

STATEMENT OF COMMON GROUND



BETWEEN MONK LAKES LIMITED (IN LIQUIDATION) & MAIDSTONE BOROUGH COUNCIL

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

PINS REF: APP/U2235/W/20/3259300
LPA REF: 11/1948

DATE: DECEMBER 2024

VERSION: FINAL

SIGNED: 	SIGNED: 
NAME: SUE KING	NAME: EMILY HARRISON, TAYTIME LIMITED
ON BEHALF OF: MAIDSTONE BOROUGH COUNCIL	ON BEHALF OF: MONK LAKES LIMITED (IN LIQUIDATION)
DATE: 12.12.2024	DATE: 12.12.2024

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1. INTRODUCTION

- 1.1 This Statement of Common Ground (SoCG) was initially prepared by Pegasus Group and then updated by Maidstone Borough Council and Taytime Limited on behalf of Monk Lakes Limited (in liquidation) ("the Appellant").
- 1.2 It has been prepared in conjunction with Maidstone Borough Council (MBC), the Local Planning Authority (LPA) and relates to a Section 78 Appeal concerning Land at Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU ("the Appeal Site").
- 1.3 The purpose of the SoCG is to identify the areas where the principal parties (the Appellant and the LPA) are in agreement and to narrow down the issues that remain in dispute. This will allow the Appeal Hearing to focus on the most pertinent issues.
- 1.4 The application (ref. 11/1948) which is the subject of this appeal was considered by the Council's Planning Committee on 23rd January 2020 and then deferred to be re-considered at the Planning Committee meeting on 5th March 2020. The application was refused on 12th March 2020.
- 1.5 An appeal hearing was heard on 5th October 2022 and the appeal was dismissed on 21st November 2022 by Inspector O S Woodward due to a technicality regarding validity of the appellant.
- 1.6 This decision was conceded by PINS but defended by an Interested Party Mr D Padden. The outcome has returned the appeal for redetermination at this current appeal.

2. SITE DESCRIPTION

Location

- 2.1 The Appeal Site is situated within the administrative area of Maidstone Borough Council and is located on land at Monk Lakes, Staplehurst Road, approximately 8.9km south east of Maidstone Town Centre.

Appeal Site

- 2.2 The Appeal Site covers an area of approximately 35 hectares and comprises five recreational fishing lakes; two of which are ground level lakes known as 'Bridges' and 'Puma' and three of which are raised above ground level, known as Lakes 1, 2, and 3. Lakes 'Bridges', 'Puma' and Lakes 2 and 3 are complete, and excavation works for Lake 1 have also been completed. However further construction works are required to complete Lake 1. None of the lakes benefit from planning permission and are all the subject of this appeal.
- 2.3 The Appeal Site forms part of a wider recreational fishing site, known as 'Monk Lakes', which also includes Mallard Lake, and Match Lakes. These are located to the south-east of the Appeal Site. Match Lakes consists of four separate lakes which are raised higher than the original ground level; Mallard Lake is sited lower. All of these lakes benefit from planning permission under 09/1380.
- 2.4 Three of the four lakes comprising Match Lakes, as the name suggests, facilitate competition angling, whereas the fourth lake (identified in the context plan below as Match Lake 1) and all other lakes in the Monk Lakes complex (including the Appeal Site) are for recreational fishing at the anglers' leisure.
- 2.5 A Context Plan illustrating the Appeal Site (outlined in red) in context with the wider Monk Lakes facility is included below at Figure 1.

