

STEVEN DOEL BA (Hons) MA MRTPI  
PROOF OF EVIDENCE

Monk Lakes, Staplehurst Road, Marden

Prepared For

MR DAVID PADDEN AND  
THE HERTSFIELD RESIDENTS ASSOCIATION

28 JANUARY 2025

Appeal Ref: APP/U2235/W/20/3259300

# Contents

## Contents

	QUALIFICATIONS AND EXPERIENCE.....	1
1	INTRODUCTION.....	2
2	THE APPEAL SITE AND ITS SURROUNDINGS .....	4
3	THE APPEAL SCHEME .....	5
4	PLANNING POLICY FRAMEWORK .....	6
5	CASE FOR THE RULE 6 PARTY .....	11
6	ENFORCEMENT COMPLIANCE REPORT .....	20
7	CONCLUSION .....	21

## QUALIFICATIONS AND EXPERIENCE

My name is Steven Doel, I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I hold a Bachelor of Arts (Honours) in Geography and a Master of Arts in Town and Country Planning. I have over 20 years' professional experience as a town planner.

I am currently employed by Denton Homes as a Planning Manager. I was previously an Associate Director at Nexus Planning, a specialist town planning consultancy, for whom I worked for 8 years. Prior to this I worked at Elmbridge Borough Council for 6 years as a development control officer and before that, at Guildford Borough Council as an enforcement officer.

I have dealt with a range of complex enforcement matters and determined a wide range of planning applications for the Local Planning Authority. Latterly, I advised a range of developers, house builders and public bodies on town planning matters generally, but with a focus on greenfield development in the south of England.

I am familiar with the Appeal Site having visited the area and having viewed it from public vantage points as well as my clients and his neighbour's properties.

This submission is made on behalf of Mr David Padden and the Hertsfield Residents Association, a Rule 6 Party in the appeal proceedings. Mr Padden is the owner and occupier of Hertsfield Barn a Grade II Listed Building located to the west of the appeal site. The Hertsfield Residents Association represents a number of other properties in the locality of Hertsfield Barn.

My evidence follows work previously prepared by Rebecca Lord on behalf of Mr David Padden. However, for the avoidance of doubt, the evidence which I provide in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinions. I understand my duty to the inquiry and have complied, and will continue to comply, with that duty.

## 1 INTRODUCTION

- 1.1 My evidence relates to planning application ref. 11/1948, submitted to Maidstone Borough Council and validated on 9<sup>th</sup> December 2011. The description of development was as follows:

*“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” (“the Appeal Scheme”)*

- 1.2 The application site and the Appeal Scheme have a lengthy planning history which is detailed in full in the Written Statement of Case prepared on behalf of Mr David Padden and the Hertsfield Residents Association (dated 12<sup>th</sup> December 2024). It is not repeated here other than to reiterate that the application was initially approved by Decision Notice dated 6<sup>th</sup> September 2012 but that decision was quashed on 22<sup>nd</sup> January 2014 following a Judicial Review. The application was redetermined and refused by Decision Notice dated 12<sup>th</sup> March 2020 for the following reasons:

1. The size, height and proximity of the raised lakes particularly the western bunding would cause less than substantial harm to the setting and significance of the Grade II listed Hertsfield Barn through loss of the open and level historic setting of the Barn which forms an important part of its significance and setting. This would be contrary to policies SP18 and DM4 of the Maidstone Local Plan and the NPPF and the less than substantial harm would not be outweighed by any public benefits from the development.
2. Due to the height and proximity of the raised lakes along the western boundary of the site, their use for fishing would result in an unacceptable loss of privacy and perceived overlooking from anglers at an elevated position to the houses and gardens of Hertsfield Barn, and numbers 3, 4, 5, and 6 Hertsfield Farm Cottages, resulting in harm to their amenity contrary to policy DM1 of the Local Plan.

1.3 Notwithstanding the above, the Rule 6 Party contends that the Appeal Scheme is unacceptable in the following additional areas:

- 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.

1.4 In that regard, my evidence should be read in conjunction with separate evidence provided by:

- i. Dr Paul Ellis (hydrogeology);
- ii. Mr A Smith (landscape);
- iii. Mr C Griffiths (heritage).

1.1 Linked to that, the law is clear that retrospective EIA development can only be granted in "exceptional circumstances". Furthermore, 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)).

