

Planning Appeal ref: APP/U2235/W/20/3259300

Site: Monk Lakes, Staplehurst Road, Marden

**Written Statement of Case on behalf of Mr David Padden and the
Hertsfield Residents Association**

Prepared by Steven Doel BA (Hons) MA MRTPI

Date:

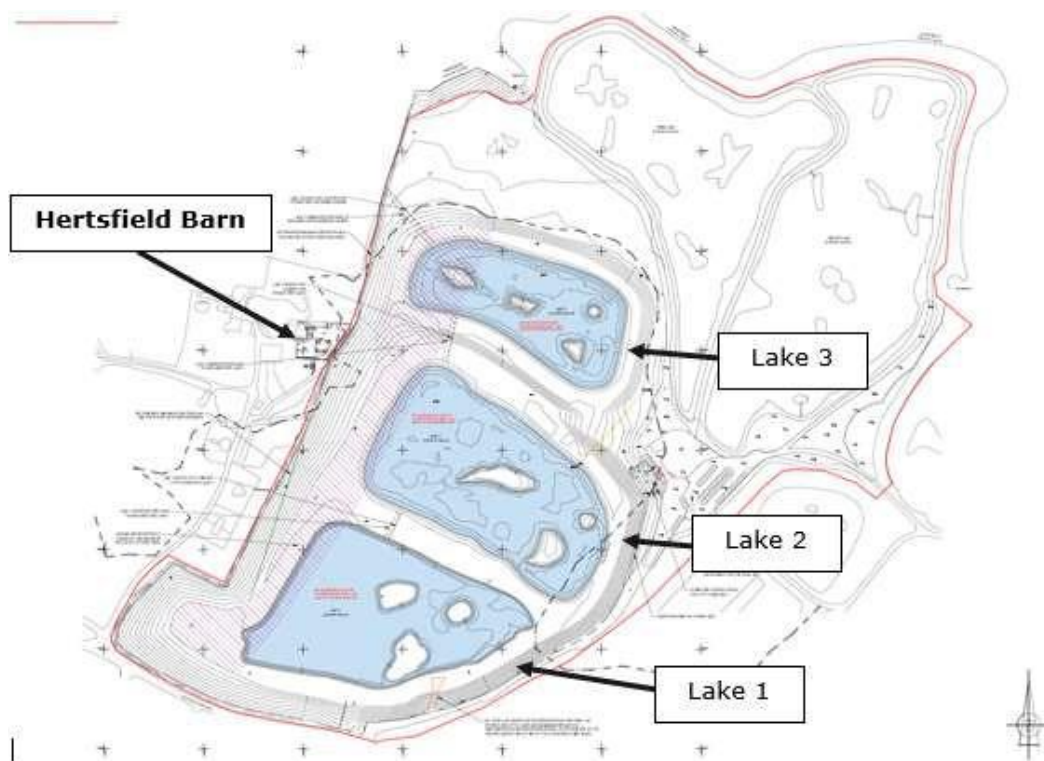
12th December 2024

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1. Introduction and Preliminary Issues

- 1.1 This report is submitted on behalf of Mr David Padden and the Hertsfield Residents Association which have been granted Rule 6 Status. For clarity, Mr David Padden (DP) is the owner and occupier of Hertsfield Barn a Grade II Listed Building located to the west of the appeal site as illustrated below. The Hertsfield Residents Association represents a number of other properties in the locality of Hertsfield Barn.



- 1.2 There is a long and complex history concerning the development the subject of the appeal. An edited overview follows, a glossary of abbreviations is provided at the end of the report:

17/09/2003	The grant of consent for a number of small fishing lakes subject to conditions including condition 12 requiring further details on site levels.
2004	Importation of waste material commenced. (EA Exemption licence issued)
13/04/2006	Concerns raised by local residents to the LPA about material piled up on west boundary.
2007	During this period there is a record of correspondence between the Environment Agency (EA), the LPA and Kent County Council (KCC) concerning, land raising in the flood plain and formation of a lake with a capacity such that it is a reservoir. Note at this time there was no appointed qualified construction engineer. Complaints from residents to the LPA and EA continue.
14/11/2007	Correspondence between the then landowner and the LPA It was agreed a Panel Engineer would be appointed for the reservoir.
28/01/2008	Engineer's report provided to the LPA (not available to third parties)
26/02/2008	Letter from landowner advising site is being sold to <u>Mr Guy Harrison by transfer of the company Monk Lakes Ltd.</u>
28/02/2008	LPA send letter to Mr Harrison <i>'I understand that you have been made aware by the past owner of the issues surrounding the development under construction ... I must stress to you that any material variation carried out to this development from the drawings approved under planning permission reference MA/03/0836 would be/is development in breach of planning control'</i>
28/03/2008	Further letter from LPA to Mr Harrison: <i>'I write in order to make you aware that the Council does have concerns that this development is not progressing in accordance with the approved plans.'</i>
09/04/2008	Email from Mr David Padden (DP) to the LPA expressing concern about the extent of works and the volume of material being imported. By this time there was a continual stream of lorries delivering spoil to the site all day long.
18/04/2008	Complaint from DP to LPA regarding increased level of activity, dust plume affecting the area and the dumping of spoil in the flood plain.
30/04/2008	Temporary Stop Notice (TSN) issued by the LPA
24/06/2008	Report by Mott Macdonald published. Commissioned by the EA. Conclusions, considerable land raising results in increase on water levels and extent of flooding.

12/09/2008	Enforcement Notice (EN) issued by the LPA requiring the removal of all imported material. Refers to waste disposal development and 6m high banks.
17/09/2008	The 2003 permission expired (5 years).
16/10/2008	Appeal against EN lodged by Mr Harrison – grounds (a), (b), (c), (d), (f) and (g)
16/11/2008	EN Appeal start date issued.
04/11/2009	Inspectorate confirm to residents that the EN appeal inquiry is due to start on 7 th July 2009
19/05/2009	Inspectorate advises planning merits no longer to be considered as no Environmental impact Assessment submitted.
2009	Inspectorate correspondence with the LPA concerning - Issues with linking and de-linking of other appeals, for invalid applications to discharge conditions on the 2003 permission, which had expired. The Inquiry date is cancelled.
25/10/2010	<p>EA to local residents following a draft scheme by the applicants then engineers.</p> <p><i>Notes response to the scheme was positive as civil engineering company now involved. They were previously concerned previous scheme lead by landscape issues rather than reservoir safety.</i></p> <p><i><u>Note they are the waste regulatory authority and previous exemption for a recreation facility. This was renewed in March 2007 for 1 million tonnes of material.</u></i></p> <p><i>New regulations April 2010 apply to any new operation registered after this date , existing ones will transfer over 18 months to 3.5 years. Various new tests will apply and <u>the limit on quantity is more restricted.</u></i></p> <p><i>Concern that as a result of new regulations there are fewer sites to take the material from Riverfield / Monks lakes to in the event of enforcement notice being upheld.</i></p> <p><i>The letter does not refer to the planning merits or otherwise of the proposed scheme as submitted by Scott Wilson.</i></p>
30/11/2010	Request from LPA case officer to Inspectorate asking for EN appeal to be held in abeyance pending the determination of a planning application.
09/12/2011	Planning application reference 11/1948 received in September validated – application the subject of this appeal
16/12/2011	Objection made on behalf of DP to the planning application 11/1948, identifying significant deficiencies in the ES, in particular that it uses 2010 as a base point rather than 2003 pre the unauthorised development

14/03/2012	The Inspectorate restart the EN appeal.
07/06/2012	Application 11/1948 reported to Members of the Maidstone Borough Council Planning Committee.
06/09/2012	Permission 11/1948 issued following completion of a S.106 obligation
September 2012	Planning permission 11/1948- Judicial Review submitted on behalf of DP.
22/01/2014	Judgement issued – 2012 approval quashed.
04/09/2014	CO/3926/2014 JR : Padden v SoS CLG, MBC and others regarding Inspectorate decision to put the EN Inquiry into abeyance. The Treasury Solicitor consented to quash the decision of 17/07/2014 to put the EN appeal into abeyance and although November date for the PI was lost the date was set for April 2015.
28/04/2015	EN appeal Inquiry hearing
18/05/2015	Enforcement Appeal decision letter issued – appeal dismissed, with variations to requirements. Costs awarded in part against the appellant Mr Harrison to my client DP (never resolved).
July 2015	Supplementary ES provided to application 11/1948
February 2019	Further ES provided to application 11/1948
October 2019	Addendum to the ES to application 11/1948
23/01/20	Application 11/1948 reported to the LPA (Local Planning Authority) Planning Committee
5/03/20	Application 11/1948 reported to LPA Planning Committee- resolution to refuse.
12/03/20	Application 11/1948 refused for two reasons - less than substantial harm to a designated heritage asset (Hertsfield Barn) and harm to neighbouring residential amenity.
5/10/22	Appeal hearing following refusal of application 11/1948.
21/11/22	Appeal Dismissed on the basis that it was not correctly made and is thus not capable of being lawfully determined under Section 78 of the Town and Country Planning Act 1990.

7/05/24	High Court Judgement issued: Taytime Ltd v Secretary of State for Levelling Up, Housing And Communities & Ors [2024] EWHC 1053 (Admin) (07 May 2024)
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The validity of this appeal

- 1.3 By way of a preliminary issue, it is the position of Mr Padden and the Hertsfield Residents Association that this appeal is not being validly pursued. The applicant for the planning permission was Monk Lakes Limited (MLL). Therefore MLL is the only person who can bring and pursue this appeal. MLL entered voluntary liquidation on 15 July 2021. In September 2021 MLL's liquidators entered an agreement with Taytime whereby Taytime agreed to adopt the appeal. Taytime has its own interests in the site, whereas MLL's liquidators confirmed (by way of a letter to PINS dated 22 September 2021 and an indemnity agreement with Taytime dated 27 September 2021) that MLL has no interest in the site or this appeal. This led Mr Padden to make submissions to PINS in late 2021 and 2022 that Taytime was pursuing the appeal in its own right and not as an agent of MLL. Indeed, there was other evidence to support this submission, including the fact that Taytime signed a statement of common ground as "the Appellant". These submissions were accepted by the inspector who heard this appeal at a hearing on 5 October 2022 and dismissed it by way of a decision dated 21 November 2022.
- 1.4 Taytime challenged this decision in the High Court. Whilst this claim was partially successful, leading the decision to be quashed, the High Court upheld the previous inspector's findings in respect of agency. These findings therefore remain a material consideration and should be the starting point for this inquiry. Mr Padden and the Hertsfield Residents Association maintain that these findings were correct and that there is no good reason to depart from them.
- 1.5 The High Court found that, because Taytime was not pursuing the appeal as an agent, MLL's liquidators should be given an opportunity to pursue the appeal themselves or make new arrangements for an agent to represent them. The liquidators have still not done this. It therefore remains the case that Taytime is not validly pursuing this appeal and, in these circumstances, Taytime's case cannot and should not be allowed. This should be the end of the matter.
- 1.6 Mr Padden and the Hertsfield Residents Association have provided detailed submissions and evidence in support of his position on agency and the validity of this appeal, which are provided as an appendix to this Statement of Case. The following submissions on the merits of the appeal are made entirely without prejudice to this position.