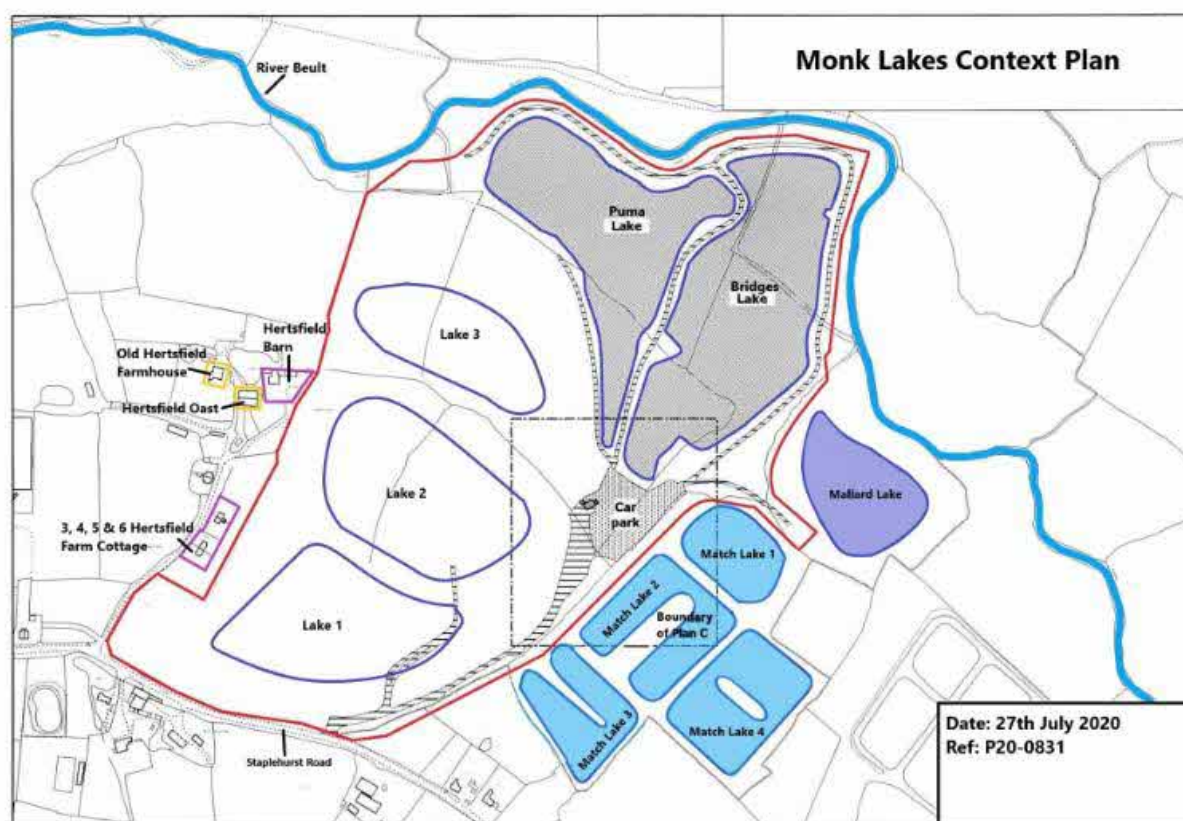


Figure 1: Appeal Site Context Plan

- 2.6 The Appeal Site lies to the north of the Staplehurst Road (A229), approximately 3.5km south of Linton Crossroads and approximately 3km northwest of Staplehurst which lies within Marden Parish. Vehicular access to the Site is provided via Staplehurst Road to the south, which leads to a car park area and building comprising a shop and serving refreshments to visiting anglers, with further internal tracks which provide access through the Site to the lakes. The shop and refreshment buildings were granted temporary permission (ref. 09/2027) on 4th January 2010; however, the temporary period has since expired.
- 2.7 The Appeal Site is predominantly bound by agricultural land, with several commercial uses in the wider surrounding area along Staplehurst Road. The nearest residential properties are located along Hertsfield Lane immediately to the west of the Site. These properties comprise Hertsfield Farm Cottages; Old Hertsfield Farmhouse (Grade II); Hertsfield Barn (Grade II) which is located approximately 50m east of Old Hertsfield Farmhouse; and Hertsfield Oast. The properties which are specifically referred to in the reasons for refusal (nos. 3, 4, 5 and 6 Hertsfield Farm Cottages and Hertsfield Barn) are outlined in purple in the Context Plan

included at Figure 1. There are also a number of residential properties to the south of the Appeal Site, on the opposite side of Staplehurst Road (A229).

- 2.8 There are a number of commercial premises within the wider surrounding area along Staplehurst Road, including Millbrook Garden Centre and Skinners Sheds, approximately 0.2 miles to the south-east, and Staplehurst Transits (a storage and distribution depot) less than 0.5 miles to the south-east.
- 2.9 To the south east of the Appeal Site, beyond Mallard and Match Lakes, lies the Riverfield Fish Farm. This facility is not owned by the Appellant and does not form part of the Appeal Site. Whilst the Appeal Site did historically form part of Riverfield Fish Farm, the Monks Lake fishing lakes complex is now entirely separate to it and operated under different ownership.
- 2.10 The Appeal Site is bound by the River Beult to the north which is a Site of Special Scientific Interest (SSSI).
- 2.11 There is a Public Right of Way (PROW) (footpath ref. KM129) located on the northern side of the River Beult which runs east to west.

Flood Zone

- 2.12 According to the Environment Agency's indicative flood maps, the northern part of the Appeal Site lies within Flood Zone 2 (between a 1 in 100 and 1 in 1,000 annual probability of flooding) and Flood Zone 3 (1 in 100 or greater annual probability of flooding). An extract of the Environment Agency's indicative flood map is included in Figure 3 below.

