



Planning Inspectorate Reference: APP/U2235/W/20/3259300

Maidstone Borough Council Reference: MA/11/1948

Town and Country Planning Act 1990 – Section 78

**Town and Country Planning Appeals (Determination by Inspectors) (Inquiries
Procedure) (England) Rules 2020**

**Proof of Evidence (Planning Matters) on Behalf of
Maidstone Borough Council**

**By: Sue King
BA (Hons) Urban and Environmental Planning**

Land at: Monk Lakes, Staplehurst Road, Marden, Kent TN12 9BS
Appeal by: Monk Lakes Limited (in Liquidation)
**Proposal: 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.**

Date of Inquiry: 25 February 2025

1. INTRODUCTION

1.01 My name is Susan King of Maidstone Borough Council. My qualifications are BA (Hons) Urban and environmental Planning from London South Bank University.

1.02 I have over 24 years of experience in town planning working for local authorities. I have been a Senior Planning Officer for Maidstone Borough Council (MBC) ("the Council") since 2016. I have been the Enforcement Team Leader since 2022 and in my time at MBC I have advised on and determined applications and prepared and defended formal enforcement actions.

1.03 I was not the case officer for the application the subject of this appeal ("the Application") although, I am familiar with the Appeal Site (as defined below) and surrounding area and have undertaken several detailed site inspections.

1.04 I provide evidence in this appeal on behalf of the Council on planning matters.

1.05 This Proof of Evidence should be read in conjunction with the report from planning committee on 5 March 2020 and the evidence provided by Miss Janice Gooch Senior Conservation Officer, MBC.

1.06 In my evidence, I cover:

- The Appeal.
- Planning history and the Council's decision
- Relevant Statutory Provisions and Planning Policy
- The Main Issues for the Inquiry
- Refusal Reason 1 - Significance of Hertsfield Barn - Impact of development on setting and significance of Hertsfield Barn
- Refusal Reason 2 - loss of privacy - Impact on Neighbouring Amenity
- Planning Balance;

1.07 In the evidence which I have prepared and provided for this appeal, the opinions expressed are my true and professional opinions. I confirm that this evidence identifies all facts which I regard as being relevant to the opinions that I have expressed. I believe that the facts stated within this proof are true and that the opinions expressed are correct.

2. SCOPE OF EVIDENCE

2.01 This Proof of Evidence should be read in conjunction with the evidence provided by Miss Janice Gooch on heritage matters. I rely on her evidence on this issue in my own evidence.

2.02 My evidence covers *inter alia* planning matters not covered by the other expert witnesses for the Council, including the overall planning balance for the appeal proposal.

2.03 In my evidence, I defer to Statement of Common Ground (SoCG), which provides:

- Description of the Appeal Site and Surrounding Area
- Planning History of the Appeal Site
- Description of the Proposed Development and the Appeal
- Agreed Policies
- Agreed Matters
- Matters Not Agreed

3. RELEVANT STATUTORY PROVISIONS AND PLANNING POLICY

Statutory provisions

3.01 In accordance with Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 this appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan

3.02 The adopted Development Plan comprises:

- the Maidstone Borough Local Plan Review (LPR) (March 2024)

- the adopted Proposals Map, which accompanies the Maidstone Borough Local Plan Review (2024),
- the adopted Kent Minerals and Waste Local Plan 2013-30, as amended by the Early Partial Review (2020)
- Marden Neighbourhood Plan (2020)

Relevant policies

- 3.03 The Council has agreed a list of all relevant policies with the Appellant through the SoCG.
- 3.04 Those most important for determining this appeal is Policy LPRS14(B) Historic Environment with regard to the setting of Hertsfield Barn and Policy LPRSP15 Principles of Good Design with regard to the privacy issue of refusal reason 2.

National Planning Policy

- 3.05 The relevant parts of the NPPF (2024) paragraphs 88-89 – (Supporting a prosperous rural economy) state that policies should enable the development and diversification of agricultural and other land based rural businesses and sustainable rural tourism and leisure developments which respect the character of the countryside. It is important that the development is sensitive to its surroundings.

Chapter 16: Conserving and Enhancing the Historic Environment. The proof of Janice Gooch points out the significances of what is required of the LPA in relation to this chapter and I refer you to her proof.

4. THE MAIN ISSUES

Refusal Reason 1 - Significance of Hertsfield Barn

Impact of development on setting and significance of Hertsfield Barn

- 4.01 It is important to look upon the proposal again and, notwithstanding the refusal reasons, and their wording, comment objectively on the planning merits and impacts of the development. The committee report shows that the Council's Conservation team at the time raised no objection to the proposal. In fact, the

report, at paragraph 7.48, says that, although the land was previously flat, and would be changed to grassed banks planted with vegetation, the application site is not considered as an important part of the listed barn's significance. The point was made that this derives more from the fabric and architectural merit of the building itself and also its group value and association with the Old Hertsfield and Hertsfield Oast as a small farm complex.