1.2 My evidence will show that the necessary "exceptional circumstances" do not exist in this case. It will also show that:

1. the Council, in concluding that exceptional circumstances do exist, rely upon the retrospective nature of the development; and
2. that the Council's assessment in that regard is out-of-date because it is contained within a Committee Report which recommended the appeal scheme for approval.

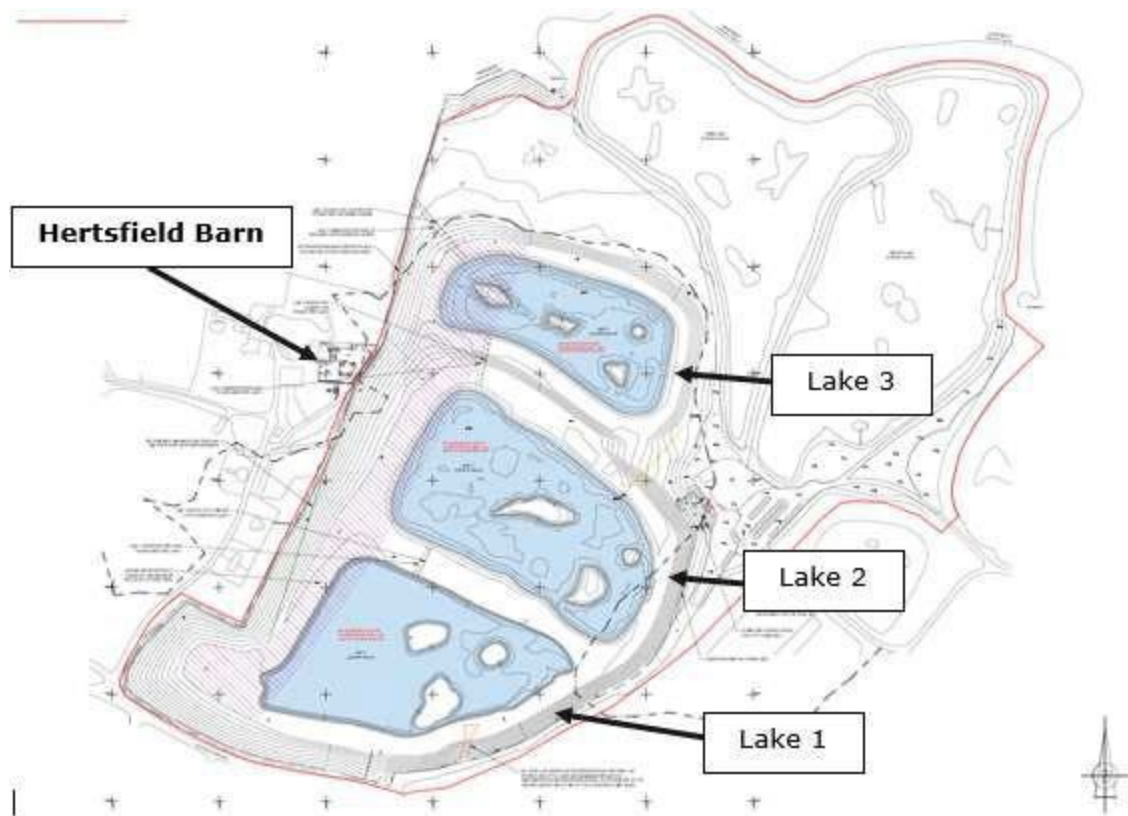
1.3 That conclusion is illogical given that the Council refused the application at Committee on heritage and amenity grounds.

## 2 THE APPEAL SITE AND ITS SURROUNDINGS

- 2.1 The appeal site measures circa 35 hectares and is located on the northern side of Staplehurst Road between the villages of Linton and Staplehurst. It was used for agriculture until the early 2000's but now contains existing and partially completed lakes on a raised plateau, in addition to a car park and various ancillary structures.
- 2.2 The existing lakes "Bridges and Puma" are below ground and situated towards the north-eastern corner. Lakes 2 and 3 are raised and are situated in the western side of the site. The raised banks measure circa 6m in height. Lake 1 is also raised but is currently incomplete.
- 2.3 The site is set in flat countryside but borders the River Beult, a Site of Special Scientific Interest (SSSI) to the north. Land to the rear of the site is situated in flood zones 2 and 3.
- 2.4 The Riverfield Fish Farm complex is to the south -east whilst residential properties adjoin the western boundary, including the Grade II listed Hertsfield Barn.