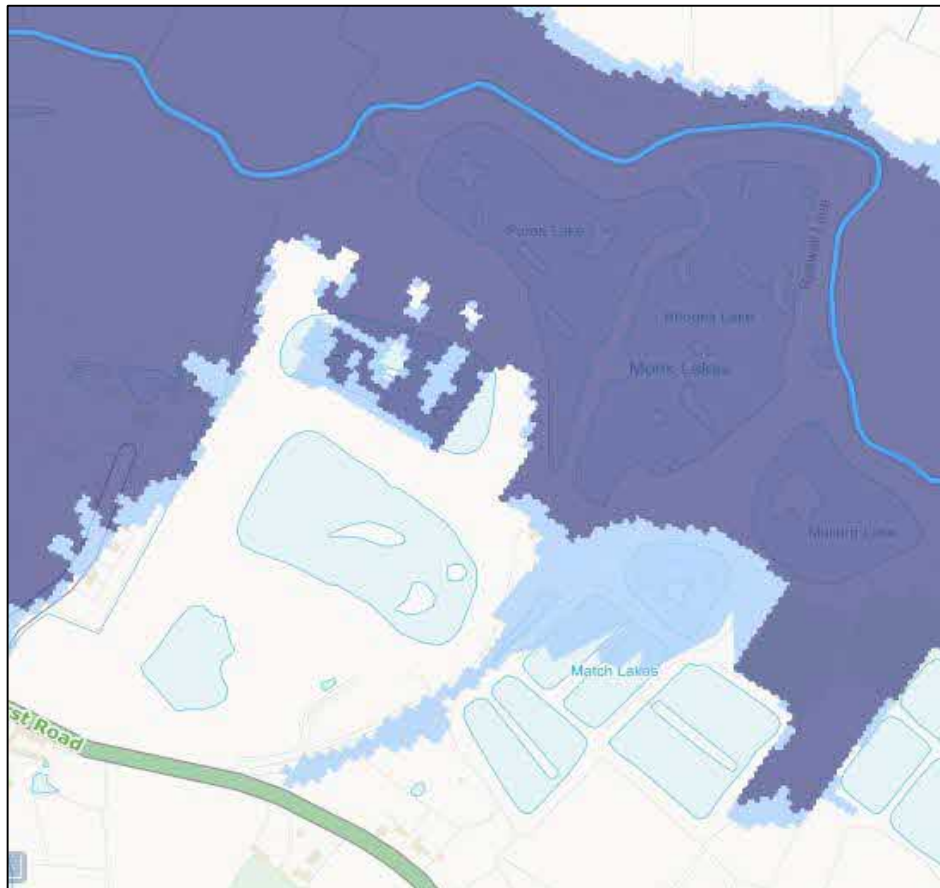


Figure 2: Extract of Environment Agency's Flood Map



Ecological Designations

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

Trees

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

Historic Environment

- 2.15 The Appeal Site is not located within a Conservation Area and does not include any Listed Buildings. There are two Listed Buildings within close proximity to the western boundary of the Appeal Site; Old Hertsfield Farmhouse (Grade II) and Barn about 50 metres east of Old Hertsfield Farmhouse (Grade II); however, the Reason for Refusal only makes reference to the Grade II Listed Hertsfield Barn.

3. SITE BACKGROUND AND PLANNING HISTORY

3.1 There is a lengthy planning history associated with the Site dating back across the last two decades, which is set out within this section.

3.2 A table summary of the main relevant planning and enforcement history associated with this site are set out in the table below:

Table 1 - Summary of main relevant planning and enforcement history

Application/ Enforcement Notice Ref.	Description of Development	Decision	Date of Decision/ Issue
00/1162	Change of use of land and engineering works to create an extension to the existing fish farm	Approved	2 nd January 2001
03/0836	Change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing.	Approved	22 nd September 2003
LDMB/LEG06/ 00504	Enforcement notice served	Subsequently appealed	12 th September 2008
09/1380	Retrospective application for the change of use of existing lakes from fish farm to recreational angling and retention of ancillary car parking and access to site	Approved	26 th November 2019
09/2027	Retrospective application for the retention of buildings and mobile facilities to serve recreational angling	Approved for temporary period of 3 years	4 th January 2010
11/1948	Part retrospective planning application for the retention of two lakes known as 'Bridges' and 'Puma' and works to create 3 additional lakes all for recreational fishing, erection of clubhouse, building and associated works and landscaping	Approved	6 th September 2012
		Permission quashed by the High Court	22 nd January 2014
APP/U2235/C/ 08/2087987	Enforcement Appeal Decision	Allowed solely in relation to ground (g) of Section 174 of the Town and Country Planning Act (as amended), which relates to the time period for compliance with the Enforcement Notice)	18 th May 2015

11/1948	Part retrospective planning application for the retention of two lakes known as 'Bridges' and 'Puma' and works to create 3 additional lakes all for recreational fishing, erection of clubhouse, building and associated works and landscaping	Supplementary Environmental Statement submitted to the Council	July 2015
		New Environmental Statement submitted to the Council	February 2019
		Subsequently refused by the Council at Planning Committee	12 th March 2020

Site Background

- 3.3 An overview of the Site background is set out below to provide context to the lengthy planning history.
- 3.4 In January 2001, planning permission ref. 00/1162 was granted for change of use of land and engineering works as a westward extension to River Fish Farm to form new lakes for farming of coldwater fish. These lakes (Match and Mallard Lakes) lie to the east of the Appeal Site, outside of the site boundary. However, the planning permission also allowed for provision of a temporary works access to the lakes from Staplehurst Road, which is included within the Appeal Site.
- 3.5 Following this, in September 2003 planning permission ref. 03/0836 was granted for the change of use and physical works to the Appeal Site to facilitate an extension of the Riverfield Fish Farm complex for recreational fishing. This included the formation of numerous ponds and lakes (both at ground level and some raised above ground level), the erection of a clubhouse building and the formation of a car park. The permission also included extended access from Staplehurst Road into the Site.
- 3.6 MBC served an Enforcement Notice for the Site in September 2008 predominantly on the grounds that between 2003 and 2008 works were being carried out that were not in accordance with the permission granted under application reference 03/0836. The Enforcement Notice was subsequently appealed by the Appellant.
- 3.7 Following the Enforcement Notice being issued, in November 2009, the Appellant submitted an application for retrospective planning permission ref. 09/1380 which was granted for the change of use of Mallard Lake and Match Lakes, from a fish farm to recreational angling use, including retention of the car park and access to the site. This main access from Staplehurst Road into the Monk Lakes complex had originally been provided on a temporary basis under permission ref. 00/1162, however its permanent retention was secured through this permission.