4.02 Accordingly, in light of the subsequent planning process, the proposal was again passed to the Heritage, Landscape and Trees team (HLT) for revised for comment. Janice Gooch, a Senior Officer from the team has produced a Proof of Evidence in this regard. She makes the following points:

- Para: 4.6.3 – *"The development of fishing lakes has altered the landscape immediately adjacent to Hertsfield barn due to the formation of the proposed bunding for the lakes and the wider loss of the field boundaries. This has removed the (possible) medieval intricate patchwork of fields. The height of the bund prevents wider views across the farmland from the historic farmstead, with the man-made land-form considered out of character with the barn's historic setting."*
- Para: 4.6.4 – *"It is considered that the impact of these changes has resulted in 'less than substantial' harm to the setting and significance of the heritage asset."*

4.03 Miss Gooch goes on to acknowledge in her conclusion *"that the setting of the barn has altered over its lifetime, and the use of the barn has changed from agricultural to domestic use (complete with associated boundary treatments and domestic clutter), the creation of the lakes has resulted in a loss of visual connection with the wider (former) agricultural land that contributes to its significance"*

4.06 In overturning the officer's recommendation, the Planning Committee came to the conclusion that the *"western bunding would cause 'less than substantial harm' to the setting and significance of the Grade II listed Hertsfield Barn through loss of the open and level historic setting of the Barn which forms an important part of its significance and setting."*

4.07 Although, it is understood the Committee came to this decision giving regard to Policy LPRSP14(B) – Historic environment, as the policy states: *"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.”

- 4.08 It is my personal opinion, having given regard to the content of Policy LPRS14(B) and its pre-amble, as well as taking on board the comments of Miss Gooch, that the setting of the barn within its farmstead has not been affected, but its wider setting has been affected due to the topography of the appeal site having been raised and altered.
- 4.09 However, settings will often change over time, especially as in this case, the land is no longer part of an agricultural unit and hasn't been for more than 20 years, and although I accept Miss Gooch's view that 'less than substantial harm' has resulted from the development, this represents a wide scope, of which I believe the level of 'less than substantial harm' would be at the lower end of that scope.
- 4.07 The follow photos taken in January illustrate the viewpoints and setting from the appeal site.



Looking towards Hertsfield Barn



View from halfway up the bund towards Old Hertsfield and Hertsfield Barn



View towards the gardens of Nos 4,5& 6 from the top of the bund



View toward Nos 3, 4, 5 & 6 from the bottom of the bund

Refusal Reason 2 - loss of privacy

Impact on Neighbouring Amenity

- 4.08 The second refusal reason involves an assessment as to whether the development has resulted in a loss of residential amenity to the occupants of Hertsfield Barn and Nos, 3,4,5 and 6 Hertsfield Farm cottages. Although the Councillors at the time, resolved to refuse the application as it was thought that the elevated lakes would *"result in an unacceptable loss of privacy and perceived overlooking from anglers, resulting in harm to their amenity contrary to policy DM1 of the Local Plan."*
- 4.09 The Planning committee rely upon Policy LPRSP15 (DM1) – Principles of Good Design, in that development should *"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"*

4.10 Here, I agree with the officer's assessment in the committee report and refer to paragraph 7.51 of the committee report:

'...due to the distance from the nearest houses to the west, 3-6 Hertsfield Cottages (28m) and Hertsfield Barn (30m), the proposed gradient of the banks (around 1 in 8), and the overall height of around 6.2m above neighbouring levels, the lakes would not have an unacceptably oppressive impact upon the houses or their outlook or result in any significant loss of light. This is also the case for the rear gardens of 3-6 Hertsfield Cottages some of which adjoin the site boundary. The minor changes to the proposals since the previous assessment, including where the slope begins to rise closer to the western boundary in places, do not affect this conclusion. The grounds of Hertsfield Barn adjoin the site but this is a parking/turning area and orchard, and the property enjoys other private garden space so that outdoor living conditions would not be unacceptably impacted. Nor do I consider the proposed tree planting and landscaping would have any unacceptable impacts in terms in terms of light or outlook.'

4.11 Paragraph 7.53 continues:

'I also consider that as the crest of the banks and therefore the potential area for fishing would be over 50m from the nearest houses and at least 33m from the nearest gardens, there would not be any unacceptable impact upon privacy from people fishing. Once more, conditions are proposed to prevent night fishing and car parking near the boundary with residential properties to protect residents from car noise, and noise/disturbance during more sensitive night-time hours. This is all in accordance with policy DM1 of the Local Plan.'

