ENFORCEMENT NOTICE COMPLIANCE ASSESSMENT

MONK LAKES, STAPLEHURST ROAD, MARDEN

January 2025

HFF Construction

bam

1) INTRODUCTION AND SCOPE

a) The construction of raised and ground-level lakes at Monk Lakes in Kent first began in 2000 under permissions: MA/00/1162 and MA/03/0836. Maidstone Borough Council (MBC) issued an enforcement notice on the 12 September 2008 concerning the development. The notice alleges numerous planning breaches, including unauthorised engineering, mining and building operations, and unauthorised change of use of the land to recreational fishing lakes. The notice demanded immediate cessation of all activities and the remediation of the site within specific timeframes.

b) After a planning application was again granted by MBC and subsequently quashed by a Judicial Review challenge brought by a neighbour, Mr. D. Padden (DP), an Enforcement Notice Appeal was heard on 28 April 2015. The inspector determined that the original timeframes for compliance with these steps were unreasonable due to the complexity of the required actions, including the removal of large quantities of material, the draining of water bodies, and the relocation of fish stocks. The inspector acknowledged that further variations to the notice might be necessary depending on circumstances and that the Council has the power to waive or relax any requirement of the notice and extend the period for compliance.

c) This assessment has been prepared by HFF Construction and evaluated by BAM for Monk Lakes. HFF Construction brings over 30 years of specialist experience in earthworks and lake construction projects, including extensive ecology and fish management expertise, through their sister company, which operates one of Kent's largest fish farms. It utilises established industry methodologies and references current technical standards, planning and environmental guidance, and case law. All volumetric calculations derive from verified survey data, employing modern technologies not available during the 2015 assessment.

d) This report provides a technical assessment of the practicability of complying with the 2008 Enforcement Notice issued for land at Monk Lakes, Staplehurst Road, Marden. Through comprehensive volumetric analysis and consultation with industry specialists, this

assessment examines the technical and financial feasibility of achieving compliance, and within the prescribed timeline.

e) Primary data sources informing this assessment include Harry Skinner Surveys' KTF "Cut & Fill Volume" site survey (2020), historic Planning Records 2000-2024, contractor consultations and quotations, landfill capacity assessments, 2008 Enforcement Notice, 2015 Planning Inspector's Decision, historical LIDAR elevation data and aerial photography, and current environmental permitting requirements.

f) Practical delivery constraints are evaluated through consultation with major contractors, waste management facility capacity analysis, infrastructure capacity assessment, and environmental and social impact evaluation. These evaluations consider both current requirements and the historical context provided by the 2015 Inspector's decision, highlighting where assumptions and conditions may have changed.

2) EXECUTIVE SUMMARY

a) Compliance with the Enforcement Notice (2008) is going to have significant consequential effects. As you will see in this report, the Harry Skinner Surveys site survey (2020) establishes that compliance with the Enforcement Notice would require the movement of **503,478m³** of material, comprising **320,765m³ for off-site removal** and 182,713m³ for internal relocation. Implementation would necessitate **85,538 heavy goods vehicle** movements through the local highway network.

b) Consultation with major contractors and waste management facilities indicates compliance costs ranging from **£17 million to £127 million**, depending on soil classification, excluding the cost of additional regulatory requirements. On this basis, compliance is unlikely to be economically viable or fundable. Current landfill capacity constraints, particularly at Shelford Landfill - the only suitable facility identified - render the prescribed 22-month compliance period technically unachievable.

c) Implementation would likely take **over 6 years** and result in:

- a substantial environmental impact: the generation of over **6,134.43 tonnes of CO_2** and the displacement of wildlife and loss of much needed habitats for rare or threatened freshwater species
- major local disruption to the local highway network
- significantly reduced landfill capacity for the local and regional construction industry
- the closure of an established recreational facility and local asset that currently attracts **30,000 annual visitors** and maintains 12,000 online followers
- the loss of all current employment positions

d) The facility, showcased on Maidstone Borough Council's 'Visit Maidstone' website, provides recreational opportunities for both disabled and able-bodied anglers, as prescribed by Environment Agency Chair Emma Howard Boyd in the National Angling Strategy (2019-2024).