The merits of this appeal

- 1.7 Throughout the course of the unlawful development there have been overlapping interests and controls between the LPA, the Environment Agency (EA) and Kent County Council (KCC) in terms of the local planning authority, the planning waste authority, waste licencing, and the monitoring licencing the reservoir development.
- 1.8 In addition there have been various issues with the Planning Inspectorate in terms of the proposed linking of the EN appeal with appeals against invalid applications, and decisions to hold the EN appeal in abeyance for long periods which resulted in delays in the determination of the Enforcement Appeal.
- 1.9 The LPA refused planning permission for the development the subject of the appeal but on two grounds only, the harmful impact on the setting of the Listed Building, and the impact on neighbours' amenity.
- 1.10 At the Planning Committee meeting on the 23/01/2020 the Members were minded to refuse on landscape and visual impact grounds as well as the impact on the setting of the Listed Building, and neighbours' amenity, as noted in the transcript extract below. However, officers issued a costs warning.

Chair – right, because that was a slightly unusual procedural but necessitated I just need to effectively report back in session so that people understand what took place. Cllrs generally had a discussion based on the issues of treatment of heritage assets, residential amenity and the interpretation and relevance of the Landscape Character Assessments taking into account previous decisions as a material consideration. And came up with a resolution which I believe is proposed by Cllr Mumford but I'm going to read it out to you for the sake of.. Which says, not withstanding the officers recommendation, the committee are minded to refuse the application for the following grounds

1. That the overpowering height and proximity of the new formulation of the landscaping, particularly the western bund causes less than substantial harm to the adjacent Grade II listed heritage asset contrary to Para 196 of the NPPF.

2. Because of the configuration of the land in particular height there is a loss of residential amenity to the neighbouring buildings to the west of the aforementioned pond. Contrary to DM 4 of the Maidstone local plan –

item 3 landscape assessment–taking into account all considerations including the material considerations of the previous consent and changes to the application site since then, it is considered by the Committee that on balance and taking all considerations into account, the effect on the landscape is contrary to the guidance set out in the Landscape Character Assessment, and in light of the clear views from the footpath, which I would need the number of, KM 129, I think that is, there is a clear harm in that the changed landscape can be clearly viewed from that footpath and there are other locations but that is primarily the view that is affected.. Now I think that's everything. Now have I got that right Cllr Mumford?

- 1.11 When the Members reconvened on the 05/03/2020 they were provided with legal advice on the risk of Costs from the LPA Solicitors, based on undisclosed Counsel advice. On the basis of this advice Members reduced the reasons to refusal to just the impact on the setting of the Listed Building and loss of neighbouring amenity.

1.12 However, in accordance with the many previous representations made to the LPA and the EN appeal on behalf of my client, we maintain that the following issues have not been adequately dealt with in the planning application, by the LPA or the relevant consultees in the assessment of the application the subject of this appeal:

- Ground water flooding;
- Impact on the fabric of the Heritage Asset as a result of rising water table and ground water flooding;
- Landscape character impacts;
- Minerals;
- Waste.

1.13 During the course of the previous hearing of this appeal, the following documents were provided to PINS in support of the draft reasons for refusal that were circulated to Members before the decision was made on the planning application:

Title	Author
Hydrogeology Report	Dr Paul Ellis BSc PHD CGeol FGS
Landscape and Visual Impact Assessment	Andrew Smith BSc (Hons) MSC CMLI
Heritage Report	Chris Griffiths LLB(Hons) MA IHBC

1.14 These documents will be updated as appropriate and submitted as proofs of evidence for this inquiry. Likewise a proof of evidence will be prepared and submitted by Mr Steven Doel in respect of planning and the other matters set out in this Statement of Case.

1.15 The following list of background documents were submitted with the appeal statement prepared by Rebecca Lord on behalf of Mr Padden in respect of the appeal hearing. We understand that copies of these documents were submitted to the Planning Inspectorate with that statement at that time. We have not therefore provided further copies with this updated Statement of Case but further copies can be provided if helpful to the Inspector. We have appended to this Statement of Case written submission prepared by Counsel in respect of the validity of the appeal. Accompanying those submissions are a copy of the High Court hearing bundle from March this year and a further supplementary bundle containing additional documents and correspondence to assist the Inspector's consideration of the submissions.

List of Background Documents and Objections

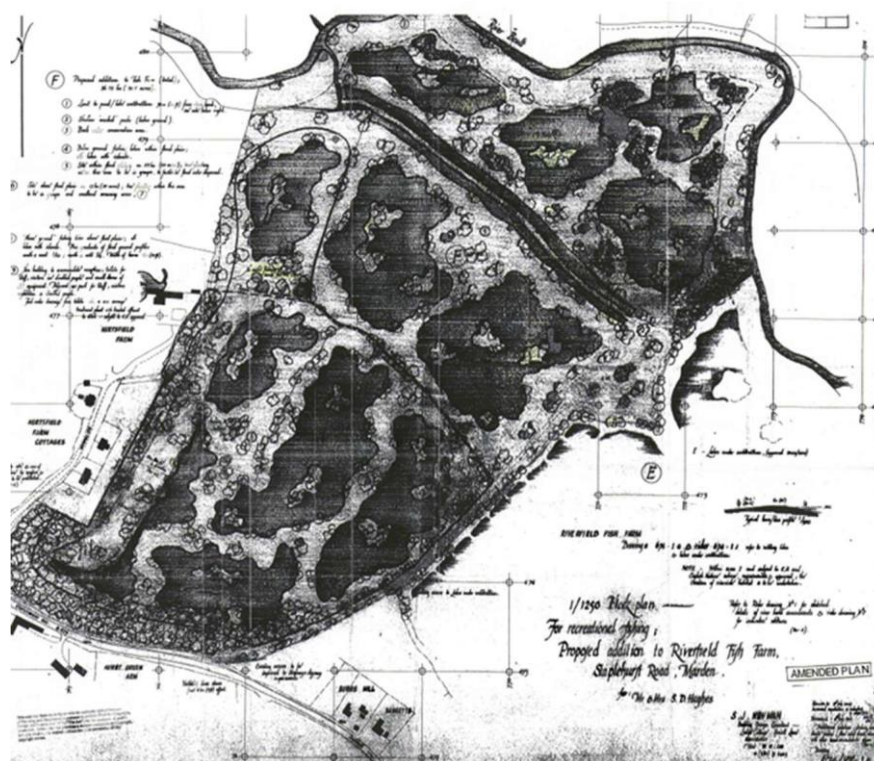
Background documents			
1		Development Planning Policy (current)	
2	12/08/2003	2003 planning application documents including the delegated officer report (12/08/2003)	
3	30/04/2008	2008 Temporary Stop Notice	
4	12/09/2008	2008 Enforcement notice	
5	07/06/2012	Officer agenda report to Committee	
6	07/06/2012	2012 transcript of the meeting	
7	22/01/2014	High Court Judgement (against 2012 decision)	
8	18/05/2015	EN Appeal and Costs decision	
9	23/01/2020	Officer committee agenda report for 11/1948	
10	23/01/2020	Officer update report	
11	23/01/2020	2012 transcript of committee meeting for 11/1948	
12	05/03/2020	Committee agenda officer report	
13	05/03/2020	transcript of Committee meeting	
14	12/03/2020	Decision notice 11/1948	
Objection and witness material:			
15	16/02/2011	Objection to the application	Rebecca Lord
16	13/11/2012	DP 1 st witness statement to the Court for the Judicial Review of the 2012 application decision	David Padden
17	29/11/2013	DP 2 nd witness statement to the Court & Dr Fox	David Padden
18	30/10/2013	RL Witness Statement to the Court	Rebecca Lord
19	06/03/2015	Letter in response to ES scoping	Rebecca Lord
20	27/03/2015	Proof of evidence to the EN Inquiry	Rebecca Lord
21	03/09/2015	Objection to the application	David Padden
22	18/01/2018	Objection to the application (submitted in parts due to size)	Rebecca Lord, Dr Ellis and Fabrik reports
23	10/05/2019	Objection to the application	Rebecca Lord and Geosmart
24	04/12/2019	Objection to the application	Rebecca Lord and Geosmart

25	22/01/2020	Objection note to Members	Rebecca Lord
26	22/01/2020	Photo and document bundle to Members	Rebecca Lord
27	03/03/2020	Objection - Suggested reasons for refusal	Rebecca Lord
28	03/03/2020	Objection note to Members	Rebecca Lord
29	03/03/2020	Objection – extract of 2012 officer report to Members	Rebecca Lord
30	05/03/2020	Objection late note to members	Rebecca Lord
31	02/11/2020	Letter to the inspectorate on the Appeal process	Rebecca Lord

2. Matters of Fact

Previous LPA Assessments:

- 2.1 In view of the LPA and appellants reliance on previous decisions made by the Council it is useful to analyse exactly what was envisaged by decision makers historically.
- 2.2 The permission granted in 2003 did allow for some above ground lakes, however, the plans approved were internally contradictory, and could not therefore be delivered without additional material, which was required by planning condition.



- 2.3 There were a number of pre-commencement conditions including condition 12 concerning levels and contours of earth works. The pre-commencement conditions were not discharged as required, so the permission was not lawfully implemented and subsequently expired.

12. No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding land-form and the development shall be carried out in accordance with the approved details;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policy ENV28 of the Maidstone Borough Wide Local Plan 2000.

- 2.4 The 2003 permission was granted under deemed consent, so never went before Members of the Planning Committee for assessment. It should be noted that with regard to impacts on the landscape the following was stated in the officer report extract below, full report at Appendix 2:

There is no question that the proposals will represent a significant change in the landscape in that a substantial part of the site will be given over to water.

⌘ However, those lakes on the northern half of the site are within the floodplain and will simply be dug out of the ground. The impact on the landscape would therefore be minimal, particularly bearing in mind that the land is susceptible to being covered by floodwater for parts of the year. Those lakes to the south will be contained within fairly shallow bunds/banks, similar to those enclosing lakes on the main Fish Farm. The appearance of those lakes has been softened by appropriate native-species tree planting and wild flowers, and with a similar treatment, I consider that the new lakes would make a positive contribution to the environment.