### 3 THE APPEAL SCHEME

- 3.1 In the simplest of terms, the Appeal Scheme seeks retrospective planning permission for the retention of lakes "Bridges" and "Puma" to the north-east of the site along with the raised Lakes 2 and 3 in their current form. It also proposes the completion of Lake 1 - with completion of that feature necessitating the further importation of an estimated 89,000m<sup>3</sup> of additional waste material.
- 3.2 A new clubhouse building is also proposed, located centrally within the site. Landscaping is proposed across the site.



## 4 PLANNING POLICY FRAMEWORK

### The Development Plan

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise.

4.2 The development plan for Maidstone comprises:

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

4.3 The Written Statement of Case on behalf of Mr David Padden and the Hertsfield Residents Association sets out in detail the relevant policies from the development plan. However, since that document was submitted, an updated National Planning Policy Framework (NPPF) was published in December 2024. The updated guidance from the document is set out below:

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>(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></ul>



	<ul style="list-style-type: none"> <li>(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> <li>(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.</li> </ul>
<p>Para 135</p>	<p>Planning policies and decisions should ensure that developments:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;</li> <li>(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);</li> <li>(d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and</li> </ul>

	<p>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>
<p>Para 187</p>	<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</p>

	<p>pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;</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>
<p>Para 202</p>	<p>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<sup>73</sup>. 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.</p>
<p>Para 208</p>	<p>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.</p>

<p>Para 212</p>	<p>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.</p>
<p>Para 215</p>	<p>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.</p>

## 5 CASE FOR THE RULE 6 PARTY

5.1 The Written Statement of Case for the Rule 6 Party sets out the issues for consideration as follows:

- (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

5.2 Having regard to updated evidence where relevant, I comment on those matters below before going on to discuss the question of exceptional circumstances.

### **(i) The Principle of Development**

5.3 Further to the Written Statement of Case on behalf of Mr Padden and the Hertsfield Residents Association, it remains my view that the proposed development includes the retention of a vast quantity of unlawfully imported waste material and that 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.

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

### **(ii) Impact on the landscape and character of the area**

5.5 I agree with the evidence of Mr Smith on Landscape that when assessing the appeal scheme in the context of a predevelopment position (pre 2003), the current development plan policy, and the fabrik Landscape and Visual Impact Report, the retention of the unauthorised imported waste material and the proposed development clearly has detrimental impact on the landscape character of the area. I consider that to be the case 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.

- 5.6 I also agree that 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.
- 5.7 Although this is an EIA development, in which alternatives should be 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.
- 5.8 It is concluded that the proposal is contrary to the NPPF (notably paras 135 and 187); 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**

- 5.9 The Council's first reason for refusal cites harm to the setting of the Grade II Listed Hertsfield Barn which is not outweighed by the public benefits of the scheme. As set out in the accompanying Written Statement of Case and having regard to the evidence of Mr Griffiths on heritage, I consider that there is harm to both the setting and the fabric of the Grade II Listed Hertsfield Barn.
- 5.10 In terms of setting, the evidence of Mr Griffiths outlines that there is a medium level of less than substantial harm and I agree with that assessment. The Appellants Statement of Case from September 2020 outlines what it deems to be the public benefits of the scheme at Paragraph 1.19 as follows:
- Strengthening the local economy and strengthening the Borough's tourism industry, with Monk Lakes identified as one of the main tourist attractions within the Maidstone area, as listed on the 'VisitMaidstone' website ;
  - Supporting healthy lifestyles through the provision of recreational activities, with angling contributing towards mental health benefits and has been used by the NHS in as part of mental health therapy ;
  - Providing the opportunity for social interaction through the provision of a

meeting place and leisure activity;

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

5.11 As set out in the Written Statement of Case prepared on behalf of the Rule 6 Party, the benefits of the Appeal Scheme in reality amount to no more than limited employment opportunities (understood to be a manager and some part time or seasonal workers) and provision of a leisure facility for fishing. These limited benefits could equally be provided by an alternative, lesser, form of development. There is simply no justification for the provision of lakes on a 4m high plateau of compacted waste with 2m high banks on top. I therefore do not accept that the public benefits of the scheme outweigh the harm in this case.

5.12 Harm to the fabric of the Listed Building comes from water ingress and seepage. I agree with the evidence of Mr Griffiths that this harm should also fall within the medium category of level of less than substantial harm, with the potential for this to increase. Furthermore, no effective mitigation measures to reverse the *de facto* harm or address it in any meaningful way have been proposed.