3) SITE CONTEXT AND HISTORY

a) Physical Site Description

Monk Lakes is a 120-acre fishery located off the A229 south of Maidstone, Kent. The appeal area comprises 86 acres containing five lakes: two ground-level lakes (Bridges and Puma) and three raised lakes (Lakes 1, 2, and 3). While Bridges, Puma, Lakes 2 and 3 are complete, Lake 1 requires additional construction works.

The wider complex includes 45 acres of fishing water across multiple lakes: four raised Match Lakes, two pleasure lakes, a specimen lake, and 2,000m of River Beult riverbank. The Match Lakes accommodate competition angling, while the other lakes provide recreational fishing for individuals and small groups. Infrastructure includes ample parking, a tackle and bait shop, an indoor catering facility, and WC amenities.

b) Site & Planning Timeline

The site has an extensive planning history:

2000: Permission granted for the (raised) Match Lakes and (ground level) Mallard Lake (MA/00/1162)

2000-2003: Match Lakes and Mallard Lake constructed by previous owner Mr. S. Hughes (SH)

2003: Permission granted for (raised) lakes in the Lakes 1, 2 & 3 area and (ground level) lakes in the Bridges & Puma Lakes area (MA/03/0836)

2003-2008: Bridges and Puma Lakes plus Lakes 1, 2 and part of Lake 3 were constructed by SH - in a formation accepted by the LPA but differing from the planning permission (fewer but larger)

2008 (February): Current owner purchased the site – construction continued in accordance to SH's plans

2008 (March): Current owner met with LPA & EA to discuss construction completion (according to SH's revised plans) and timescales

2008 (April): Temporary Stop Notice Issued. All lake construction ceased

2008 (September): Enforcement Notice Issued

2009: Retrospective permission granted to retain the (raised) Match Lakes (MA/09/1380)

2009: Retrospective permission granted to retain (ground level) Mallard Lake, the car park, access and shop

2012: Retrospective permission granted to retain (raised) Lakes 1, 2 & 3, (ground level) Bridges & Puma Lakes and permission to build a clubhouse (MA/11/1948) – subsequently quashed after challenge by DP

2015: Enforcement Appeal heard – compliance time extended

2015: Planning application to retain (raised) lakes 1, 2 & 3, (ground-level) Bridges & Puma lakes and a build a clubhouse submitted for redetermination

2016: Regulation 22 letter from LPA issued

2020: Planning application MA/11/1948 with recommendation by LPA, refused by Councillors (led by Councillor Mr. D. Burton) and appealed

2022: Appeal heard and dismissed on a procedural technicality, argued by DP

2024: Dismissal conceded by PINS, but defended by DP and overturned in the High Court

4) IMPLEMENTATION LOGISITICS

a) Material Volumes

The Harry Skinner Surveys site survey (2020) establishes that compliance with the Enforcement Notice would require a total material movement of **503,478m³**, comprising **320,765m³** for off-site removal and 182,713m³ for internal relocation. The grab lorry has an actual capacity of 13m3, although restrictions limit contractors to a maximum of 10m3 of (loose) material. The "bulking factor" (the ratio or percentage of the volume change of excavated material to the volume of the original compacted volume before excavation) means that a lorry in fact holds 7.475m3 of (once compacted) inert material. This has been rounded up to 7.5m for these purposes. These volumes therefore necessitate **42,769 lorry loads** for off-site removal and 24,361 lorry loads for internal movement, totalling 134,260 lorry movements.

b) Road Network

The anticipated **85,538 on-road lorry movements** (42,769 x 2) would necessitate continuous road-cleaning operations to mitigate mud deposition and highway surface degradation.

c) Landfill Capacity

Comprehensive research across Southeast landfill sites has revealed severe capacity limitations that fundamentally challenge implementation feasibility. Analysis has identified that only Shelford Landfill, located 56km from the site, possesses the necessary classification to accept material likely to be designated as "non-hazardous" under the new regulations.

Through direct consultation, Valencia Waste Management, operators of Shelford Landfill, have confirmed several critical constraints. Their current capacity would not be available for approximately **five years**, when the material could be accepted as "cap" on their c. 1,000,000m3 of general waste capacity. Journey times between the site and landfill range from 40-60 minutes each direction, with significant tipping fees and government tax applicable to each load.