4.12 Realistically, if the area at the top of the bund was unrestricted, the anglers would walk along to the nearest (central) lake across the top of the bund before stepping down towards the lake and finding a lower position to sit and tackle up. Fresh water anglers would be present for one reason only, that it is to fish, and for which they are required to pay a fee. As such, there would be no necessity to walk down the bund towards the boundary with the Hertsfield properties.

- 4.13 Consideration has been given to Policy LPRSP15 Principles of Good Design regarding to respect the amenities of occupiers of neighbouring properties.
- 4.14 Conditions have been suggested restricting angling to the hours between 0800 and 2000 hours and that no lighting shall be installed at the site without the prior written consent of the Council.
- 4.15 Given the distances illustrated in the following table and aerial image and also the vegetative planting and screening proposed, the privacies of the residential occupiers would be safeguarded, and I see no reason to disagree with the conclusions in the committee report on this issue.

Property	Distance from Dwelling	Distance from Garden
3 Hertsfield Farm Cottages	56m	34m
4 Hertsfield Farm Cottages	56m	34m
5 Hertsfield Farm Cottages	60m	48m
6 Hertsfield Farm Cottages	60m	49m
Hertsfield Barn	83m	68m



- 4.16 After full consideration of this refusal reason, officers are of the view that no evidence can be reasonably offered to the contrary.

5. PLANNING BALANCE

5.01 A section 106 Agreement was being negotiated with the developer prior to the committee report being finalised. To mitigate against the development's impacts, the following measures were stipulated by the Council:

- the submission of an Environmental Permit application within 6 months of planning permission being granted;
- the submission of details for a suitable landscape management plan within 1 month, and the completion of the agreed landscaping along part of the western boundary within 6 months of permission being granted;
- the completion of all surface water and groundwater drainage mitigation along the western boundary within 9 months of permission being granted, and subject to an inspection by the appropriate authorities to ensure that the works have been implemented in accordance with the approved details. This would also require a verification report;
- to complete flood compensation works within 12 months of permission being granted;
- restrictions on any further soil importation; and
- to submit to the Council a land survey of the site to demonstrate that the development has been completed in accordance with the approved plans/details, within 3 months of the development being completed.

5.02 It is accepted that no weight should be given to the retrospective aspect of the development and that of the pending enforcement notice, the requirements of which would come into play should the appeal be dismissed.

5.03 Due to the resultant consequences should compliance with the requirements of the enforcement notice not be achieved, this was why a scheme with its environmental safeguards was submitted in an attempt to achieve a remedial solution that might be acceptable to all parties. The Council did not exercise S.70(c) of the TCPA 1990 despite having an enforcement notice in place.

5.04 Given the magnitude of the development and the many mitigation measures that would be employed, along with the imposition of a number of restrictive planning

conditions suggested and a s106 agreement, a pragmatic approach needs to be struck as well as consideration to the development plan and the NPPF.

- 5.05 Nonetheless, this does not alter the concerns that the Council has regarding the setting of Hertsfield Barn. The question to be borne in mind is whether the merits of the scheme and the recreational public benefits for fresh-water angling outweigh the said harm to the setting of Hertsfield Barn.
- 5.06 Miss Gooch, quite understandably, has concerns regarding the above and, with reference to NPPF terminology, considers the harm to be 'less than substantial'. As I have mentioned, this has a lengthy range, and although it is obvious that the barn's setting has been altered, this is more to do with the change in land levels to the east of the barn due to the creation of the lakes. The rise in land levels is gradual but does represent a different setting from the open fields that previously existed.
- 5.07 As settings can alter over time the issue is whether the change in setting has been unduly harmful to the listed barn's setting.
- 5.08 My personal view is that the setting of the listed barn has been impacted upon to an extent by the change in topography to the east of the barn beyond its boundaries, but the building's significance in its setting has not been affected to any real detriment or significance as its main integrity is as part of the collective grouping with the other farm buildings in the Hertsfield Farmstead.
- 5.09 It is my opinion that the benefit to the rural economy, local employment and public outdoor recreation promoting healthier lifestyles, should all be taken into account when assessing whether these factors outweigh the less than substantial harm afforded to the setting of Hertsfield Barn. As such, I believe that the broad range that encompasses the term 'less than substantial harm' to the setting of Hertsfield Barn, is at the low end of the scale and could realistically be seen to be outweighed by these factors.
- 5.10 The merits of the scheme at appeal, have been set out and the Inspector is invited to weigh up the various factors and come to an 'on balance' decision.