- 2.5 The bunds at the neighbouring fish farm are approximately 1m high and certainly no more than 2m above ground level as illustrated in the photograph below:



- 2.6 Thus in 2003 it was envisaged that the proposal was for a number of small fishing lakes with shallow bunds rather than reservoirs situated on a raised plateau as currently in place and as proposed.
- 2.7 In 2008 when the Enforcement Notice (Appendix 4) was issued, the LPA assessed the bank to be 6m high on the western boundary. In the reasons for issue the following was stated:

There has been no technical justification advanced why lakes have to be built on a six metre high plateau compared with the below ground lakes already constructed on the Land. This land raising has involved the deposit on the Land of construction and demolition arisings and therefore waste materials. In the absence of any technical justification for the need for these waste materials to be deposited on the Land, the primary purpose of this aspect of the development appears to be a change of use for waste disposal rather than the use of waste materials as part of an essential engineering operation.

The Council does not consider that planning permission should be given to this unlawful development on the Land because:

- (i) planning conditions alone could not overcome the objections to that development based on the harm it causes to the open countryside of which the Land forms part;
- (ii) it causes harm to the amenities of local residents;
- (iii) it creates hazards to users of the public highway, Staplehurst Road; and
- (iv) it causes policy harm as a result of conflict with national and development plan policy relating to the protection and conservation of the countryside and retail development.

2.8 There remains no stated reason or justification by either the appellant or the LPA for the importation of waste material on the scale that was undertaken and the creation and retention of the plateaus (4m high approx.) upon which the reservoirs (fishing lakes) are situated creating banks in excess of 6m above ground level on the western side of the site. What was happening was essentially a huge unlawful waste disposal operation: see below. The raising of the banks was it seems justified by the monies being made from this activity.

2.9 In 2012 the application the subject of the appeal (11/1948) was reported to the Planning Committee members by the then case officer Peter Hockney. As noted in a transcript of the presentation extract below Mr Hockney described the proposed development to Members as follows in an extract from the transcript (full document at Appendix 6). This information formed part of the evidence in the Judicial Review (Judgment at Appendix 7):

In terms of the proposed landform to create the lakes, it would ensure that the crest of the banks in this location would be approx. 40m from the boundary of the site with the residential properties, with a further 20m between that boundary and the residential dwellings.

The closest 15m of the site to the boundary would be a relatively flat before the banks themselves rise in a 1:8 gradient, resulting in a 4m slope over a 32m distance. Now this height and gradient would result in an acceptable impact on the occupiers of nearby properties. And in addition to that conditions are proposed to ensure there would be no significant disturbance to these properties from night fishing in these areas or from vehicles to be parked around the

areas of these lakes, and to prevent any access either vehicular or pedestrian from Hertsfield Lane.

2.10 Representations were made to the LPA throughout the period advising them that this stated height, and the plans which purported to show the completed development in terms of height and contours adjacent to Hertsfield Barn were incorrect. Our assessment of the height of the bund at 6m high was later confirmed as correct in the Mott Macdonald levels survey commissioned by the LPA in 2019.

2.11 At the 23/01/2020 Committee meeting in response to a question from a member of the Planning Committee Mr Timms, the case officer, described the height of the proposed development as follows in an extract from the transcript, full document at Appendix 11:

The second point in terms of the height and the 4m height that has been referred to and certainly is referred to in the report in 2012 within the urgent update in the officers response on page 2 – differences from the 2012 proposal – what we are saying there is yes, the previous report does refer to various heights including 5m and 4m but the council commissioned its own survey of the site in September last year. Now though that survey and the cross sections compares what was proposed in 2012 or decided upon to what is now proposed and in the report it's saying that the differences are between 2 & 1m higher or lower, so in fact what we are saying is the report may say its 4 or 5m but the survey we've done reveals actually it is higher than that report originally said. So the differences which have been set out in the report are correct, but I appreciate that's what it says in the 2012 report.

2.12 As a matter of fact the current plans, based on the recent Mott Macdonald survey, show a constructed and completed bank height set at 22m AOD close to Hertsfield Barn, and an AOD level height in front of the house on the driveway of 15.63m meaning the increase in height is actually 6.37m above ground level, on what was a low lying field prior to the unlawful development.

2.13 in summary:

- in 2003 the bank height was assessed to be similar to existing nearby development at around 1-2 m high.

- When the Enforcement Notice was issued the waste material was estimated by the LPA to be 6m high with material deposited up to the boundary.
- In 2012 the proposal, as recommended by officers for approval and as presented to Members of the Planning Committee, was stated to be for banks at 4m high with a 15m low lying gap from the boundary to the foot of the slope.
- Following a survey by Mott Macdonald on behalf of the Council the 2020 officer report refers to a bank that is 6.2m high with the slope starting at the west boundary line of the site adjacent to Hertsfield Barn.

2.14 Creating a bank 15m closer to the west boundary and increasing the height of the bank by 2.2m (over 50% higher than previously assessed in 2012 and 200% times higher than that envisaged in 2003) is a substantial material change in the scale and nature of development and consequently the impacts. This material change includes the retention of a much greater quantity of waste material.

2.15 As noted at para 2.17 of the previous submission by Rebecca Lord in 2015 to the Enforcement Appeal Inquiry (Appendix 20), by comparing LIDAR surveys from March 2002 and January 2008 the EA estimated in 2010 that the quantum of material that had been unlawfully imported to the site in 2008 was in the region of 645,858 m³. This calculation excluded any of the 4m high plateau areas that were under water. The estimated volume increase was reduced in 2012 following a further survey, but it is understood this was due to the compaction of material undertaken by the appellant post the issue of the unlawful 2012 planning decision (later quashed) and the fact that larger areas of the site were by then covered in water.

2.16 It is noted that the importation of an additional 89,000 m³ of waste material that is proposed as part of the appeal scheme to complete Lake 1 is not specifically mentioned in the development proposals section of the appellant's Statement of Case, or indeed the officer Agenda Report to Committee. Although the importation of material to complete the development is referred to in paragraphs 3.15 and 4.4 of the 2019 ES, the quantum of material is not specified. Previous application material considered in 2012 referred to the importation of 51,000 m³.

2.17 In conclusion it is not reasonable to rely on the LPAs unlawful 2012 decision based on an inaccurate assessment to support the current appeal scheme as presented to the Planning

Committee which (although still damaging to the matters the subject of the objections) was a very different proposal to the current scheme.

Environmental Impact Assessment Regulations

2.18 It is not in dispute that the proposal which is the subject of this appeal is EIA development pursuant to the Town and Country (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). Moreover, it is EIA development which was carried out without planning permission and without any prior assessment of its effects on the environment. The law is clear that applications falling within this category should only be granted in **exceptional circumstances**. In addition, a developer who has carried out such development must not be afforded any improper advantage by passing the need for Environmental Impact Assessment (EIA): see the High Court judgment at Appendix 7 (Padden, R (on the application of) v Maidstone Borough Council & Ors [2014] EWHC 51 (Admin) (22 January 2014)). For the avoidance of doubt, this remains the case following Brexit because the EIA Regs and the caselaw underpinning them have become “assimilated law” pursuant to ss.2 and 6 of the European Union Withdrawal Act 2018 (as amended).

2.19 The following is stated in the 23/01/2020 officer report to Committee (Appendix 9):

7.77 The site history demonstrates why significant retrospective development exists at this site, which has been through a combination of two planning permissions. The first was not implemented properly but significant material was brought on site (some of which would have been necessary to implement the permission) before the Council served an enforcement notice. The second was quashed but further work was carried out prior to this. The enforcement notice requires the site to be restored to its pre-2003 condition but any action in relation to the notice has been held in abeyance by Planning Enforcement pending the outcome of this planning application. All these factors and the scale of the works involved represent unique, very unusual, and exceptional circumstances as to why a retrospective EIA application is before the Council.

2.20 At 6.82 of the Statement of Case the appellant relies on the Council’s assessment in the 2020 Committee report to demonstrate the ‘exceptional circumstances’ as required in the Environmental Regulations.

2.21 This is not accepted and no exceptional circumstances exist which would permit a retrospective

grant of consent in these circumstances. It cannot be disputed that the presence of the vast quantity of unlawful waste material on site was as a result of unlawful development by the appellants and their predecessors. The importation of waste material, which had significantly increased in frequency to a full time operation once the appellant had taken over the site, only ceased in 2008 after the issue of a TSN and EN. The Appellants chose not to pursue a ground (a) appeal (that planning permission should be granted) as no EIA was produced and the appellant had no grounds for claiming it was a lawful development as confirmed to him by the Inspector in the Inquiry. The Enforcement Notice was upheld with variations at appeal and partial costs was awarded to my client for the abortive work in responding to the appellants late withdrawal of the other ground of appeal, decisions at Appendix 8.

2.22 On the basis that in law there should be no unfair advantage for retrospective EIA development it would be inconsistent for the appellant to gain permission on the basis that:

- The unlawful material is on site.
- There is a vast quantity of unlawful material.
- The length of time the unlawfully deposited material has been there due to the unprecedented delays by the LPA in pursuing its own enforcement notice, and in allowing the applicants / appellants years to try to provide the necessary material to support its application.
- The time it would take to remove the unlawful material.

2.23 It is our position that in correctly applying current planning policy and guidance, if the scheme were presented as a proposed waste disposal / development proposal with no existing development on site (i.e. the pre 2003 position) planning permission would not be granted on the appeal site either by the LPA or on appeal for a scheme of this scale and design.

2.24 As such to grant retrospective planning permission, on the basis that the development is physically there, it is vast, it would take time to remove, and that it has been there for a long time, would clearly allow the developer to reap an unfair benefit from the retrospective nature of the appeal scheme.

2.25 The overall quantum of waste material to be retained as part of the proposed development has not been referred to by the appellant in the Statement of Case or by the LPA in the recent Committee reports. This is a major failing in the assessments undertaken in support of the

appeal proposal.

- 2.26 As stated in my submission to the Enforcement Appeal Inquiry by comparing LIDAR surveys from March 2002 and January 2008 the EA estimated in 2010 that the quantum of material that had been unlawfully imported to the site in 2008 was in the region of 645,858 m³. This calculation excluded any of the 4m high plateau areas that were under water. The estimated volume increase was reduced in 2012 following a further survey, but it is understood this was due to the compaction of material undertaken by the appellant and the fact that larger areas of the site were covered in water.
- 2.27 Some material had been imported prior to the appellants purchase of the site, however the level of importation was significantly accelerated in the period post their purchase and necessitated the issue of the TSN.
- 2.28 As a waste disposal exercise the appellant has already reaped a large financial profit from gate takings and has made a profit from the unlawful use of the site since 2008 in breach of an extant enforcement notice. If approved additional profit will of course be made from the receipt of 89,000m³ of additional imported waste material as proposed.
- 2.29 The scale of unlawful activity that underlies this proposal is breath taking. The breaches of planning control are so serious as to bring into question the credibility of the planning system. Throughout this process the actions of the developer have supported a notion that if one breaches planning control on a large enough scale the authorities charged with dealing with this are overwhelmed and instead look to retrospectively consent the same as an easy way out. The allowing of this appeal would undermine the credibility of the planning system yet further. This is in itself an important material consideration against this appeal being allowed.