Assessment of alternative facilities has identified eight locations with theoretical collective capacity. However, only Shelford possesses suitable classification for "non-hazardous" material, and no facility has demonstrated the ability to accommodate the required full material volume or within the specified timeline.

d) Seasonal Constraints

Analysis of meteorological data, ground conditions and previous construction projects indicates potential **delays of up to 21%** due to restricted working days annually, from flood risk

periods, frost conditions, and days of excessive rainfall. These restrictions effectively reduce the available implementation period.

e) Fish Relocation

The relocation of fish stocks presents significant practical and regulatory challenges. Environment Agency Movement Orders would be required for each transfer operation, with processing times of 10-20 working days per application. The volume of fish stock currently maintained at Monk Lakes exceeds the available capacity of local fish farming operations, including that of Kent's largest facility.

Direct sale from site would be necessary, as no suitable intermediary holding facility exists with sufficient capacity. However, stock movement is substantially constrained by:

- Seasonal restrictions (limited to October-March)
- Temperature requirements (below 6-7°C)
- Mandatory health certification requirements
- Species segregation protocols for transportation
- Commercial resistance from fisheries who typically prefer farm-reared stock due to disease risk and handling considerations

f) Timings

Comprehensive consultation with regional haulage contractors indicates that a minimum implementation period of 170 weeks (3.5 years) would be required for the removal of the material, excluding permitting timescales and lake infilling. However, detailed analysis based on verified construction industry experience suggests a more realistic programme duration of 6 years and 2 months to achieve full compliance, accounting for seasonal constraints, permitting requirements, and operational limitations.

5) IMPLEMENTATION REQUIREMENTS

a) 2025 Permitting Requirements

- Apply for permits to drain water bodies. As the lakes have outfall that connects it to a watercourse the water discharge requires a permit. This entails: Water Management Plan comprising an overview of the works, potentially a Specific Substance Assessment, a Risk Assessment, a Controls and Treatment Plan, details on Monitoring and Control. Once submitted, this permit is likely to take up to 10 months to be processed.
- Apply for a Trade Effluent Permit or local Area Agreement to control water quality for discharge.
- Show Environmental permits, recovery permits or registered exemptions under Environmental Permitting Regulations 2010 for waste disposal sites receiving material.

b) Other Regulatory Requirements

- Give notice of proposal to cause, carry out or permit operations requiring Natural England's consent on a site of special scientific interest (SSSI).

- The infilling of the lakes and loss of established habitats would require detailed ecological assessment and mitigation strategies to address biodiversity impacts, particularly given the site's proximity to designated land.
- EA SP1 Site applications for each fish movement. This can take up to **20 days to process**.
- Fish Health Certification
- Lake lining

6) IMPLEMENTATION COSTS

Extensive consultation has been undertaken with major contractors in the region to assess operational capacity and establish accurate cost projections for implementation. These consultations have revealed significant capacity constraints and substantial cost implications across all aspects of the proposed works.

a) Contractor Assessment

Erith Group:

Erith Group estimate the following compliance costs:

- Site Establishment and Operations total £2,348,400, covering plant and personnel costs, site infrastructure, and traffic management requirements.
- Material Testing total £408,000, encompassing initial borehole sampling, ongoing classification testing, and verification monitoring.
- Disposal costs vary significantly based on classification:

Inert classification: £14,370,384
Lower rate non-hazardous: £24,576,192
Higher rate non-hazardous: £124,928,976

Total cost with "inert" classification: **£17,126,784**
Total cost with "higher rate non-hazardous" classification: **£127,685,376**
Estimated carbon emissions (based on journeys to/from Erith Group sites, if there was capacity): **9311.64 tonnes CO_2**

Gallagher Group:

Despite being Kent's largest haulage operator, Gallagher Group confirms that current capacity commitment to other projects prevents acceptance. However, their estimated costs for soil removal alone, excluding loading, tipping fees and taxation, amount to **£14,541,120**.

Ardula Limited:

Prior to their closure, Ardula Limited gave an estimate for the compliance works of **£16,358,760** (excluding loading, tipping fees and taxation). This figure was based on 2022 prices and without soil classification information.

b) Totals and Exclusions

Total costs exclude: Site Waste Management Plan, Material Management Plan, Soil Resource Plan, Environmental permits, Lake lining requirements, Lake backfilling operations. Shelford Landfill's tipping rates (£30/load) plus government tax (£3.30-£103/load depending on classification) must be added to contractor costs. N.B. Shelford's comparable project, removing 420,000m^3, was recently estimated to cost £55m.