- 3.8 Additionally, retrospective permission ref. 09/2027 was also granted in January 2010, for a temporary period of 3 years, for the retention of buildings and mobile facilities to serve recreational angling on the site.
- 3.9 Following this, a part retrospective application ref. 11/1948 (which forms the basis of the appeal scheme) was submitted in November 2011 for the retention of Lakes Bridges and Puma and works to create 3 additional lakes (known as Lakes 1, 2, and 3) for recreational fishing; together with erection of a clubhouse building and associated works, and landscaping. This application was granted by MBC on 6th September 2012. At this point, works to the Lakes continued, however these ceased following the filing of a Judicial Review by the adjoining neighbour to the Site.
- 3.10 The permission was quashed by the High Court in January 2014. The summarised grounds on which the High Court quashed the previous decision were:
1. Failure by the Council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for Environmental Impact Assessment (EIA) development; and
 2. Failure by the Council to adequately consider groundwater flooding within the EIA process.
- 3.11 Following this, the Hearing for the appeal (ref. APP/U2235/C/08/2087987) against the Enforcement Notice was held on 28th April 2015.
- 3.12 The appeal decision was issued on 18th May 2015 and was allowed solely in relation to ground (g) of Section 174 of the Town and Country Planning Act (as amended), which relates to the time period for compliance with the Enforcement Notice. This applied to the works that required material to be removed or used to fill holes and depressions and restore the land to its previous condition, amending it to allow for a total of 22 months (to April 2017).
- 3.13 MBC's Enforcement team have held any action regarding the Enforcement Notice in abeyance pending the re-determination of the application.
- 3.14 The appellant submitted an updated Environmental Statement in July 2015. A summary of the history relating to the Environmental Statement element of the application is referenced below.

Table 2 - Summary of history of the Environmental Statement

Submission Date	Document	Status/Explanatory Notes
November 2011	Original ES	Accompanies original submission
July 2015	Supplementary ES	Provides further information to Nov 2011 (itself is included within the July 2015 submission) Provides baseline environmental information for the periods between 2003 and 2011; incorporates the findings and conclusions of the 2011 Environmental Statement in full and where necessary provides updated and amended as necessary information by up to date technical reports to the current day.
February 2019	New ES	Provided in response to formal Reg 22 request and collates all relevant information to assess the environmental effects and identify the key environmental impacts that could arise, including consideration of a pre-2003 baseline. This submission supersedes earlier ES submissions. Following disciplines addressed: - Flood Risk, Hydrology, Hydrogeology And Groundwater And Drainage (significant further work) - Ecological Assessment (updated surveys) - Landscape & Visual Impact - Conservation & Cultural Heritage - Cumulative Impact Assessment & Conclusion
October 2019	ES Addendum	Review of hydrological matters in relation to updated land survey on lakes 1-3; review of conclusions previously drawn and update of relevant plans seeking retrospective permission

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

3.16 In August 2019 the LPA commissioned its own topographical survey of the site to verify the accuracy of the appellant's plans. Following this, the appellant submitted amended plans relating to Lakes 1-3, and the proposed clubhouse, and an addendum to the Environmental Statement in October/November 2019.

3.17 The amended application with all the additional information was considered by MBC's Planning Committee for re-determination on 5th March 2020 with a recommendation for approval, where it was resolved to refuse the application.

3.18 Following the refusal of planning application on 12th March 2020, MBC's Enforcement team have held any actions in abeyance following the outcome of this current appeal.

4. THE APPEAL PROPOSAL

- 4.1 The Planning Application, now the subject of this Appeal, seeks planning permission for the following development:

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

- 4.2 The application seeks retrospective permission for the retention of the 2 below ground lakes (Bridges and Puma) in their current form in the northeast corner of the site and raised Lakes 2 and 3 on the west side of the site, also in their current form. Permission is also sought for raised Lake 1 and this requires additional works to complete mainly involving raising the levels of the lake bed and reductions in the levels of the lake banks.
- 4.3 ‘Bridges’ and ‘Puma’ lakes are excavated below ground with their water level just below ground level. Lakes 1, 2, and 3 are/would be between 5m to 6.2m above the previous ground level and have sloped sides which run down to the west boundary with some Hertsfield Road properties, to the south boundary with the A229, and within the site itself. The depth of water would be around 2m.
- 4.4 Landscaping is proposed largely in the form of woodland planting along the west and south site boundaries and on the lake slopes, and existing landscaping would be retained around Puma and Bridges lakes.
- 4.5 A new clubhouse is proposed to provide facilities for anglers which would be in a similar position as the temporary buildings adjacent to the car park which will be removed. The building would be single storey with hipped roofs and finished in timber boarding and clay roof tiles. It would have a floor area of 266m² and provide toilets and showers, offices, shop, kitchen, and dining area. The existing car park would be formalised with new surfacing and marked spaces and lowered in the region of 1m from its present position to provide flood compensation. New landscaping would be introduced in and around the car park/clubhouse.

5. AMENDMENTS TO THE 2014 QUASHED APPLICATION

- 5.1 The changes from the originally proposed development consist of lower sloped banks in places around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in places of no more than 1m. The western banks also begin to rise closer to the western boundary in some places. The corners of the lakes are also positioned at slightly different angles and the islands within the centre of the lakes are also a marginally different shape and in slightly different locations.
- 5.2 The orientation of the clubhouse was altered since the application was originally submitted, however is broadly in the same location, to the east of Lake 2. The roof pitch was made shallower, and the building raised around 2m above ground level.
- 5.3 An amended Proposed Landscaping Plan (ref. ref. P20-0831_02 Rev A) has been submitted as part of the appeal and this supersedes the Proposed Landscaping Plan (ref. 0183-04/03 Rev D) which was previously submitted to the Council. It is agreed that the changes are not material, and that the plan has been updated only to provide an accurate representation of the existing landscaping which is proposed to be retained as part of the scheme. Sectional drawings (ref. P20 0831-01 Sheets 1 to 4) have also been produced to demonstrate the distance between the lakes and Hertsfield Barn and the gradient of the lakes.
- 5.4 This updated Landscaping Plan does not seek to alter any new landscaping proposed but just to accurately reflect the existing landscaping on Site which is proposed to be retained. The key changes provide for the additional inclusion and retention of:

Area of existing woodland scrub comprising self-grown willow and scrub land to the south east of Lake Puma;

Existing tree planting and vegetation around boundaries of Lake Puma and Lake Bridges, and within the islands within both lakes;

Existing trees along the southern boundary of the River Beult;

Existing tree planting and vegetation around boundaries of Lakes 2 and 3, and within the islands within both lakes;

Indicative wood chipping areas around Lakes Puma and Bridges; and

Clarification of the proposed landscaping to the east of Lake 1 and between Lakes 1 and 2.

6. POLICY AND LEGISLATION

- 6.1 This section sets out the legislation and planning policy considerations and guidance contained within both national and local planning guidance which relate to the Appeal.

National Planning Policy

- 6.2 The National Planning Policy Framework (NPPF) was most recently published by the Government on 20th December 2023 and sets out the Government's national policy for planning and how these policies are to be applied.
- 6.3 The NPPF is a material consideration in the determination of the Appeal. Both the LPA and the Appellant have made reference to the NPPF in their Statements of Case.
- 6.4 The National Planning Practice Guidance (NPPG) provides further guidance and will be referred to by both parties.

The Development Plan

- 6.5 Both parties agree and accept that under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for Planning Permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.6 At the time of writing, the Statutory Development Plan covering the Appeal Site comprises:

Maidstone Borough Local Plan Review 2021-2038 (adopted 20th March 2024);

Kent Minerals and Waste Local Plan 2013-2030 (adopted September 2020 as amended by Early Partial Review); and

Marden Neighbourhood Plan 2017-2031 (adopted June 2020).

Proposals Map

- 6.7 The adopted Proposals Map, which accompanies the Maidstone Borough Local Plan Review (2024), confirms that the Appeal Site is partially within the KCC Minerals Safeguarding Areas as shown in Figure 3 below.

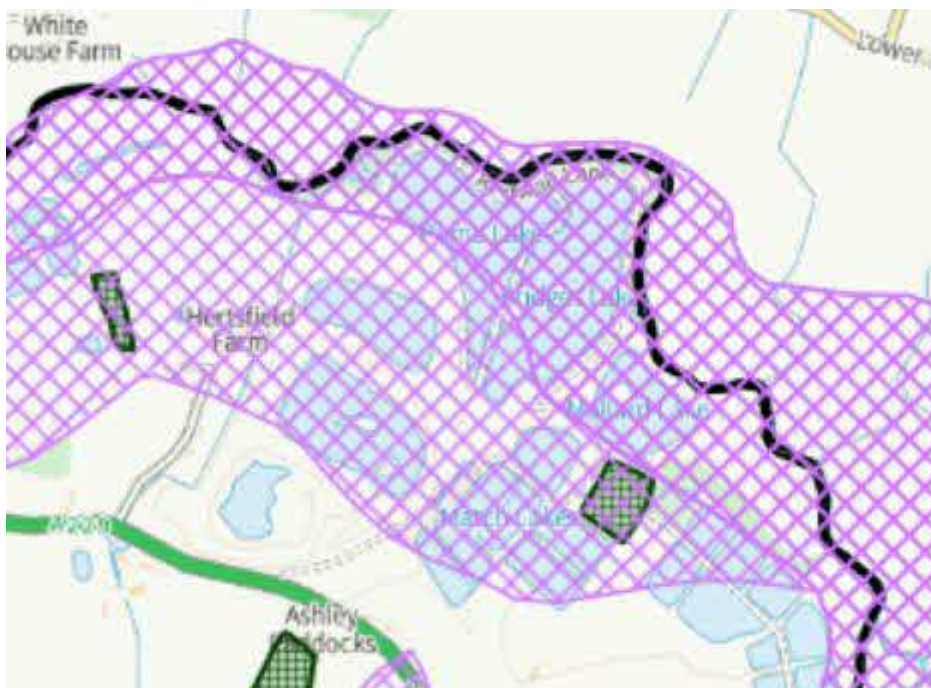
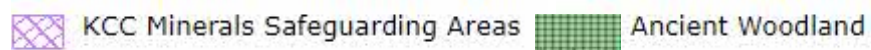


Figure 3: Proposals Map Extract – KCC Minerals Safeguarding Areas.



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

LPRSS1 – Maidstone borough spatial strategy

LPRSP9 – Development in the Countryside

LPRSP11 – Economic development

LPRSP14(A) – Natural Environment

LPRSP14(B) – Historic environment

LPRSP14(C) – Climate Change

LPRSP15 – Principles of good design

LPRCD6 – Expansion of existing businesses in rural areas

LPRTRA2 - Assessing the transport impacts of development

LPRTRA4 – Parking standards

LPRENV1 – Development affecting heritage assets

LPRQD1 – Sustainable design

LPRQD2 – External Lighting

LPRQD4 – Design principles in the countryside

Marden Neighbourhood Plan

6.9 The Site is located within the boundary of the Marden Neighbourhood Plan (adopted July 2020). The key Neighbourhood Plan policies of relevance to this Appeal are:

Policy NE1 – Surface Water Management

Policy NE2 – Water Quality

Policy NE3 – Landscape Integration

Policy NE4 – Biodiversity and Habitats

Policy NE5 – Landscape Planting

Policy NE6 – Soil Conservation

Policy BE1 – Local Character

Policy BE3 – Sustainable Construction

Policy In3 – Traffic Generation

Policy E1 – Business and Employment

Kent Waste and Minerals Plan

6.10 The Waste and Mineral Plan policies of relevance to this Appeal are:

Policy DM7 – Safeguarding Mineral Resources

Legislation

6.11 Legislation relating to the Historic Environment is primarily set out within the Planning (Listed Buildings and Conservation Areas) Act 1990 which provides statutory protection for Listed Buildings and Conservation Areas.