3. Planning Policy

3.1 S.38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

3.2 The National Planning Policy Framework (NPPF) (December 2023) is also a material consideration. Where development plans policies are silent or out of date this takes precedence. Relevant considerations include:

Para /Section	Extract / summary
Para 8	<p>Achieving sustainable development means that the planning system has 3 overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):</p> <ul style="list-style-type: none"> <li data-bbox="523 904 1399 1151">(i) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure <li data-bbox="523 1227 1399 1576">(ii) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and <li data-bbox="523 1653 1399 1964">(iii) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Para 135	<p>Planning policies and decisions should ensure that developments:</p> <p>(a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;</p> <p>(b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;</p> <p>(c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);</p> <p>(d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;</p> <p>(e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and</p> <p>(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users ; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.</p>
Para 180	<p>Planning policies and decisions should contribute to and enhance the natural and local environment by:</p> <p>(a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);</p>

	<p>(b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;</p> <p>(c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;</p> <p>(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;</p> <p>(e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and</p> <p>(f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.</p>
Para 195	Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
Para 201	Local planning authorities should identify and assess the particular significance of any heritage asset that may be 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 into account when considering the impact of a proposal on a

	heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
Para 205	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.
Para 208	Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3.3 The development plan for the area is comprised of:

Title	Adopted
Maidstone Borough Local Plan Review 2021 – 2038 (LPR)	2024
Kent Minerals and Waste Local Plan (KMWLP)	September 2020
Kent Mineral Sites Plan	2020
Marden Neighbourhood Plan (2017-2031) (MNP)	July 2020

3.4 Development Plan Policies of relevance to this application include:

Maidstone Borough Local Plan Review (LPR) 2024		
Policy	Title	Policy / Extract / Summary
LPRSP14(B)	The Historic Environment	<p>To ensure their continued contribution to the economy, culture and image of Maidstone Borough, the characteristics, distinctiveness, diversity, and quality of heritage assets will be conserved and, where possible, enhanced. This will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include:</p> <ol style="list-style-type: none"> 1. Collaboration with developers, landowners, parish councils, groups preparing neighbourhood plans and heritage bodies on specific heritage initiatives including proposals for conservation and appropriate re-use of historic assets (especially as drivers for local regeneration) and bids for funding; 2. Through the development management process, securing the sensitive management and design of development which impacts on heritage assets and their settings and positively incorporates heritage assets into wider development proposals. This includes the potential public benefits from development impacting a heritage asset; 3. Through the incorporation of positive heritage policies in neighbourhood plans which are based on analysis of locally important and distinctive heritage; and broad locations identified in the local plan; 4. Ensuring relevant heritage considerations are a key aspect of site master plans prepared in support of development allocations and broad locations identified in the Local Plan and that specialist officers will be consulted at an early stage in the preparation of plans; 5. Through the reallocation of Non-Designated Heritage Assets to the Local List; 6. Through the review and reduction of assets recorded in the list of Heritage Assets at Risk held by Historic England; 7. Through reference to the Heritage Asset Assessment and Heritage Assessment of Proposed Housing Allocations matrix in all individual site policies; 8. Through the protection, conservation and enhancement of the historic environment and archaeological landscapes appropriate to their significance.

LPRSP15	Principles of Good Design	<p>Proposals should create high quality design and should meet the following criteria, as appropriate, to be permitted:</p> <ol style="list-style-type: none"> 1. Create designs and layouts that are accessible to all, and maintain and maximise opportunities for permeability and linkages to the surrounding area and local services; 2. Respond positively to, and where possible enhance, the local, natural, or historic character of the area. Particular regard should be paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage; 3. Incorporation of a high quality, modern design approach and making use of vernacular materials where appropriate. For housing schemes vernacular materials should be used on a high proportion of buildings, particularly in key/prominent locations*; 4. Create high quality public realm and, where opportunities permit, provide improvements, particularly in town centre locations; 5. Respect the amenities of occupiers of neighbouring properties and uses and provide adequate residential amenities for future occupiers of the development by ensuring that proposals do not result in, or its occupants are exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking, or visual intrusion, or loss of light to occupiers; 6. Respect the topography and respond to the location of the site and sensitively incorporate natural features such as natural watercourses, trees, hedges, and ponds worthy of retention within the site. Particular attention should be paid in rural and semi-rural areas where the retention and addition of native vegetation appropriate to local landscape character around the site boundaries should be used as positive tool to help assimilate development in a manner which reflects and respects the local and natural character of the area; 7. Provide a high-quality design which responds to areas of heritage, townscape and landscape value or uplifts an area of poor environmental quality; 8. Orientate development, where possible, in such a way as to maximise the opportunity for sustainable elements to be incorporated, including to optimise access to sustainable transport modes, and to reduce the reliance upon less sustainable energy sources; 9. Protect and enhance any on-site biodiversity and
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		<p>geodiversity features;</p> <ol style="list-style-type: none"> 10. Development shall have regard to relevant national and local design guides and codes; 11. Safely accommodate the vehicular and pedestrian movement generated by the proposal on the local highway network and through the site access; 12. Create a safe and secure environment and incorporate adequate security measures and features to deter crime, fear of crime, disorder and antisocial behaviour; 13. Incorporate measures for the adequate storage of waste, including provision for increasing recyclable waste; 14. Provide adequate vehicular and cycle parking to meet adopted council standards; 15. Be flexible towards future adaptation in response to changing life needs; 16. Ensure that new streets are tree lined and that opportunities have been taken to maximise the incorporation of trees within the development; 17. Account should be taken of Conservation Area Appraisals and Management Plans, Character Area Assessments, the Maidstone Borough Landscape Character Guidelines SPD, the Kent Design Guide, and the Kent Downs Area of Natural Beauty Management Plan. <p>*: The separate design guidance will outline examples of vernacular materials and how they can be used well and where these are most appropriate</p>
LPRENV1	Development Affecting Heritage Assets	<ol style="list-style-type: none"> 1. Applicants will be expected to ensure that new development affecting a heritage asset incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and its setting. This includes responding positively to views of and from that asset. This also includes the potential public benefits from development impacting a heritage asset. 2. Where appropriate, development proposals will be expected to respond to the value of the historic environment by the means of a proportionate Heritage Assessment which assesses and takes full account of: <ol style="list-style-type: none"> a. Any heritage assets, and their settings, which could be impacted by the proposals; b. The significance of the assets; and c. The scale of the impact of development on the identified significance. 3. Where development is proposed for a site which includes or has the potential to include heritage assets with archaeological interest, applicants

		<p>must submit a proportionate assessment by way of an appropriate desk-based assessment and, where necessary, a field evaluation. This will be used to inform development and identify opportunities to enhance awareness, understanding and enjoyment of the historic environment to the benefit of the community.</p> <ol style="list-style-type: none"> 4. The council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting. This includes applying this policy to non-designated heritage assets where a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. 5. In the circumstances where the loss of a heritage asset is robustly justified, developers must make the information about the asset and its significance available for incorporation into the Historic Environment.
LPRQD2	External Lighting	<ol style="list-style-type: none"> 1. Proposals for external lighting schemes will be permitted if they meet the following criteria: <ol style="list-style-type: none"> a. It is demonstrated by illuminance contour diagrams that the minimum number, intensity and height and timing of lighting necessary to achieve its locationally appropriate purpose is proposed; b. The design and specification of the lighting would minimise glare and light spillage and would not dazzle or distract drivers or pedestrians using nearby highways; c. The lighting scheme would not be visually detrimental to its immediate or wider setting, particularly intrinsically dark landscapes and would be of appropriate colour temperature for its location and ecological impact; d. The impact on wildlife and biodiversity is minimised through appropriate mitigations; e. Any development affecting protected species follows relevant specific guidance on lighting. 2. Lighting proposals that are within or are near enough to significantly affect areas of nature conservation and landscape importance, e.g., Special Areas of Conservation, Sites of Special Scientific Interest, National Nature Reserves, County Wildlife Sites, Local nature Sites, and Areas of Outstanding Natural Beauty will only be permitted in exceptional circumstances and need to take account of any specific guidance on lighting

		that is relevant to these identified sites.
LPRTRA4	Parking	<ol style="list-style-type: none"> 1. Car parking standards for new residential developments will be assessed against the requirements set out in KCC's Interim Guidance Note 3 (IGN3) to the Kent Design Guide or any subsequent revisions or superseding documents produced by the Highways Authority. 2. For all new non-residential developments, and for cycle and motorcycle parking in residential developments, provision for all types of vehicle parking should be made in accordance with advice by Kent County Council as Local Highway Authority. As a starting point of reference, consideration should be given to the standards set out in the former Supplementary Planning Guidance 4 (SPG4) to the Kent and Medway Structure Plan. 3. The council may depart from established maximum or minimum standards to take account of: <ol style="list-style-type: none"> a. Specific local circumstances that may require a higher or lower level of parking provision for reasons including as a result of the development site's accessibility to public transport, shops and services, highway safety concerns and local on-street parking problems; b. the successful restoration, refurbishment and re-use of listed buildings or buildings affecting the character of a conservation area; c. allow the appropriate re-use of the upper floors of buildings in town centres or above shop units; d. innovative design that can sufficiently justify a reduced provision of vehicle parking. 4. Any departure from the adopted standards will be informed by consultation with the Local Highways Authority. 5. 5. Proposals for non-residential development which includes the provision of parking shall provide electric vehicle charging points at a minimum rate of 50% active Electric Vehicle charging points, and 50% passive Electric Vehicle charging points.