Total costs, without the exclusions, range from **£17,126,784** to **£127,685,376**

7) IMPLEMENTATION IMPACTS

a) Carbon

DonBur's calculations, based on 85,537 on-road lorry movements to/from Shelford Landfill, reveal substantial environmental implications. The implementation would consume **c.2,332,500 litres of fuel**, generating a direct cost of c.£3,003,500. Most significantly, these operations would produce over **c.6,135** tonnes of carbon emissions, representing a major environmental impact not considered in the original enforcement decision. Note these figures do not include the lorry movements to and from their base.

b) SSSI, Wildlife & Fish

The infilling of two established fishing lakes adjacent to a Site of Special Scientific Interest would result in significant ecological impact. The mature aquatic ecosystem currently supports extensive biodiversity, including established tree specimens, aquatic flora and fauna. These water bodies provide critical habitat functions including feeding areas, nesting sites and a permanent water source that sustains the wider ecological network.

For the fish relocation, even with zero acquisition costs, the absorption capacity of regional fisheries is insufficient for the volume of stock present. Consequently, some degree of stock culling would be unavoidable, raising additional regulatory and animal welfare considerations.

c) Road Network

The combined impact of heavy goods vehicles and road-sweeping activities would create significant disruption to the local highway network, affecting traffic flow and road safety on Staplehurst Road (A229).

d) Community

The local industry would face significant disruption, particularly through the reduction in regional landfill capacity, which would severely impact the local construction and development sectors. The loss of an established recreational facility, currently featured on the "Visit Maidstone" website, would remove a valuable community asset, while the termination of current staff employment would affect local families and the broader economy. The community would lose specialised facilities designed for disabled anglers, while the removal of a recreational resource currently serving 30,000 annual visitors would significantly impact

local leisure provision. The facility's 12,000-strong online community demonstrates its broader social value, and its closure would reduce local tourism draw. Economic implications would cascade through the local economy, from direct job losses and reduced tourism revenue to impacts on the local supply chain and the loss of substantial facility investment value.

8) EVOLUTION SINCE 2015 ASSESSMENT

a) The 2015 Appeal Decision's compliance timeframes require substantial revision considering current circumstances. The Inspector acknowledged operating with limited information, particularly regarding volumetric calculations and material movement capacities. The assessment was based on "crude working assumptions" about vehicle capacities, waste disposal infrastructure, and available haulage resources. The intervening period has seen significant changes to waste management regulations, material classification requirements, and available disposal capacity, rendering the original assessment's practical assumptions obsolete.

b) Volume and Operational Changes

The initial volume estimates for material removal presented to the Inspector in 2015 were significantly lower than the actual requirements. Advanced survey technology, particularly KTF comparisons between historical LIDAR scanning and recent topographical surveys has revealed that the true volume of material requiring removal is 503,478m³, which is c.11% higher than the initial estimate of 450,000m³. This discrepancy directly impacts the number of lorry movements required, extending the compliance timeframe. Furthermore, the operational assumptions made in 2015 significantly underestimated the complexity of implementation. The required schedule of 14 lorry loads per hour, or 28 lorry movements on and off-site per hour, exceeds the operational capacity of available contractors and would necessitate 1,426 movements per week. No landfill facility or haulage company currently possesses the capacity to accommodate this volume of material movement within the prescribed timeframe.

Soil classification has changed substantially. The material that was brought to site between 2003 and 2008 was classified as "inert". However, as it did not originate at the site, if it is removed, it is now unlikely to be classified as such. It would still have been classified as inert in 2015.

c) 2015 Permitting requirements

- Apply for permits to drain water bodies and treating fish stocks before material removal could begin
- Submit a detailed methodology for safe fish retrieval and removal
- Apply for a Trade Effluent Permit or local Area Agreement to control water quality for discharge
- Show Environmental permits, recovery permits or registered exemptions under Environmental Permitting Regulations 2010 for waste disposal sites receiving material

As seen earlier in the report, the 2025 permitting requirements are more stringent in involved than in 2015.