6.12 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that:

"In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

6.13 The following are agreed as being relevant in terms of the Historic Environment by virtue of the presence of a nearby Listed Building and the potential for impact upon its setting:

Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990; and

The National Planning Policy Framework (2023) Chapter 16: Conserving and Enhancing the Historic Environment.

7. MATTERS IN AGREEMENT

7.1 This section sets out the matters in agreement between the Appellant and the LPA.

Appeal Site

7.2 The site area which comprises the Appeal Site is agreed. This area includes the area covering Lakes Puma, Bridges, and Lakes 1, 2, and 3. It is agreed that the Appeal Site has an area of approximately 35 ha.

Format of the Planning Application

7.3 It is agreed that the Planning Application seeks full planning permission for recreational fishing lakes which is partly retrospective in relation to Lake Bridges and Puma, and Lakes 2 and 3. Permission is sought for works to complete Lake 1 and for the erection of a clubhouse building, formalisation of the existing car park with new surfacing and associated landscaping around the site.

Development Plan Designations

7.4 It is agreed that the Appeal Site is within open countryside and partially within the Kent County Council Minerals Safeguarding Area. It is agreed that the proposed development falls within the Safeguarding Area for 'alluvial river terrace deposits' and 'river terrace deposits' under the Kent Minerals and Waste Local Plan (KMWLP) (adopted September 2020). It is agreed that the site meets the requirements of policy DM7 on the basis that extraction would not be appropriate in this location due to the potential unacceptable impacts to the River Beult SSSI.

7.5 It is agreed that 'full weight' is to be afforded to the adopted policies of the Maidstone Borough Local Plan Review, the Marden Neighbourhood Plan and the Kent Minerals and Waste Local Plan.

Flooding, Groundwater & Drainage

7.6 It is agreed that all groundwater, flooding, and drainage issues can be satisfactorily addressed and mitigated by the development subject to planning conditions and/or the legal agreement.

Landscape and Visual Impact Assessment

- 7.7 It is agreed that the proposed development is not considered to have an adverse impact with regards to Landscape and Visual Impacts, on the surrounding area subject to mitigation secured by planning conditions.

Ecology and Biodiversity

- 7.8 It is agreed that the proposed development will not have an adverse effect on the River Beult SSSI or other ecological designations or receptors subject to any necessary mitigation secured by planning conditions.

Highways

- 7.9 It is agreed that the proposed development is not considered to have any adverse impacts with regards to highway safety or capacity.

Impact on Heritage Assets

- 7.10 It is agreed that the impact on Heritage Assets relates solely to the setting of the Grade II listed Hertsfield Barn to the west of the Site.

Reasons for refusal relate solely to the impact arising from Lakes 1, 2, and 3 on Hertsfield Barn and 3, 4, 5, and 6 Hertsfield Farm Cottages

- 7.11 It is agreed that the reasons for refusal of application ref. 11/1948, which is subject to this appeal, relate solely to the impacts on heritage and amenity arising from Lakes 1, 2, and 3. It is agreed that the reasons for refusal do not relate to the impact arising from the other lakes for which planning permission is sought (Lakes Bridges and Puma).

Proposed Landscaping Plan

- 7.12 It is agreed that the updated Proposed Landscaping Plan (ref. P20-0831_02 Rev A) submitted as part of the appeal supersedes the Proposed Landscaping Plan (ref. 0183-04/03 Rev D) which was previously submitted to the Council and that this does not make a material change to the proposals.

Application/Appeal Plans

- 7.13 It is agreed that the Planning Application (forms, plans and supporting documents) fulfilled the requirements of the various regulations and national and local validation checklists. It is agreed that the plans that the appeal should be based on are as follows:

PDA-MON-101 (Site Location Plan)

0183-04/02 Rev H (Proposed Site Layout)

P20-0183-02 Rev A (Proposed Landscaping Plan)

0183-04/04 Rev B (Proposed Clubhouse and Car Park Layout)

0183-04/05 Rev B (Clubhouse - Proposed Floor Plans & Elevations)

0183-04/06 Rev A (Vehicular Access Point)

0183-04/07 (Flood Compensation Plan)

2675/ML/G Rev 1 (Flood Compensation Plan)

5881 3D-F Sections (Proposed Cross Sections Sheets 1 to 3)

Exceptional Circumstances

- 7.14 EIA case law has established that retrospective EIA development should only be granted in 'exceptional circumstances'. In considering the retrospective nature of the application, it is agreed that 'exceptional circumstances' exist. These relate primarily to the site's extensive and complex planning history and subsequent development that has occurred which represent a unique and unusual situation.