5.13 Planning policy places significant weight on the preservation of designated heritage assets. NPPF (notably paragraphs 208, 212 and 215); 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) Ground water flooding**

5.14 Further to the above, I agree with the evidence of Dr Ellis that the groundwater regime has been altered by the Monk Lakes development and that this has probably caused a rise in groundwater levels at Hertsfield Barn. Specifically, I agree with the evidence of Dr Ellis that contributing factors in that regard include removal of the original land drainage system, potential leakage front the lakes, removal of a section of aquifer and focused recharge of the aquifer along the western drainage ditch due to run-off from the steeply sloping banks.

5.15 I also agree with the evidence of Dr Ellis that to effectively design a successful mitigation scheme will require a detailed conceptual hydrogeological model of the area surrounding the development, comprising plans and cross sections, including off site receptors and identifying the groundwater contour levels and flows the mitigation scheme is seeking to achieve compared to the current situation. This should be supported by appropriate modelling and calculations to demonstrate the feasibility of the scheme before planning permission is granted.

5.16 The feasibility of the proposed groundwater mitigation scheme, developed to an outline stage in 2015, has not been sufficiently assessed to support retrospective planning permission.

5.17 The appeal 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 construction and safety**

5.18 having regard to the evidence of Dr Ellis on geohydrology, I retain the view that there is uncertainty around 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.

5.19 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.

5.20 The appeal scheme is contrary to the provisions of policy LPRSP15 of the Maidstone Local Plan 2017.

**(vi) Impact on Amenity of Neighbours**

5.21 As set out in the Written Statement of Case, it remains my view that harm to neighbouring residents goes beyond that cited by the Council in the second reason for refusal. Specifically, I consider that there is harm to neighbouring residents as a result of the Appeal Scheme through a loss of visual amenity, a sense of enclosure and an overbearing impact.

5.22 I reach that conclusion because the 6m high bank is an artificial manmade feature in the landscape which changes the level of the horizon and blocks any views across what was previously a low lying agricultural field. This significant development by virtue of its height, scale and mass and proximity to residential properties 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 at Hertsfield Barn.

5.23 I also agree with the second reason for refusal that there is actual and perceived overlooking from use of the 6m high banks. Furthermore, I consider that the proposed landscaping scheme would further enclose the property increasing the overbearing impact.

5.24 It remains the case that the Appellant has failed to consider a scheme with banks which are lower and set further away from the site boundaries – even though alternatives should be considered as part of the EIA process.

5.25 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**

5.26 As set out in the Written Statement of Case on behalf of Mr Padden and the Hertsfield Residents Association, the unlawful dumping of waste material on this site has had the effect of neutralising the potential for mineral extraction in the area south of the

river Beult which is within the Safeguarded Area for River Terrace Deposits.

- 5.27 It is my view 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 – the justification given by the Council in this case.
- 5.28 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**

- 5.29 As set out in detail in the Written Statement of Case on behalf of Mr Padden and the Hertsfield Residents Association, 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.
- 5.30 It remains my view that use of the site for waste disposal is contrary to policies CSM3 and DM7 of the Kent Minerals and Waste Local Plan 2020.
- 5.31 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 2020.

#### **Exceptional Circumstances**

- 5.32 In *R (Ardaugh Glass) v Cheshire West Council* [2011] EWCA Civ 172, the Court of Appeal endorsed the following proposition of law [**CD 7.2**]:

*“retrospective planning permission could lawfully be granted for EIA development provided the decision-taker, whether the local planning authority or the Secretary of State, made it plain that a developer would gain no advantage by pre-emptive development and that such development will be permitted only in exceptional circumstances”.*

- 5.33 Thus, a developer seeking retrospective planning permission or EIA development

may not be granted permission unless he can show (i) he has gained no advantage by pre-emptive development and (ii) exceptional circumstances exist. This is a test that the appellant must pass *in addition* to demonstrating that the development is acceptable in planning terms.

5.34 The Written Statement of Case on behalf of Mr David Padden and the Hertsfield Residents Association deals with this in detail at (2.18 - 2.29).