LPRQD4	Design Principles in the Countryside	<p>Outside of the settlement boundaries as defined on the Policies Map, proposals which would create high quality design, satisfy the requirements of other policies in this plan and meet the following criteria will be permitted:</p> <ol style="list-style-type: none"> 1. The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features. 2. Impacts on the appearance and character of the landscape would be appropriately mitigated. Suitability and required mitigation will be assessed through the submission of Landscape and Visual Impact Assessments to support development proposals in appropriate circumstances. 3. Proposals would not result in unacceptable traffic levels on nearby roads; unsympathetic change to the character of a rural lane which is of landscape, amenity, nature conservation, or historic or archaeological importance or the erosion of roadside verges. 4. Where built development is proposed, there would be no existing building or structure suitable for conversion or re-use to provide the required facilities. Any new buildings should, where practicable, be located adjacent to existing buildings or be unobtrusively located and well screened by existing or proposed vegetation which reflect the landscape character of the area. 5. Where an extension or alteration to an existing building is proposed, it would be of a scale which relates sympathetically to the existing building and the rural area; respect local building styles and materials; have no significant adverse impact on the form, appearance or setting of the building, and would respect the architectural and historic integrity of any adjoining building or group of buildings of which it forms part. 6. Where design, layout and landscaping has considered the need to respond and adapt to climate change. 7. Where possible, the design should include local and sustainable materials. 8. 8. Where possible in consideration of other elements of this policy renewable energy generation methods should be included.
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LPRCD6	Expansion of Existing Businesses in Rural Areas	<ol style="list-style-type: none"> 1. Planning permission will be granted for the sustainable growth and expansion of rural businesses in the countryside where: <ol style="list-style-type: none"> i. New buildings and proposed access thereto are appropriate in scale and provided the resultant development as a whole is appropriate in scale for the location and can be satisfactorily integrated into the local landscape; ii. The increase in floorspace would not result in unacceptable traffic levels or types on nearby roads or a significant increase in use of an existing substandard access; iii. The new development, together with the existing facilities, will not result in an unacceptable impact on the amenity of the area. In particular the impact on nearby properties and the appearance of the development from public roads will be of importance; and iv. No open storage of materials will be permitted unless adequately screened from public view throughout the year. 2. Where significant adverse impacts on the rural environment and amenity would result from expansion, rural businesses requiring expanded premises should look to relocate to one of the Economic Development Areas identified in policy LPRSP11(A) or allocated employment sites as identified in policy LPRSP11(B), or to a site within Maidstone Urban Area or one of the Rural Service Centres.
Kent Minerals and Waste Local Plan (KMWLP)		
Policy	Title	Policy / Extract / Summary
CSW2	Waste Hierarchy	<p>Policy</p> <p>To deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how the proposal will help drive waste to ascend the Waste Hierarchy whenever possible.</p> <p>Accompanying text:</p>

		<p>The application of the Waste Hierarchy is a legal requirement under the Waste (England and Wales) Regulations 2011. It is anticipated that there will be a transition over time to forms of waste management at the higher end of the Waste Hierarchy. The Kent MWLP addresses this transition by seeking to rapidly provide a more sustainable option for the mixed non-hazardous waste that is going to landfill by applying ambitious but achievable landfill diversion targets presented in Policy CSW 4.</p>
CSW9	Non Inert Waste Landfill in Kent	<p>This is referred to on the basis that there is no certainty that all the waste is inert.</p> <p>Policy</p> <p>Planning permission will only be granted for non-inert waste landfill if:</p> <ol style="list-style-type: none"> 1. it can be demonstrated that the waste stream that needs to be landfilled cannot be managed in accordance with the objectives of Policy CSW2 and for which no suitable disposal capacity exists; and 2. environmental or other benefits will result from the development 3. the site and any associated land being restored to a high quality standard and appropriate after-use that accords with the local landscape character as required by Policy DM 19.
CSW11	Permanent Deposit of Inert Waste	<p>Planning permission for the disposal of inert waste will be granted where:</p> <ol style="list-style-type: none"> 1. it can be demonstrated that the waste cannot be managed in accordance with the objectives of Policy CSW2 2. it is for the restoration of landfill sites and mineral workings 3. environmental benefits will result from the development, in particular the creation of priority habitat

		4. sufficient material is available to restore the site within agreed timescales.
CSM2	Supply of Land-won Minerals in Kent	<p>Policy Extracts:</p> <p>Mineral working will be granted planning permission at sites identified in the Minerals Sites Plan subject to meeting the requirements set out in the relevant site schedule in the Mineral Sites Plan and the development plan.</p> <p>.....</p> <p><u>Selection of Sites in the Minerals Sites Plan</u></p> <p>The criteria that will be taken into account for selecting and screening the suitability of sites for identification in the Minerals Sites Plan will include: the requirements for minerals set out above relevant policies set out in Chapter 7: Development Management Policies relevant policies in district local plans and neighbourhood plans strategic environmental information, including landscape assessment and HRA as appropriate their deliverability other relevant national planning policy and guidance</p> <p>Footnote: <u>Sites identified in the Minerals Sites Plan will generally be where viable mineral resources are known to exist, where landowners are supportive of mineral development taking place and where MPAs consider that planning applications are likely to be acceptable in principle in planning terms.</u></p>
DM5	Heritage Assets	<p>Policy</p> <p><u>Proposals for minerals and waste developments will be required to ensure that Kent's heritage assets and their settings, including locally listed heritage assets, registered historic parks and gardens, Listed Buildings, conservation areas, World Heritage Sites, Scheduled Ancient Monuments, archaeological sites and features and</u></p>

		<p>defined heritage coastline, are conserved in a manner appropriate to their significance.</p> <p>Proposals should result in no unacceptable adverse impact on Kent's historic environment and, wherever possible, <u>opportunities must be sought to maintain or enhance historic assets affected by the proposals.</u></p> <p><u>Minerals and/or waste proposals that would have an impact on a heritage asset will not be granted planning permission unless it can be demonstrated that there is an overriding need for development and any impacts can be mitigated or compensated for, such that there is a net planning benefit.</u></p>
DM6	Historic Environment Assessment	<p>Policy</p> <p>Proposals for minerals and waste development that are likely to affect important heritage assets will only be granted planning permission following:</p> <ol style="list-style-type: none"> 1. preliminary historic environment assessment, including field archaeological investigation where appropriate, to determine the nature and significance of the heritage assets 2. appropriate provision has been secured for preservation in situ, and/or archaeological excavation and recording and/or other historic environment recording as appropriate, including post-excavation analysis and reporting, archive deposition and access, and interpretation of the results for the local community, in accordance with the significance of the finds 3. <u>agreement of mitigation of the impacts on the significance of the heritage assets, including their fabric, their setting, their amenity value and arrangements for reinstatement</u>
DM7	Safeguarding Mineral Resources	<p>Policy</p>

		<p><u>Planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding, where it is demonstrated that either:</u></p> <ol style="list-style-type: none"> 1. the mineral is not of economic value or does not exist; or 2. that extraction of the mineral would not be viable or practicable; or 3. the mineral can be extracted satisfactorily, having regard to Policy DM9, prior to the non-minerals development taking place without adversely affecting the viability or deliverability of the non-minerals development; or 4. the incompatible development is of a temporary nature that can be completed and the site returned to a condition that does not prevent mineral extraction within the timescale that the mineral is likely to be needed; or 5. material considerations indicate that the need for the development overrides the presumption for mineral safeguarding such that sterilisation of the mineral can be permitted following the exploration of opportunities for prior extraction; or 6. it constitutes development that is exempt from mineral safeguarding policy, namely householder applications, infill development of a minor nature in existing built up areas, advertisement applications, reserved matters applications, minor extensions and changes of use of buildings, minor works, non-material amendments to current planning permissions; or 7. it constitutes development on a site allocated in the adopted development plan where consideration of the above factors (1-6) concluded that mineral resources will not be needlessly sterilised.
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		<p>Further guidance on the application of this policy is included in a Supplementary Planning Document.</p> <p>Accompanying test:</p> <p>7.5.1 As set out in section 5.5, it is important that certain mineral resources in Kent are safeguarded for potential use by future generations. However, from time to time, proposals to develop areas overlying safeguarded minerals resources for non-minerals purposes will come forward where for genuine planning reasons it would not be practicable to extract the otherwise economic underlying reserves before surface development is carried out.</p> <p>7.5.2 In such circumstances, when determining proposals, a judgement will be required which weighs up the need for such development against the need to avoid sterilisation of the underlying mineral taking account of the objectives and policies of the development plans as a whole will need to be considered when determining proposals.</p> <p>7.5.3 Policy DM 7 sets out the circumstances when non-minerals development maybe acceptable at a location within a Minerals Safeguarding Area. This policy recognises that the aim of safeguarding is to avoid unnecessary sterilisation of resources and encourage prior extraction of the mineral where practicable and viable before non-mineral development occurs.</p>
DM10		<p>Planning permission will be granted for minerals or waste development where it does not:</p> <ol style="list-style-type: none"> 1. result in the deterioration of physical state, water quality or ecological status of any water resource and waterbody, including rivers, streams, lakes and ponds 2. have an unacceptable impact on groundwater Source Protection Zones (as shown in Figure 15)

		<p>3. exacerbate flood risk in areas prone to flooding (as shown in Figure 15) and elsewhere, both now and in the future</p> <p>All minerals and waste proposals must include measures to ensure the achievement of both no deterioration and improved ecological status of all waterbodies within the site and/or hydrologically connected to the site. <u>A hydrogeological assessment may be required to demonstrate the effects of the proposed development on the water environment and how these may be mitigated to an acceptable level.</u></p>
DM11		<p><u>Minerals and waste development will be permitted if it can be demonstrated that they are unlikely to generate unacceptable adverse impacts from</u> noise, dust, vibration, odour, emissions, bioaerosols, illumination, <u>visual intrusion</u>, traffic or exposure to health risks <u>and associated damage to the qualities of life and wellbeing to communities and the environment.</u> This may include production of an air quality assessment of the impact of the proposed development and its associated traffic movements and necessary mitigation measures required through planning condition and/or planning obligation. This will be a particular requirement where a proposal might adversely affect the air quality in an AQMA. (See Figure 15) <u>Proposals for minerals and waste development will also be required to ensure that there is no unacceptable adverse impact on the use of other land for other purposes.</u></p>
MNP		
Policy NE3	Landscape Integration	<p>Policy</p> <p><u>All proposed developments should be designed to integrate into their surroundings in the landscape and contribute positively to the conservation and enhancement of that landscape.</u> Dense hedgerow</p>

		planting with native species is the preferred boundary treatment if the strengthening of existing hedgerows or restoration of lost hedgerow boundaries is not possible. Artificial lighting systems, if deemed necessary, require sensitive treatment to reduce visual intrusion and negative impacts on wildlife.
Policy BE1	Local Character	<u>Development proposals should be designed to protect the fabric and setting of any designated and non-designated heritage asset and respect and enhance the existing character</u> of the village. New development must be both visually and functionally sympathetic to the existing styles and materials, which are illustrated at pages 21/22 in this Plan and also described in the Marden Design Statement (2001), in order to maintain and enhance Marden's sense of place

3.5 Other material considerations include the Maidstone Landscape Character Assessment March 2012, amended July 2013 and the KCC Minerals and Waste Safeguarding SPD 2017.

4. Consideration of Issues

4.1 Notwithstanding the limited reasons for refusal by the LPA, the issues for consideration are:

- (i) The Principle of Development
- (ii) Impact on the landscape and character of the area
- (iii) Heritage Impacts
- (iv) Ground water flooding
- (v) Reservoir construction and safety
- (vi) Impact on Amenity of Neighbours
- (vii) Mineral safeguarding
- (viii) Waste Hierarchy Principles and Policies

(i) The Principle of Development:

4.2 As noted at paragraph 2 of the NPPF planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

4.3 The purpose of the planning system is to contribute to the achievement of sustainable development, paragraph 8 of the NPPF provides the definition of sustainable development has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways, these are:

- an economic objective
- a social objective
- an environmental objective.