9) PROPORTIONALITY ASSESSMENT

a) An Example of Relevant Case Law

Stratford On Avon District Council v Persimmon Homes Ltd [2015] EQHC 3593 (QB)

The case underlines the importance of enforcement action being proportionate. This is a point made very clearly to enforcing authorities by the NPPF (para 207), and Planning Practice Guidance, which states that "there is a clear public interest in enforcing planning law and planning regulation in a proportionate way" (and emphasises the relevance of the provisions of the ECHR such as Articles 1, 8 and 14 when considering enforcement action).

b) Scale of Compliance Impact

The assessment of proportionality must weigh the substantial costs and impacts of enforced compliance against the specific impacts that the development is alleged to cause, in the context of current circumstances and evidence:

Enforced compliance would require:

- Movement of 503,478m^3 of material requiring 134,260 heavy goods vehicle movements
- Costs ranging from £17 million to £127 million
- Generation over 6,134 tonnes of CO_2 emissions
- Loss of established recreational facility serving 30,000 annual visitors
- Loss of the country's largest disabled access fishery
- Loss of tourist facility featured on 'Visit Maidstone' website
- Loss of employment positions
- Impact on local tourism and economy
- Disruption of established community asset with 12,000 online followers
- Substantial environmental damage

c) Nature of Impact Being Addressed

The development's alleged impacts relate solely to two specific matters:

(i) Impact on Heritage Assets

The evidence demonstrates minimal heritage impact:

- Four successive Conservation Officers (2012-2020) concluded the development caused no harm to heritage assets. The 2012 Committee Report specifically found 'no adverse impact on the settings of listed buildings in the vicinity.' This consistent professional assessment spanning eight years demonstrates the development's compatibility with the heritage setting
- The site's relationship to Hertsfield Barn has historically involved changing land uses, including orchards and polytunnels
- The 1:8 gradient of banks maintains open character
- The proposed naturalised planting plan aligns with historic verdant character
- Historic maps show no designed views between buildings were intended

- The barn's primary significance derives from its fabric and architectural merit rather than setting

(ii) Impact on Residential Amenity

The evidence shows limited amenity impact:

- Substantial separation distances (minimum 28m to properties, 50-80m to fishing positions)
- Shallow gradient (1:8) of banks places anglers well back from boundaries
- Inward-facing nature of fishing activities
- No night fishing permitted along western boundary
- Comprehensive screening through proposed planting scheme
- Clear precedent in 2012 permission finding no amenity impact
- Site rules and management maintain tranquil environment

d) Mitigating Factors

- The fishery has operated successfully for over two decades
- LPA granted permission multiple times
- Conservation Officers consistently found no heritage harm
- Impacts can be addressed through proposed mitigation measures
- Complete removal would cause substantial environmental damage
- Implementation costs vastly exceed scale of alleged harm
- Loss of facility would remove significant public benefit

e) Proportionate Approach

A proportionate resolution would be the continued operation of the facility with appropriate mitigation measures in place. This approach is supported by several key considerations. First, the identified impacts could be comprehensively addressed through the proposed mitigation strategy. Second, multiple independent heritage assessments have concluded there is no demonstrable harm to designated assets. The facility provides substantial public benefits that demonstrably outweigh the limited impacts identified, while the environmental and economic costs of enforcement action would be disproportionate to any potential benefits gained. Furthermore, the Local Planning Authority's previous support through multiple planning permissions demonstrates the inherent acceptability of the development in planning terms. Alternative solutions exist that would better serve the public interest than the wholesale removal of an established recreational facility.

10) TECHNICAL CONCLUSIONS

Based on comprehensive volumetric analysis and detailed technical assessment, implementation of the Enforcement Notice requirements faces significant practical constraints that render compliance unachievable within the prescribed timeline. The verified survey data establishes that a total material movement of **503,478m³** would be required, comprising **320,765m³** for off-site removal and 182,713m³ for internal relocation. This necessitates **85,538 heavy goods vehicle movements** through the local highway network.

Implementation is fundamentally constrained by disposal facility capacity. Only Shelford Landfill, located 56km from the site, possesses the necessary classification to accept material

designated as "non-hazardous" under current regulations. However, this facility cannot accept material for approximately five years. The journey times and handling requirements create substantial logistical challenges that prevent achievement of the required movement rates.