8. MATTERS IN DISPUTE

8.1 The issues that remain in dispute between the Appellant and MBC can be described as the following focused matters:

Issue 1 Whether there is any harm to the setting and significance of the Grade II listed Hertsfield Barn, based on the size, height, and proximity of the raised lakes, particularly the western bunding. The Appellant contends that there is no harm and the Council contends that there is less than substantial harm and this would not be outweighed by any public benefits from the development.

Issue 2 The impact of the development on the amenity of the occupants of Hertsfield Barn, and numbers 3, 4, 5, and 6 Hertsfield Farm Cottages, arising from loss of privacy and perceived overlooking from the anglers at an elevated position to these houses and gardens, based on the height and proximity of the raised lakes along the western boundary of the site.

8.2 Both parties will continue to work together before the start of the Appeal Hearing.

9. CONDITIONS

- 9.1 It is agreed that control over the form of the development can be achieved through the imposition of appropriate planning conditions. An agreed set of conditions is attached to this Statement at Appendix 1.

10. SECTION 106 AGREEMENT

10.1 The Section 106 Agreement secures the following:

1. To submit an Environmental Permit (EP) application within 6 months of permission being granted;
2. To submit an Amended Landscape Management Plan within 1 month of permission being granted;
3. To complete the landscaping along part of the western boundary with residential properties within 6 months of permission being granted;
4. To complete the surface water drainage works and groundwater mitigation works along the western boundary within 9 months of permission being granted;
5. To carry out an inspection within 3 months of completion of the Surface Water Drainage Works, with the Council and Kent County Council (LLFA), of the surface water drainage works to demonstrate that the works have been implemented in accordance with the approved details including a verification report;
6. To complete the flood compensation works within 12 months of permission being granted;
7. To start the soil importation within 6 months of the EP being granted;
8. To complete the soil importation within 3.5 years of the EP being issued;
9. To complete the development (excluding the clubhouse) in accordance with the approved details within 6 months of the completion of the soil importation;
10. To submit a land survey of the site to the Council to demonstrate that the development has been completed in accordance with the approved plans/details within 3 months of completion of the development; and
11. The sum of £1,500 to the Council in connection with the monitoring and administration of this Deed.

10.2 The legal agreement ensures that the appellant carries out various requirements to a timetable to ensure that the development is completed in a timely manner. It requires the appellant to verify that the development has been completed in accordance with the approved plans. In view of the scale, retrospective nature, and being EIA development, it is agreed that exceptionally, such measures are necessary and reasonable. It is agreed that the legal agreement is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

11. DECLARATION BY PARTIES TO THIS STATEMENT OF COMMON GROUND

- 11.1 This document is the Statement of Common Ground between Maidstone Borough Council and the Appellant and identifies matters that are both agreed and not agreed between these parties

APPENDIX 1

AGREED CONDITIONS

Agreed Conditions

If the Inspector is minded to allow the appeal, agreed conditions are set out below which are the same as were recommended in the LPAs committee report (with plans updated) and two additional conditions to reflect policy LPRQD1 (Sustainable Design) of the Local Plan Review

1. The development hereby permitted shall be carried out strictly in accordance with the following approved plans:

PDA-MON-101 (Site Location Plan)
0183-04/02 Rev H (Proposed Site Layout)
0183-04/04 Rev B (Proposed Clubhouse and Car Park Layout)
0183-04/05 Rev B (Clubhouse - Proposed Floor Plans & Elevations)
0183-04/06 Rev A (Vehicular Access Point)
0183-04/07 (Flood Compensation Plan)
2675/ML/G (Flood Compensation Plan)
5881 3D-F X Sections (Proposed Cross Sections Sheets 1 to 3)
P20-0831-02 (Proposed Landscaping Plan)
P20-0831-01 (Indicative Landscape Site Sections Sheets 1-4)

Reason: For the purpose of clarity, and to ensure a satisfactory appearance to the development and impact upon residential amenity.

2. Prior to the importation of any material, a Construction Management Plan and Code of Construction Practice shall be submitted to and approved in writing by the local planning. The approved details shall be fully implemented. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority.

The code shall include:

- a) An indicative programme for carrying out the works
- b) Measures to minimise the production of dust on the site(s)
- c) Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- d) Measures to minimise light intrusion from the site(s)
- e) Management of traffic visiting the site(s) including temporary parking or holding areas
- f) Provision of off-road parking for all site operatives
- g) Measures to limit the transfer of mud and material onto the public highway
- h) The location and design of site office(s) and storage compounds

Reason: In view of the scale and length of time to carry out the development and in the interests of highway safety and local amenity.

3. Prior to the importation of any material or the carrying out of any further development, the detailed design of the groundwater interceptor drain shall be submitted to and approved in writing by the Local Planning Authority. The detailed design should be supported by site-specific data, calculations, and justified assumptions that fit with the established hydrogeological conceptual site model and shall include the following:
- a) Detailed construction drawings showing all elements of the groundwater and surface water drainage system;
 - b) Calculations of the anticipated volume of groundwater to be intercepted by the system.
 - c) Sensitivity testing of the design to allow for uncertainties, including aquifer thickness and permeability, hydraulic gradient and future increases in groundwater level (e.g. due to climate change).
 - d) Confirmation (where possible) of the elevations of relevant off-site receptors.
 - e) A narrative explaining the operating assumptions behind the design, including how the groundwater drainage system would interact with the site surface water system and discharge to the river under a range of groundwater level and river stage conditions. This should be supported by hydrogeological cross-sections illustrating the conceptual site model.
 - f) A maintenance plan for the groundwater interceptor drain and surface drainage ditch, to ensure its long-term integrity and functionality. This should identify who is responsible for maintenance and a means of demonstrating that the plan is being adhered to.
 - g) Demonstration that the design will resist long-term threats to its integrity and effectiveness, such as climate change, settlement, further developments at the site, etc.