4.4 The principle of the use of the appeal site for recreational fishing lakes in the countryside may on the face of it meet these objectives, however, a detailed assessment of the form of the development and its environmental and other impacts is also required to be tested against the relevant policies, guidance, and other material considerations.

4.5 The proposed development includes the retention of a vast quantity of unlawfully imported waste material. This unlawful waste disposal exercise has not been fully addressed by the appellant in the ES or the appeal submissions, or indeed by the LPA in its assessment.

4.6 This aspect is contrary to development plan policy and is not therefore considered as acceptable in principle.

(ii) Landscape Character and Visual Impact

4.7 The LPA and the appellant place much weight on the decisions made by the LPA in 2003 and 2012 in support of their position with regard to the landscape impacts of the unlawful development.

4.8 As demonstrated at section 2 of this report in 2003 the proposal was for a number of small lakes with shallow bunds, similar to those at the neighbouring fish farm, rather than the retention of three reservoirs located on a 4m high raised plateau with overall bank heights of 6 - 6.2m on the west side of the site as currently proposed.

4.9 In the report by Andrew Smith BSc (Hons), MSc, CMLI of fabrik Landscape Architects a thorough assessment of the landscape character of the area is made and of the appellant's landscape and visual impact assessments that are produced in the ES at:

- Part O Landscape and Visual Impact Analysis Rev B, FLA, 2011;
- Part P Addendum to Landscape and Visual Impact Analysis, FLA, February 2015
- Part Q Addendum to Landscape and Visual Impact Analysis Rev B, FLA, August 2017.

4.10 The fabrik report notes that the reports submitted by the appellant (listed above) firstly do not correctly score the harmful impacts of the appeal scheme on the landscape character as a result of the operational development works in the creation of the raised banks and lakes (6m high), and secondly incorrectly use the proposed landscaping scheme to mitigate the harm, such that the assessments cannot be relied on.

4.11 The fabrik report states that that the recent changes and adjustments associated with the current appeal scheme have made no significant difference to the negative outcome associated with the unauthorised development the subject of the appeal.

4.12 The fabrik report concludes that the current scheme is of the same character as the 2015 Enforcement Appeal scheme and that it results in adverse visual impacts and is harmful to the landscape character of the area.

- 4.13 Development plan policy SP17 states that development proposals in the countryside will not be permitted unless they accord with other policies in this plan, and they will not result in harm to the character and appearance of the area.
- 4.14 Policy LPRQD4 requires the type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features.
- 4.15 The more recently adopted MNP policy NE3 requires all proposed developments to be designed to integrate into their surroundings in the landscape and contribute positively to the conservation and enhancement of that landscape.
- 4.16 In assessing the appeal scheme the context of a predevelopment position (pre 2003), the current development plan policy, and the fabrik Landscape and Visual Impact Report it is concluded that the retention of the unauthorised imported waste material and the proposed development has a clearly detrimental impact on the landscape character of the area by virtue of its height, mass and artificial design which is incongruous in the local landscape, as noted in the Maidstone Borough Landscape Character Assessment in 2012 and 2013.
- 4.17 The scheme as proposed does not provide any mitigation that would overcome the harm to the landscape character and visual amenities of the area and although some fairly limited employment opportunities, and some limited private leisure and recreation is provided, there are other fishing lakes locally, and such benefits do not amount to 'exceptional circumstances' or material considerations that would outweigh the harm that has been demonstrated.
- 4.18 Although this is an EIA development, in which alternatives are considered in the ES, the appellant has consistently failed to consider a reduced scheme with banks set away from the site boundaries, and with gentle slopes over a longer distance, which could potentially provide fishing lakes and mitigate the harm to the landscape character and visual amenities of the area.
- 4.19 It is concluded that the proposal is contrary to the NPPF (notably paras 135 and 180); Policies LPRSP9; LPRSP15 and LPRQD4 of the Local Plan Review (2024); Policy NE3 of the Marden Neighbourhood Plan 2020, the guidance in the Maidstone Borough Landscape Character Assessment (2012 amended 2013) and, the strategic objectives of the Kent Minerals and Waste Local Plan 2016 and policy CSW11.

(iii) Heritage Impacts

- 4.20 The harm is divided into two parts, firstly the harm to the setting of the Grade II Listed building and secondly the harm to the fabric of the building.
- 4.21 The harm to the setting of the building is assessed in the report by Chris Griffiths. At 3.34 it is concluded that, before the unauthorised development took place, the land at Monk Lakes made a major positive contribution to the setting and significance of Hertsfield Barn. This contribution reinforced both the building's heritage interest and an ability to appreciate its high significance and that the development has had a significant negative impact on the setting and significance of the grade II listed Hertsfield Barn.
- 4.22 Whilst the retention of the proposed use would retain some limited employment opportunities, understood to be a manager and some part time or seasonal workers, and provide a leisure facility for fishing, these limited benefits could be provided by an alternative lesser form of development. There has never been any justification for the provision of lakes on a 4m high plateau of compacted waste with 2m high banks on top.
- 4.23 Planning policy places significant weight on the preservation of designated heritage assets as set out in the NPPF (notably paragraphs 201, 205 and 208); policies LPRSP14(B) and LPRENV1 of the Local Plan Review 2024, BE1 of the Marden Neighbourhood Plan 2020, and policy DM5 of the Kent Minerals and Waste Local Plan 2020. It is concluded that the application proposals cause harm to the setting of the Listed Building and the stated benefits do not outweigh these policy objectives.
- 4.24 With regard to the impact on the fabric of the Listed Building, my client and his neighbours have provided evidence to the LPA over many years of the change in ground water levels following the importation of the waste material. Evidence to the Courts of this issue was provided in witness statement, copies of which are produced at Appendix 16, 17 and 18.
- 4.25 As noted in the following section on ground water flooding and in the report by Dr Ellis, the groundwater monitoring program only commenced in September 2014, well after the

development was put in place the Appellant has potentially gained an advantage (contrary to the case-law on EIA) due to the difficulties in demonstrating changes in the groundwater system from the pre-existing conditions. Further, the methodology for obtaining the information was not in accordance with the recommendations of the EA or Dr Ellis.

- 4.26 On the basis of current evidence there can be no certainty that the proposed mitigation scheme will be effective, or that a condition requiring a scheme will deliver effective mitigation.
- 4.27 Whilst the LPA commissioned a report to assess the ground water flooding information, as noted below, the conclusion that a condition requiring a scheme of mitigation was inconsistent with the assessment in the body of the report.
- 4.28 At paragraph 5.29 of the Heritage report Chris Griffiths advises that there is sufficient evidence that the groundwater changes have had a negative impact on the fabric of the Listed Building and there is the potential for these conditions to cause the building to deteriorate to the extent that its long terms conservation is put at risk.
- 4.29 He goes on to advise that even if the stance of the officer is accepted, which is that the evidence is “not conclusive”, it is essential to reach a conclusion on this matter as part of the appeal. Leaving this point unanswered opens the possibility of a gradual worsening of the seepage and a potentially irreparable damage to the listing building’s historic fabric, including elements of its primary construction which are of considerable architectural and historical value and great heritage interest.
- 4.30 As noted above planning policy places significant weight on the preservation of designated heritage assets. NPPF (notably paragraphs 201, 205 and 208); policies LPRSP14(B) and LPRENV1 of the Local Plan Review 2024, BE1 of the Marden Neighbourhood Plan 2020, and policy DM5 of the Kent Minerals and Waste Local Plan 2020. It is concluded that on the basis of the evidence submitted the application proposals cause harm to the fabric of the Listed Building and the stated benefits do not outweigh the long term preservation of the designated heritage asset.

(iv) Groundwater Flooding

- 4.31 The appellant’s Statement of Case indicates that following investigations the appellants believe there are no off site ground water flooding issues and that any issues will be resolved by the

implementation of the proposed mitigation set out in the Groundwater Monitoring Report (July 2015) and Drainage Strategy Report (July 2015), prepared by Peter Brett Associates.

- 4.32 Notwithstanding evidence of ground water flooding provided by Mr Padden and his neighbours to the LPA over the years since the unlawful development was undertaken, the appellant, who purchased the site after the development had commenced and with no prior knowledge of the conditions at neighbouring properties, continues to maintain there has been no impact on groundwater flooding at Hertsfield Barn.
- 4.33 Evidence of raised ground water levels is included in witness statements from Mr David Padden provided to the High Court in the process of the judicial review is produced at Appendix 16 and 17.
- 4.34 As noted in the report by Dr Ellis in his report accompanying these submissions the groundwater monitoring program only commenced in September 2014, well after the development was put in place the Appellant has potentially gained an advantage due to the difficulties in demonstrating changes in the groundwater system from the pre-existing conditions.
- 4.35 Further as stated in previous objections, the methodology of the onsite ground water level testing undertaken on behalf of the appellant did not meet with recommendations made by the EA or Dr Ellis. As such the factual information collected was limited.
- 4.36 Dr Ellis advises that the significant uncertainties in the extent and behaviour of the groundwater system along the western margin should be assessed through monitoring to provide confidence in any proposed mitigation measures.
- 4.37 Dr Ellis notes that updated plans for the planning appeal (ref. P20-0831_02) do not include the new details of the surface water attenuation scheme comprising attenuation basins and a weir system indicating appellant has not considered how it will be incorporated within the landscaping of the development, given the limited space along the western margin and the need to avoid locating flood attenuation basins within the flood plain.
- 4.38 As stated in previous objections, the report by Mott Macdonald that was commissioned by the LPA to assess the ground water flooding issues, on the basis that ground water flooding did not fall within the remit of the EA or KCC (the Lead Flood Authority). The assessment in the body of the report was inconsistent with its conclusion that although there were uncertainties about

the efficiency of any scheme of mitigation, a condition to provide details after the issues of consent would suffice.

- 4.39 On the information currently available there can be no certainty that the proposed ground water mitigation scheme will have any effectiveness. As such planning conditions to require the provision of any such unproven scheme is not suitable.
- 4.40 Evidence exists to demonstrate that the existing conditions on the appeal site as a result of the unlawful development are causing ground water flooding to nearby residential properties on the west side of the site (and have done for years now) to the detriment of the amenities of the occupiers of those properties.
- 4.41 In these circumstances the scheme is contrary to the provisions of policy LPRSP15 of the Maidstone Local Plan 2017 and policies DM10 and DM11 of the Kent Minerals and Waste Local Plan 2016.