The environmental permitting process presents additional technical barriers. Water discharge permits require a 10-month processing period, while Environment Agency Movement Orders for fish relocation require 10-20 days per application. These timeframes, combined with seasonal restrictions limiting fish relocation to October-March when temperatures are below 6-7°C, create significant sequential delays.

Operational delivery is further restricted by limited contractor capacity, with major regional operators confirming inability to achieve the required movement rates. Weather conditions are projected to reduce available working days by 21%, while highway network constraints limit vehicle movements. Implementation costs range from **£17.1 million to £127.7 million** depending on material classification, excluding additional regulatory requirements and government waste taxes.

The environmental impact would be substantial, generating over **6,134.43 tonnes of CO_2** emissions and consuming 2.3 million litres of fuel. The works would result in permanent loss of established aquatic ecosystems and significant impact on protected species habitat adjacent to designated SSSI land.

This technical assessment conclusively demonstrates that the 22-month compliance period specified in the 2015 Appeal Decision is unattainable due to the significantly larger material volumes, current environmental requirements, limited disposal capacity, and complex operational constraints. Full compliance is likely to take **over 6 years**. The implementation timeline, costs, and environmental impacts render the enforcement requirements disproportionate to the planning breaches being addressed.

11) REFERENCES & DOCUMENTATION

a) Primary Source Documentation

- Enforcement Notice (2008) - Maidstone Borough Council Reference: LDMB/LEG06/00504
- Enforcement Appeal Decision Notice (2015) - PINS Reference: APP/U2235/C/08/2087987
- Harry Skinner Surveys "Cut & Fill Volume" Site Survey (2020)

b) Supporting Documentation

- Committee Report MA/11/1948 Redetermination (2020) - Maidstone Borough Council
- Statement of Common Ground between Monk Lakes Limited (in liquidation) & Maidstone Borough Council (December 2021)
- DonBur Carbon Emissions Calculations (2024)
- National Angling Strategy 2019-2024 - Angling Trust
- Environment Agency Remaining Landfill Capacity Data (2024): Remaining Landfill Capacity - data.gov.uk
- National Planning Policy Framework - Guidance - GOV.UK
- National Planning Practice Guidance on Enforcement: Enforcement and post-permission matters - GOV.UK – last updated August 2024.
- Monk Lakes Fishery - Fishing in Marden, Marden - Visit Maidstone

c) Planning Permissions

- MA/00/1162 - Change of use granted January 2001
- MA/03/0836 - Change of use granted September 2003
- MA/09/1380 - Retrospective permission granted November 2009
- MA/11/1948 - Retrospective permission granted September 2012 (subsequently quashed)

d) Case Law

- Stratford On Avon District Council v Persimmon Homes Ltd [2015] EQHC 3593 (QB)

e) Background Reading

- Waste: environmental permits - GOV.UK
- Permission to move live fish to or from a fishery - GOV.UK
- Discharges to surface water and groundwater: environmental permits - GOV.UK
- Environmental permitting guidance: Water discharge activities - GOV.UK
- River Beult SSSI Citation and Management Requirements: Improving_the_River_Beult_SSSI_Non-Technical_Summary.pdf
- DEFRA Create Ponds and Lakes Guidance: Create ponds and lakes – Farming
- Freshwater Habitats Trust Guidelines: Habitat Creation and Management - Freshwater Habitats Trust
- Maidstone Borough Local Plan Local Plan Review 2021-38 [Adopted 20 March 2024].pdf - Google Drive
- Kent Minerals and Waste Local Plan 2024-2039: Kent Minerals and Waste Local Plan 2024 to 2039 - Kent County Council
- Marden Neighbourhood Plan 2017-2031: attachments.asp
- National Character Area Profile: Low Weald: Low Weald - National Character Area Profiles
- Maidstone Landscape Character Assessment (2012): services.maidstone.gov.uk/docs/Maidstone Landscape Character Assessment 2012 (July 2013).pdf
- Maidstone Landscape Capacity Study: Sensitivity Assessment (2015): Maidstone Landscape Capacity Study: Sensitivity Assessment