The scheme shall be completed in accordance with the approved details.

Reason: To protect neighbouring properties against potential groundwater level impacts.

4. Prior to the importation of any material or the carrying out of any further development, the following details shall be submitted to and approved in writing by the Local Planning Authority:
- a) A site inspection and groundwater level monitoring plan, to be implemented during construction of the groundwater interceptor drain and associated works, to verify that site conditions are consistent with the established hydrogeological conceptual site model and design assumptions. This should include a protocol for responding to any deviations that would impact on the effectiveness of the approved design, and reporting these to the Local Planning Authority.
- The groundwater level monitoring data shall be collated for submission to the Local Planning Authority in a verification report, upon completion of the groundwater interceptor drain works. The verification report shall also include the following information:
- i) Photographs of the excavations before and after placement of the drainage system components;
 - ii) As-built drawings showing the surveyed elevations of installed drainage system components.

Should any deviations from the established hydrogeological conceptual site model or design assumptions be identified, the contractor shall cease works and agree any proposed alterations to the design with the Local Planning Authority in writing, prior to their implementation.

Reason: To protect neighbouring properties against potential groundwater level impacts.

5. Prior to the importation of any material or the carrying out of any further development, the detailed design of the surface water drainage system, which shall be based on the strategy presented in Drawing 29431/001/SK03 prepared by Peter Brett Associates (3 July 2015), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved details.

Reason: To mitigate any flood risks associated with surface water.

6. Prior to the importation of any material, details of any boundary treatments and their implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

7. Prior to the importation of any material or the carrying out of any further development, details of catch fences to prevent fish from entering the river system in times of flood shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To protect the River Beult SSSI.

8. Any surface water run-off during the construction phase shall be directed to Puma Lake and/or the proposed temporary settling pond as outlined in the 'Water Resources Management Strategy' (22/03/12).

Reason: To ensure sediment does not flow into the River Beult SSSI.

9. All surplus water from the new lakes shall be directed to Puma Lake as outlined in the 'Water Resources Management Strategy' (22/03/12).

Reason: To ensure sediment does not flow into the River Beult SSSI.

10. Prior to the importation of any material or the carrying out of any further development, a Construction Environmental Management Plan relating to biodiversity (CEMP Biodiversity), that shall follow the precautionary mitigation measures detailed in section 5.10 to 5.17 of the ecological report (Preliminary Ecological Appraisal (Phlorum Ltd, August 2017)), shall be submitted to and approved in writing by the local planning authority. The CEMP Biodiversity shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of protecting biodiversity.

11. The development of the clubhouse shall not commence above slab level until samples of the timber cladding and clay roof tiles to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials.

Reason: To ensure a satisfactory appearance to the development.

12. In addition to the requirements of the Section 106 Agreement, all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in full in the first planting season following the completion of lakes 1, 2 and 3, and prior to any use of any part of lakes 1, 2 and 3. Any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development.

13. The development shall be carried out in accordance with the River Beult Habitat Enhancement Scheme received on 10/11/11.

Reason: To ensure appropriate biodiversity enhancements.

14. All vehicular access for the importation of material, vehicles for the re-profiling of the lakes and the embankments, and the implementation of the planting proposals, shall use the spur off the existing access directly off the A229 (Staplehurst Road), as shown on drawing number 0183-04/06 RevA (Vehicular Access Point).

Reason: To protect the amenities of adjoining residents and in the interest of highway safety.

15. The clubhouse shall be constructed with its finished floor level no lower than 17.36m AOD and with access as shown on drawing no. 0183-04/05 RevB.

Reason: To protect the building and occupants in the event of a flood.

16. Once the approved parking/turning areas have been implemented they shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not,

shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

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

Reason: An unrestricted use could cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

18. No angling shall take place between the hours of 10pm and 8am within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

Reason: To protect the nearby residents from noise and disturbance at such times.

19. No parking in connection with angling shall take place within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

Reason: To protect the nearby residents from noise and disturbance.

20. All access will be via the existing consented access directly from the A229 and there shall be no vehicular or pedestrian access to the site from Hertsfield Lane.

Reason: To protect the amenities of adjoining residents.

21. The clubhouse shall not be used for any overnight accommodation.

Reason: To prevent danger to human life in the event of a flood and to prevent inappropriate residential accommodation.

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

Reason: An unrestricted use could potentially cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

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

Reason: To protect the character and appearance of the countryside.

24. Any foul water shall be passed through a Klargestor system, which is to discharge to Puma Lake as set out in the 'Phlorum' letter dated 20th May 2019, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent harm to the River Beult SSSI.

25. No development above slab level in connection with the club house shall take place until details and evidence of the measures necessary to incorporate at least 10% on-site renewable or low carbon energy production measured as a percentage of overall consumption for the club house have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first use/occupation of the club house and thereafter retained.

Reason: To ensure a sustainable form of development.

25. The club house shall achieve a Very Good BREEAM technical standard rating including addressing maximum water efficiencies under the mandatory water credits. A final certificate shall be issued to the Local Planning Authority for written approval to certify that at a Very Good BREEAM UK rating has been achieved within 6 months of the first occupation of the club house.

Reason: To ensure a sustainable and energy efficient form of development.