(v) Reservoir Safety and Construction

- 4.42 As detailed in the report by Dr Ellis, the construction of Lakes 1, 2, and 3 should have been subject to continuous supervision as required by legislation. From information obtained from the EA through Freedom of Information request it is apparent that there was no construction engineer appointed.
- 4.43 Dr Ellis refers to an email dated 6/08/2014 from Nick Reilly (reservoir construction engineer) to Richard Knight (EA) in which it is stated that there has been no communication with the Harrisons about Monk Lakes or over a year. He states *'As you know I assisted them to formulate their planning application with the aim (on their part) that I would act as Construction Engineer under the Act. I have never been formally appointed to this role and my intention was that I would not accept it unless they regularised their approach to be more professional in design, testing and supervision etc.'*
- 4.44 As can be seen from the summary of the FOI material obtained from the EA and appended to Dr Ellis's report there is some confusion as to who was appointed when and on what basis.
- 4.45 In 2015 a final letter before enforcement was issued by the EA to the appellants for failure to have an appointed construction engineer. This was followed soon after by an email from Mrs

Harrison advising the Geoffrey Wilson had been appointed.

- 4.46 In 2017 Geoffrey Wilson advised the EA that he was still waiting to hear from Emily Harrison, but in the meantime, he had discussed the matter with the original Construction Engineer Stewart Cale and sometime previously had contacted his successor, Nick Reilly (retired). Mr Wilson comments that *'there does seem to be a very troubled past (and present?). I would like to call you (or other EA person familiar with the history of Monk Lake) to discuss'*.
- 4.47 In February 2018 Geoffrey Wilson advised the EA that the situation was as follows:
- 1) Subsequent to our last communications on Monk Lakes, I finalised an agreement with TerraConsult, through whom I now undertake reservoir inspections.*
- 2) A formal proposal for inspection was sent to the Owner of Monk Lakes on 04 October 2017. The owner was to return a signed copy of the agreement to TerraConsult. There has been no response to date.*
- You will be aware from our previous communications that there had been problems in obtaining responses from the Owner in the past. The original verbal agreement for my appointment some two years ago was never confirmed, hence I assumed for a long time that another engineer had been appointed.*
- The EA may perhaps need to consider making an appointment under Section 15(1).*
- 4.48 Shortly afterwards he confirmed his instructions as both as Construction Engineer and Supervising Engineer for Monk Lake 2. However, it seems there have been significant gaps in the appointment of the necessary construction and supervising engineers in the site history and it is not clear who is appointed for the other large lakes 1 and 3 that are presumably reservoirs as well as these are similar in size and all linked.
- 4.49 With regard to the proposed landscaping scheme, this remains of concern, as firstly there are questions as to the safety of the design, and secondly it is not usual practice to undertake planting on the bank of a reservoir other than a grass sward. The EA had previously commented that tree and shrub planting on the bank of reservoirs was not usual. It is understood this is because dense planting could potentially damage bank walls or impede inspection for leaks or fissures in the bank walls.
- 4.50 However, after some years of maintaining an objection on this basis with no response from the LPA or the applicant on the issues, shortly before the application was reported to the Planning Committee in 2020 an short email from Mr Geoffrey Wilson was provided to the LPA in which

he simply states that having reviewed the proposed landscaping plan 0183-04/03 Revision D he confirms that the planting proposals are acceptable in terms of the Reservoirs Act, subject to an appropriate vegetation management plan. Mr Wilson does not explain why such planting would be acceptable, when this is not usual on reservoir banks and I am not aware of any such Vegetation Management Plan having been produced.

- 4.51 In addition the landscaping scheme Mr Wilson refers to is not the landscaping scheme being considered as part of the appeal submission which has been produced by the appellants more recently appointed planning consultants and is dated 07/09/2020 with the reference P20-0831-02 and no revisions.
- 4.52 Dr Ellis concludes that there is uncertainty regarding the proper supervision, construction and filling of the reservoir which may have been undertaken without the supervision of a reservoir panel engineer. This is relevant to the impact of leakage on groundwater and has other implications for flood risk and safety. It should therefore be considered relevant to the determination of the planning application rather than only a matter for the Environment Agency.
- 4.53 There is also uncertainty about the proposed landscaping scheme and its impacts in terms of reservoir inspection and future safety and therefore the safety and amenity of local residents. The scheme is therefore contrary to the provisions of policy LPRSP15 of the Maidstone Local Plan 2017.

(vi) Neighbours Amenity

- 4.54 The 6m high bank is an artificial manmade feature in the landscape, which at over three times the height of an average person (1.75m) at the human scale changes the level of the horizon and blocks any views across what was previously a low lying agricultural field. This significant development the subject of the appeal results in a loss of visual amenity, a sense of enclosure and has an overbearing impact on the occupiers of neighbouring properties to the west of the site, including my client at Hertsfield Barn.
- 4.55 The bank is frequently walked on by staff and visiting members of the public who have paid to use the fishing lakes. Vehicles are also driven onto the bank. My client has suffered the loss of privacy in his residential home and garden for many years now. A number of photos illustrating views from my client's home are produced in the HCUK Heritage report.

- 4.56 The suggestion that members of the public fishing will be inward looking is simply not sufficient to overcome the perception of a loss of privacy from persons overlooking from an artificially elevated position.
- 4.57 The proposed landscaping scheme produced to try and mitigate the loss of privacy will further enclose the residential property and increase the overbearing impact. The issue that is causing the harm is the height, scale and mass of the banks and the proximity to the residential properties, including Hertsfield Barn and this has not been addressed.
- 4.58 Although this is an EIA development, in which alternatives are purportedly considered, the appellant has consistently failed to consider a scheme with banks set away from the site boundaries, with gentle slopes over a longer distance which could potentially provide fishing lakes and mitigate the harm to neighbour's amenity. In reality the consideration of alternatives has been constrained (to the developer's advantage) by the fait accompli caused by this vast unauthorised development having already taken place.
- 4.59 It is considered planning conditions could not mitigate the harm caused and concluded that the proposal is therefore contrary to the provisions of the NPPF (notably para 8(b)&(c)); policy LPRSP15 of the Local Plan Review 2024, and policy DM11 of the Kent Minerals and Waste Local Plan 2020.

(vii) Mineral Safeguarding

- 4.60 KCC Minerals provided a consultee response on 25/11/2019 as the application and now the appeal site, is located within a Minerals Safeguarded Area. The text from the short email is copied in full below:

Looking through Next Phase's submission I see that the need to address mineral safeguarding is under 'Other Matters' 1.8 to 1.12. The type and quantity of the safeguarded mineral has not been investigated, so it is unclear if there is or is not an economically important deposit of Sub- Alluvial Terrace Sands and Gravel.

Thus, this is not really a Mineral Assessment as it excludes any possibility of being able to invoke exemption criterion 1 of Policy DM 7, which is the first step any such assessment should

look at. The argument being advanced is that any extraction of mineral (but this is entirely unquantified) would adversely impact the 'immediately adjacent' River Beult SSSI.

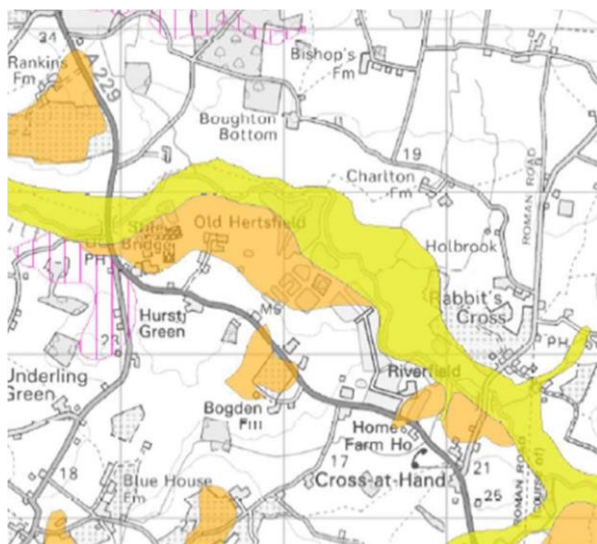
Again, this is not qualified with evidence, but asserted. Thus, the argument that could be proposed, is that any extraction of mineral would be unacceptable against criterion 3 of Policy DM 7. In that it would adversely affect the environment (the river Beult SSSI) and could not satisfy Policy DM 9 that is linked to criterion 3 of safeguarding exemption Policy DM 7.

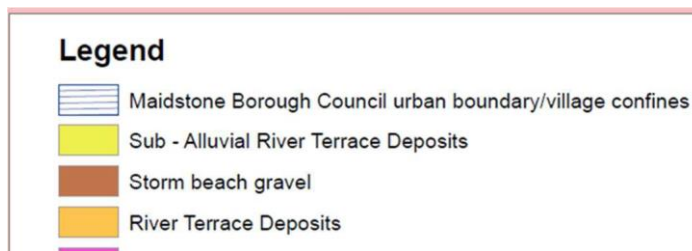
If they can more fully evidence the impact on the adjacent SSSI, or indeed you are satisfied that there would be an unavoidable adverse impact, then the above argument I think may be able to be advanced.

- 4.61 As such the LPA were advised that the applicant's submission did not comprise a full assessment as to the type and quantity of material as this has not been investigated therefore it is unclear as to whether or not there is an economically important deposits therefore the exemption criterion 1 of the exemptions to Policy DM7 are excluded.
- 4.62 No further evidence on this aspect of the application was requested from or advanced by the applicant post this consultee response.
- 4.63 The LPA officer report to the Planning Committee on the 23/01/2020 (Appendix 9) states at para 7.63 that it is confirmed that the assessment must be made from a predevelopment position, and then goes on to say *'In my view, there are certainly risks of harmful impacts upon the SSSI from a potential quarry in such close proximity to the River Beult and also from noise and disturbance to nearby properties. One may argue that this has/could occur as a result of the proposed development through the extraction and importation of soil, and general earthworks but no known harm to the SSSI has occurred as a result of the development so far.'* This does not respond to the issues raised by the consultee.
- 4.64 The officer report then goes on to comment on the ecological and environmental assessments made in connection with the existing unlawful development the subject of the appeal, rather than any evidence specifically concerning mineral extraction. The report then concludes *'To my mind it is not practicable to have quarry operations in such close proximity to the River Beult SSSI*

due to the potential risks to the SSSI and to a lesser degree the potential impact upon nearby residential properties. It is therefore considered that criterion 2 of policy DM7 is satisfied. KCC Minerals have been consulted and advise that there is a basis for invoking the 'exemption' to minerals extraction and it is considered that the above reasons are sufficient.'