5.35 The Appellants Statement of Case at Para 6.82 relies on the Council's assessment in the 2020 Committee report to demonstrate the "exceptional circumstances" required in the Environmental Regulations. The Council's Statement of Case in that regard states as follows:

*'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'.*

5.36 The appellants produced an "Addendum to Statement of Case" dated December 2024. It makes no explicit reference to the need for exceptional circumstances but at Paragraphs 3.1 it does refer to an Enforcement Notice Compliance Report prepared in connection with the Appeal Scheme as below:

*'An independent Enforcement Notice Compliance Report has been commissioned which, whilst still in draft form, concludes that compliance with the Notice requirements is not feasible. The report's findings support the case that the proposed development represents the most appropriate solution for the site'.*

5.37 A further Statement of Common Ground dated December 2024 has been agreed between the appellant and the Council. In connection with the need for exceptional circumstances, it states at Paragraph 7.14 that:

*"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".*

5.38 Finally an email sent to PINS by from Richard Timms (Principal Planning Officer at Maidstone Borough Council) on 20<sup>th</sup> January 2025 timed at 16:39 states as follows:

*"Dear Helen*

*Just to provide clarity from the LPA's point of view.*

*We agree the hearing format would be suitable for any discussion on the 'exceptional circumstances' matter.*

*We do not rely on the 'Enforcement Notice Compliance Report submitted by the Appellant' on this matter and our position is as set out in the January 2020 committee report.*

*Regards"*

5.39 All of these factors (the allegedly complex planning history of the site, the scale of the works carried out and the alleged difficulties in complying with the enforcement notice) arise directly out of the appellant's decision to undertake pre-emptive development. As explained above, as a matter of law, the appellant cannot gain any advantage from these and therefore they cannot be relied upon to establish any exceptional circumstances. The appellant and the Council seem to have completely misunderstood this issue. Even if they could be relied on (which is not accepted) I do not agree that they would amount to exceptional circumstances justifying a grant of planning permission.

5.40 Furthermore, the 2020 Committee Report in which the Council concluded that exceptional circumstances exist had also recommended that the application be approved. It therefore concluded that exceptional circumstances exist on the assumption that the appeal scheme did not warrant refusal in any other technical areas. Members did not follow the officer's recommendation and refused the application because it resulted in heritage and amenity harm. The analysis in the 2020 committee report is therefore fundamentally out of date. It cannot credibly be argued on the one hand that there are exceptional circumstances to justify retrospective EIA development whilst on the other hand also arguing that the scheme results in unacceptable harm to the setting of a listed building and neighbouring

residential amenity.

## 6 ENFORCEMENT COMPLIANCE REPORT

6.1 As noted above, the Appellant commissioned an Enforcement Compliance Report which was produced in January 2025. No explanation has been provided for why this was not produced for the previous hearing of this appeal. In any event, this Report is irrelevant to this appeal. It deals with the consequences of the enforcement notice being enforced. This is not a matter for this appeal because:

- (1) It was (or could have been) dealt with in the appellant's appeal against the enforcement notice. That appeal was dismissed. It is an abuse of process to raise these issues again;
- (2) In any event, whilst it is accepted that a consequence of allowing this appeal is that the enforcement notice would fall away, the consequences of dismissing this appeal are less certain and they are matters for planning enforcement, not for this inspector. The point is that these consequences cannot be known and, as a result, can be given no weight;
- (3) Furthermore, if the appellant is able to rely on the difficulties in complying with the enforcement notice in support of this appeal then this would allow the appellant to gain an advantage from its pre-emptive EIA development which would be unlawful as explained above.

## 7 CONCLUSION

- 7.1 In conclusion it is considered 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.
- 7.2 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:
- (1) Landscape and Visual Character of the Area,
  - (2) A Designated Heritage Asset (setting and fabric),
  - (3) Ground Water Flooding,
  - (4) Neighbour's Amenity, and
  - (5) Mineral Safeguarding.
- 7.3 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.
- 7.4 Other matters for concern include reservoir construction, safety, and monitoring.
- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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.

- 7.9 Further, and in any event, this appeal should be dismissed because it is a retrospective application for EIA development and, as a matter of law the appellant should not benefit from the retrospective nature of the appeal, which should only be allowed in 'exceptional circumstances'. 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.
- 7.10 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.
- 7.11 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.
- 7.12 Further it is clear from these submissions that ground water flooding was not the only matter that officers of the Council and Members of the Planning Committee failed to adequately assess.
- 7.13 The appellant has a history of breaching planning control and in delays in complying with requirements such that a timetable that focusses his attention on immediate action to secure compliance with the notice is required.
- 7.14 In conclusion it is therefore requested that the appellant be allowed no more than one year to remove the unauthorised spoil, three months to restore the land and remove equipment, and up to the end of the relevant planting season to grass seed the land.