information for the application, and the assessment and recommendation, has suitably addressed the reasons for the quashing of the previous decision made in 2012*".

Baseline Position assumed in the Environmental Statement

- 6.90 Third Party Objections included concerns that the ES assessed the Proposed Development against a current baseline i.e. with built form within it. It was argued that the 2003 permission was not implemented, was not a fall-back position and

therefore the correct baseline to assess impacts against must be the pre 2003 consent position.

- 6.91 The ES submitted in February 2019 and subsequent Addendum acknowledged this fact and provides discussion on a pre-development state of the Site in relation to all the key disciplines and accordingly ensures conclusions reached in relation to likely significant effects are considered against this baseline. Furthermore, this was acknowledged and agreed by the Council within their Committee Report stating, "*the development has been adequately assessed against the pre-development state of the site (2003)*". It is therefore considered this concern has been addressed.

Improper Advantage from Pre-Emptive Development

- 6.92 Third Party Objections included comments relating to the Appellant gaining an unfair advantage on the basis that the ES was not assessed against a baseline of 2003 (i.e. before any development commenced on the Appeal Site), and therefore the Council were not presented with the correct assessment, particularly regarding the impact of groundwater flooding.
- 6.93 As discussed above, the ES has taken into account the 2003 (pre-development) position on the Site as the baseline and assessed the development against this. The assessment by MBC has therefore been carried out against this. This ensures that no unfair advantages have been gained through the EIA process through the development being predominantly retrospective, as confirmed in the MBC Committee Report.

Waste Disposal Operations

- 6.94 Third Party Objections included concerns that contaminated waste has been used to construct the lakes and that the importation of further spoil is required which will create significant noise, disturbance, and loss of amenity to local residents.
- 6.95 The development of the lakes has required significant earthworks which have been carried out under a licence / permit issued by the Environment Agency. Under previous ownership, the Site was subject to a Paragraph 19a Waste Exemption, originally granted in February 2004, for an estimated 1.5 million tonnes of material. This was renewed in March 2007 for a further 1 million tonnes of material. The Environment Agency have monitored the site throughout the soil importation

process and would have been unable to issue a licence if any non-inert waste has been deposited on site.

- 6.96 Further soil is required to complete the development which will be completed with inert material and will be subject to an Environmental Permit. The amount of soil required to complete the development is of a significantly smaller scale than the previous importation of soil. The submission of an Environmental Permit to facilitate this has been included within the Draft Heads of Terms for a new Section 106 legal agreement.
- 6.97 With regard to noise, disturbance, and loss of amenity, the draft conditions for the development include the submission of a Construction Management Plan and Code of Construction prior to the importation of any material. The reason for the proposed condition is to protect local amenity and the Appellant is agreeable to such a condition.
- 6.98 Notably, the level of works required to complete the development would be significantly less extensive with regard to the movement of materials, movement of vehicles, and the length of time the works would take, compared to the works listed to comply with the Enforcement Notice.

Provision of Car Parking Adjacent to Residential Properties

- 6.99 Third Party Objections included reference to vehicles being parked on the raised banks next to the residential properties, which would have an adverse impact on their amenity to the location residents, together with noise and disturbance.
- 6.100 No car parking facilities are proposed on the raised banks next to the residential properties. The proposed car parking area is located to the east of Lakes 1, 2, and 3 and therefore is not adjacent to nearby residential properties.

Enforcement Notice

- 6.101 The requirements of the Enforcement Notice issued by the Council on 12th September 2008 would be triggered in the event that planning permission is refused.
- 6.102 The Enforcement Notice requires a number of works to be undertaken in order to ensure compliance with the notice. These works include excavating and removing permanently all land used for recreational fishing lakes, to fill to original ground

level the depressions and holes created by the creation of the lakes and associated works, excavating down to the original ground level and removing all material used to form the raising of the land, excavating and removing permanently all below ground foul drainage tanks and pipework, and removing all buildings, surface roads and surface car parking area.

6.103 The impact of undertaking these works in order to comply with the Enforcement Notice would in itself have an impact on the environment and amenity of the area. The total impacts are difficult to quantify, however it is clear that the impacts would be significant. This would include biodiversity impacts, through the loss of established and mature planting and local wildlife habitats, and a substantial impact to local and neighbouring amenity of the adjacent residential properties due to the extent and nature of the work required which would necessitate the movement of a significant amount of material, and a substantial number of associated construction vehicle movements, and the extended period of time to undertake such significant and extensive works.

6.104 Whilst this is not in itself a primary determining factor, it is a material consideration which should be taken into account.

7. CONDITIONS AND SECTION 106 OBLIGATIONS

Planning Conditions

- 7.1 Whilst conditions were suggested by Officers and set out in the Committee Report at **Appendix 1**, the recommendation for approval was ultimately overturned by the Planning Committee in March 2020.
- 7.2 Therefore, conditions now need to be agreed as part of the Appeal Hearing and will be addressed through the Statement of Common Ground.

Planning Obligations

- 7.3 A draft Section 106 Agreement will be subject to discussion with the LPA prior to commencement of the Appeal Hearing. It will also form part of the Statement of Common Ground process.