- 4.65 The unlawful development on site today commenced 17 years ago and were purported to have been completed 9 years ago, apart from Lake 1 and some landscaping. However, as the works did not benefit from a planning permission and were largely unregulated there was no baseline ecological assessment prior to the commencement of works against which to measure the impacts. The officer report is pure speculation and does not add credence to the suggestion that mineral extraction would be harmful.
- 4.66 As such it appears that the LPAs conclusions with regard to the potential impacts on the River Beult SSSI of any mineral extraction from the appeal site (the quantity, type and value of which are unknown) amounted to an officer opinion that is unsupported by any specific evidence as required in the policy criterion.
- 4.67 Since the refusal of consent in March 2020 there has been an early partial review of the plan and a revised KMWLP was adopted in September 2020. Part of the appeal site which is covered by the unlawful reservoirs and imported material remain in The Safeguarded area for River Terrace Deposits as illustrated below:





- 4.68 The proximity of the River Beult SSSI was known to KCC when the area was designated as a Minerals Safeguarded Area previously and has again been confirmed as being safeguarded in the 2020 adopted partial review.
- 4.69 River Terrace Deposits are commonly close to rivers, where gravel and other aggregates and mineral deposits are found. The foot note to Policy CMS2 states that 'Sites identified in the Minerals Sites Plan will generally be where viable mineral resources are known to exist, where landowners are supportive of mineral development taking place and where MPAs consider that planning applications are likely to be acceptable in principle in planning terms'.
- 4.70 If mineral extraction were approved any consent would of course be subject to regulatory controls to ensure the site was operated in a controlled manner and restoration, such as the creation of lakes, and ecological enhancements, are all part of such schemes. As such the LPAs conclusions with regard to the safeguarding are illogical. In essence it would mean that no mineral extraction site could be allowed near an SSSI, therefore any such designation is inappropriate.
- 4.71 The officer Committee report continues 'It is therefore considered that criterion 2 of policy DM7 is satisfied. KCC Minerals have been consulted and advise that there is a basis for invoking the exemption' to minerals extraction and it is considered that the above reasons are sufficient.' This is a misrepresentation of the KCC consultee response (copied at 4.60 above) which was much more considered.
- 4.72 It is apparent that there has been no thorough assessment of the type and quantity of the geological deposits on this part of the site, therefore no assessment of the impacts of extraction is possible, and as such there can be no conclusions as to the impacts of any such extraction on the SSSI.
- 4.73 The appeal scheme which includes land raising by the importation and compaction of large amounts of illegally imported waste material up to 6m in height from the 2003 predevelopment

ground level, in effect neutralises the potential for mineral extraction from the area south of the river.

- 4.74 The appeal scheme must be assessed from a 2003 predevelopment context, i.e. a low lying agricultural field. The developer must not gain an unfair advantage from the retrospective nature of this EIA development and permission should only be granted in 'exceptional circumstances'.
- 4.75 The fact that the waste material is on site cannot logically amount to an 'exceptional circumstance' without it providing the developer with an unfair advantage. It highly unlikely that permission would be granted for this development if a planning application for the scheme were submitted as a proposal, rather than as a retrospective scheme.
- 4.76 No evidence or adequate justification for an exemption from the safeguarding against the criteria in Policy DM7 has been provided by the appellant or the LPA as such the appeal scheme is contrary to Policies CSM3 and DM7 of the Kent Minerals and Waste Plan 2020.

(viii) Waste Hierarchy Principles and Policies

- 4.77 There has been no justification provided for the creation of reservoirs on top of a 4m high plateau of compacted waste material. The importation of the waste material was recognised as a waste disposal operation by the LPA in the reasons for the issue of the EN.
- 4.78 In 2008 the estimated quantum of imported waste to the site was in the region of 645,858 m³. This was using LIDAR surveys which do not include material lying under water bodies.
- 4.79 The 11/1948 application documents initially referred to the need to import a further 51,000m³ of waste material to complete Lake 1 as part of the proposed development. However, it is noted that in the 23/01/2020 officer report to Committee reference is now made to the importation of an estimates additional 89,000m³ of waste being required to complete the appeal scheme. This additional importation of waste does not appear to be specified in the application description.
- 4.80 At 7.76 of the officer Committee agenda report (23/01/2020) it is stated that the EA regulated the materials imported onto the site in the period from 2004 when the 2003 permission was

purported to being implemented to the cessation of importation. However, it should be noted that there was only an exemption licence which was issued on the basis that there was planning permission for the development taking place (which, of course, there was not). From early discussions with Barrie Neaves of the EA it is understood that any regulation of activity by the EA at this time under the exemption regime would have been a light touch.

- 4.81 As can be seen from the events leading up to the issue of the TSN and EN the 2003 planning permission was never lawfully implemented, as such logically the EA waste disposal exemption licence could not have been lawful or valid either, so the importation could not have been in accordance with a lawful waste disposal licence.
- 4.82 No evidence has been provided by the appellant or the LPA to demonstrate that in the creation of fishing lakes it was necessary to import waste material across a large part of the site to create the plateau, or that there were no options for the waste to be disposed of elsewhere in accordance with the waste hierarchy.
- 4.83 The officer report refers to EA exemption licences originally granted in February 2004 for an estimated 1.5 million tonnes of material, and in March 2007 for a further 1 million tonnes of material. This is a vast quantity of material which should under the planning regime have been regulated by the Waste Planning Authority, in this case KCC.
- 4.84 Further in the absence of a planning permission at the time of importation, and therefore any waste exemption licence, the deposit of waste material on the land was unregulated and there is no certainty that all deposited waste material was inert.
- 4.85 Policy CWS2 requires proposals to demonstrate how the proposal will help drive waste to ascend the Waste Hierarchy whenever possible. This is a retrospective application which seeks to retain a vast quantity of waste material, but this issue has not been addressed in the application or the appeal submission.
- 4.86 It should also be assessed in the context of no development (pre 2003) so that the developer will not gain an unfair advantage from the retrospective nature of this EIA development proposal.
- 4.87 The fact that the material is on site cannot logically amount to an 'exceptional circumstance' without it providing the development with an unfair advantage, as it is unlikely that permission

would be granted for this development if an application for the scheme as a proposal, rather than as a retrospective scheme, were advanced.

- 4.88 On the basis of the information available it is concluded that the use of the site for waste disposal development conflicts with policies CSW2, CSW9 and CSW11 Kent Minerals and Waste Local Plan 2016

5. Conclusion

- 5.1 As noted above, it is the primary contention of Mr David Padden and the Hertsfield Residents Association that this appeal is being improperly pursued by Taytime. Without prejudice to this and in any event, it is considered in conclusion that the two reasons for refusal as stated in the LPAs decision notice do not comprise the full reasons for why the development the subject of this appeal should be refused.
- 5.2 It has been demonstrated that on proper assessment the proposal, which includes the retention of the vast quantum of waste material, has detrimental impacts on:
- Landscape and Visual Character of the Area,
 - A Designated Heritage Asset (setting and fabric),
 - Ground Water Flooding,
 - Neighbour's Amenity, and
 - Mineral Safeguarding.
- 5.3 In addition neither the appellant nor the LPA have provided a justification for the importation of vast quantities of waste material to create lakes on 4m high plateaus with 2m high banks, or adequately dealt with an assessment of the policies for waste development.
- 5.4 Other matters for concern include reservoir construction, safety, and monitoring.
- 5.5 The public benefits of the proposed scheme in terms of the provision of a facility for recreational fishing and small scale employment opportunities are limited and do not outweigh the harm caused.
- 5.6 Having considered the issues it is concluded that planning conditions could not fully mitigate the harm arising from the unlawful development as assessed in this report.
- 5.7 As an alternative a much reduced scheme could potentially provide the leisure and limited employment benefits without causing the harm, but this has not been explored by the appellant in the ES.
- 5.8 It is concluded that the scheme the subject of this appeal is contrary to the policies and advice

in the NPPF, adopted development plan policy and guidance.

- 5.9 Even if this were not the case, because this development is unauthorized EIA development, permission should still not be granted unless the appellant can show exceptional circumstances. In addition, a developer who has carried out such development must not be afforded any improper advantage by passing the need for EIA. There are many aspects of the application and the appeal which are directly contrary to this principle. The appellant has in many respects gained advantage from the unlawful conduct. Allowing this appeal would be the final vindication of this unlawfulness and undermine the credibility of the planning system itself.
- 5.10 No exceptional circumstances exist. If the 'exceptional circumstances' proffered by the LPA and the appellant were accepted, which in summary amount to the large quantity of unlawful imported material and the length of time that material has been on site, it would in effect allow the appellant to benefit from the fact the development is retrospective.
- 5.11 It is therefore respectfully requested that this appeal be dismissed for the wider range of reasons as set out in the report and submission than the original basis for refusal by the LPA.

List of Abbreviations

ABBREVIATIONS	
EA	Environment Agency
EIA	Environmental Impact Assessment
EN	Enforcement Notice 2008
ES	Environmental Statement (versions 2011; 2015; 2019)
JR	Judicial Review
KCC	Kent County Council
KMWLP	Kent Minerals and Waste Local Plan 2020
LFLA	Lead Flood Authority
LPA	Local Planning Authority
MLCA	Maidstone Borough Landscape Character Assessment
MLP	Maidstone Local Plan 2017
MNP	Marden Neighbourhood Plan
NPPF	National Planning Policy Framework
PIs	Planning Inspectorate
TSN	Temporary Stop Notice 2008
TSOL	Treasury Solicitor

List of Documents

Background documents			
1		Development Planning Policy (current)	
2	12/08/2003	2003 planning application documents including the delegated officer report (12/08/2003)	
3	30/04/2008	2008 Temporary Stop Notice	
4	12/09/2008	2008 Enforcement notice	
5	07/06/2012	Officer agenda report to Committee	
6	07/06/2012	2012 transcript of the meeting	
7	22/01/2014	High Court Judgement (against 2012 decision)	
8	18/05/2015	EN Appeal and Costs decision	
9	23/01/2020	Officer committee agenda report for 11/1948	
10	23/01/2020	Officer update report	
11	23/01/2020	2012 transcript of committee meeting for 11/1948	
12	05/03/2020	Committee agenda officer report	
13	05/03/2020	transcript of Committee meeting	
14	12/03/2020	Decision notice 11/1948	
Objection and witness material:			
15	16/02/2011	Objection to the application	Rebecca Lord
16	13/11/2012	DP 1 st witness statement to the Court for the Judicial Review of the 2012 application decision	David Padden
17	29/11/2013	DP 2 nd witness statement to the Court & Dr Fox	David Padden
18	30/10/2013	RL Witness Statement to the Court	Rebecca Lord
19	06/03/2015	Letter in response to ES scoping	Rebecca Lord
20	27/03/2015	Proof of evidence to the EN Inquiry	Rebecca Lord
21	03/09/2015	Objection to the application	David Padden

22	18/01/2018	Objection to the application (in parts due to size)	Rebecca Lord, Dr Ellis and Fabrik reports
23	10/05/2019	Objection to the application	Rebecca Lord and Geosmart
24	04/12/2019	Objection to the application	Rebecca Lord and Geosmart
25	22/01/2020	Objection note to Members	Rebecca Lord
26	22/01/2020	Photo and document bundle to Members	Rebecca Lord
27	03/03/2020	Objection - Suggested reasons for refusal	Rebecca Lord
28	03/03/2020	Objection note to Members	Rebecca Lord
29	03/03/2020	Objection – extract of 2012 officer report to Members	Rebecca Lord
30	05/03/2020	Objection late note to members	Rebecca Lord
31	02/11/2020	Letter to the inspectorate on the Appeal process	Rebecca Lord