8. CONCLUSION

- 8.1 This Appeal is being submitted following the refusal of planning permission by Maidstone Borough Council on 12 March 2020 (ref. 11/1948) for part retrospective planning permission for the retention of Lakes Bridges and Puma, the works to create Lakes 1, 2, and 3, and the erection of a clubhouse and associated works and landscaping.
- 8.2 The reasons for refusal relate to the impact on the heritage assets comprising the Grade II listed Hertsfield Barn through the loss of the open and level historic setting of the Barn, and the impact on amenity through the loss of privacy and perceived overlooking from anglers at an elevated position.
- 8.3 It has been demonstrated through this Statement of Case that the proposals satisfy the statutory requirement of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and relevant local policy.
- 8.4 The residential conversion of the barn has removed its active functional connection with land beyond its now-domestic curtilage, and in addition, the presence of mature trees limit some of the views from the Barn across the Appeal Site. In addition, the shallow slope of the Site allows for continues appreciated of the openness of the wider area and would therefore not have any impact on the heritage significance of the asset.
- 8.5 Furthermore, the proposals to create lakes to the east of the former complex of buildings, which are now in separate ownership and physically divided, would not affect the ability to understand and appreciate the relationship between the buildings.
- 8.6 It has been demonstrated that the significance of the Grade II Listed Barn is mostly embodied within its remaining physical fabric and historic interest as a rare 15th century former agricultural building. On this basis, the proposals will not impact the interpretation of this aspect of tis significance.
- 8.7 Also, the appeal proposals will have no negative impacts on any of the qualities of the setting that are considered to contribute positively to the significance of the Listed Building; the ability to appreciate the tranquil, verdant and riparian surroundings and the historic former functional relationship between the barn and other buildings formerly comprising the Hertsfield agricultural complex, will continue to be understood. The site only forms a part of the wider setting, and its

limited contribution to the significance of the Barn through setting, will be preserved.

8.8 The proposals would result in 'no harm' to the significance of the Grade II Listed Barn; however, should the Inspector identify 'less than substantial harm', the public benefits provided by the proposed development would outweigh the less than substantial harm. The public benefits of the scheme include:

- Strengthening the local economy and strengthening the Borough's tourism industry, with Monk Lakes identified as one of the main tourist attractions within the Maidstone area, as listed on the 'VisitMaidstone' website²¹;
- Supporting healthy lifestyles through the provision of recreational activities, with angling contributing towards mental health benefits and has been used by the NHS in as part of mental health therapy²² ;
- Providing the opportunity for social interaction through the provision of a meeting place and leisure activity;
- Contributing towards the well-being of the local community and the users of the site;
- Providing the opportunity for social interaction through the provision of a meeting place and leisure activity;
- Provision of accessible activities, with the facility providing the largest disabled access fishery in the country, with previous links to Pads Army (a charity that assists disabled anglers to go fishing) and the provision of a number of fishing platforms which are specifically for disabled anglers;

²¹ <https://www.visitmaidstone.com/things-to-do/monk-lakes-fishery-p12471> (accessed September 2020)

²² <https://www.telegraph.co.uk/politics/2020/05/03/let-anglers-fish-coronavirus-lockdown-improve-residenital-health/> (accessed September 2020)
<https://www.getfishing.org.uk/tag/fishing-for-mental-health/> (accessed September 2020)
<https://www.heraldscotland.com/news/13030397.fishing-on-the-nhs-for-mental-health-patients-its-a-good-sense-of-achievement-when-we-catch-a-fish/> (accessed September 2020)
<https://www.nhsggc.org.uk/about-us/media-centre/news/2011/9/mental-health-patients-find-fishing-rewarding/> (accessed September 2020)
<https://www.getfishing.org.uk/carp-fishing-ptsd-military-veterans-icarp/> (accessed September 2020)

- Contributing to the quantity and quality of the Borough's sporting facilities; and
- Providing environmental benefits through the provision of additional landscaping features which provide additional habitat opportunities for local wildlife, including a dedicated river enhancement scheme (included at **Appendix 28**).

8.9 It has also been demonstrated that the proposed development will not cause an unacceptable impact on the amenity of the houses and gardens of Hertsfield Barn, and numbers 3, 4, 5 and 6 Hertsfield Farm Cottages.

8.10 Based on their siting, the setback of the embankments and the proposed landscaping, the proposed development will not result in an adverse impact on amenity through unacceptable loss of privacy and perceived overlooking from anglers. The lakes are a considerable distance from the adjacent residential properties and their rear gardens/amenity space.

8.11 In addition, the relatively gentle gradient of the embankment will ensure the crest of the embankment, which will be utilised by anglers walking along to reach the lakes, will also be setback a sufficient distance from the curtilage of neighbouring properties. Therefore, whilst views will be possible at an elevated position, these are considered significantly far away that there will be no undue overlooking or loss of privacy to Hertsfield Barn and numbers 3-6 Hertsfield Farm Cottages.

8.12 Notwithstanding this, in reality anglers will spend the majority of their time situated closer to the lake and facing inwards, rather than outwards to the neighbouring residences, further reducing any perceived overlooking. In addition, the proposed planting will also provide additional screening between the cottages and the anglers.

8.13 It is also worth noting that the proposed development has not been subject to any significant changes since the development was previously approved by MBC in September 2012.

8.14 Overall, the proposal is considered to be in accordance with the policies contained in the Development Plan. On this basis, it is considered that the Appeal made pursuant to Section 78 of the Town & Country Planning Act (1990) (as amended) should be allowed.