

APPLICATION: MA/09/1380 Date: 31 July 2009 Received: 3 September 2009

APPLICANT: Mr G Harrison

LOCATION: RIVERFIELD FISH FARM, STAPLEHURST ROAD, MARDEN,  
TONBRIDGE, KENT, TN12 9BU

PARISH: Marden

PROPOSAL: 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 as shown on drawing numbers 1728/1, 1728/2, 1728/3 and 1728/6 received on 31/7/09 and 3/9/09.

AGENDA DATE: 26th November 2009

CASE OFFICER: Peter Hockney

The recommendation for this application is being reported to Committee for decision because:

- Councillor John Verrall has requested it be reported for the reason set out in the report

### **1. POLICIES**

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, T13  
South East Plan 2009: C4, NRM5, TSR2, TSR4  
Government Policy: PPS7, PPS9

### **1. RELEVANT HISTORY**

ENF/8320 – (Summarised) Alleged breach of planning control - Without planning permission, unauthorised development consisting of engineering, mining & building operations & unauthorised change of use of land to recreational fishing lakes & for waste disposal not in accordance with planning permission – ENFORCEMENT NOTICE ISSUED – APPEAL NOT YET HEARD.

MA/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. The application involves the formation of ponds and lakes, the erection of a building and the formation of a car park. The existing access to Staplehurst Road is to be improved – APPROVED WITH CONDITIONS.

MA/00/1162 – Change of use of land and engineering works to create an extension to the existing fish farm and provision of temporary works access – APPROVED WITH CONDITIONS.

## **2. CONSULTATIONS**

- 3.1 Marden Parish Council** raise no objections to the application stating:-  
"Councillors have no objection subject to Kent Highway Services being in agreement to the access road and the Environment Agency agreeing to the breeds of fish to be stocked in Mallards Lake due to possible flooding issues."
- 3.2 The Environment Agency** raise no objections to the development from a planning perspective.
- 3.3 Natural England** raise no objections to the application with regard to the impact on the River Beult SSSI. Two conditions are recommended, firstly, for an interceptor to prevent polluted run off from the car parking area. Secondly, that the northern pool is not stocked with non-native fish as in the event of a flood they could gain access to the River Beult.
- 3.4 Kent Highway Services** raise no objections to the application stating:-  
"This application relates to an existing access to the A229 Staplehurst Road. The road is subject to the national speed limit.  
The existing visibility splay is in the region of 160m in both directions and is clear of vegetation throughout. This is considered adequate given the measured 85th percentile speed at the site of 52mph.  
There is not a personal injury crash history associated with the existing access. With this in mind I would make no objection on highway grounds to the retention of this access."
- 3.4 MBC Environmental Health Manager** raises no objections to the application.

## **3. REPRESENTATIONS**

- 4.1 Cllr John Verrall** has called the application to Planning Committee on the following grounds:-  
"On road safety grounds the access to the site should have been closed on completion of the works. Planning 03/0836 refers; there is an established entrance to the original fish farm site and sufficient car parking space could be made available. There is an adequate road structure to enable fisherman to reach any of the existing lakes."
- 4.2 CPRE Maidstone** objects to the application on the grounds that earthworks would harm the landscape and the use of the site for recreational fishing has the potential to cause environmental damage.

#### **4. SITE LOCATION AND DESCRIPTION**

- 5.1 The application site is located in an area of open countryside on the north eastern side of Staplehurst Road, the A229, within Marden Parish. It is just over 13 hectares in area. The River Beult is located to the north east of the site, which is a SSSI. The application site itself has no specific landscape or nature conservation designations. The land within the application site and the surrounding area is generally low lying and is partially within the flood risk areas associated with the River Beult.
- 5.2 The site has a lawful use as a fish farm and comprises five man-made lakes and four of these are at a level higher than original ground levels and one lake, Mallard Lake, lies to the north and is below original ground level with car parking area and access. The lakes are lawful but the car parking and access are not lawful.
- 5.3 In the surrounding area there is a mix of land uses. The surrounding land is predominantly in agricultural use with sporadic commercial and residential uses along Staplehurst Road. The current extent of Riverfield Fish Farm is located to the south east of the site.

#### **5. HISTORY AND ENFORCEMENT BACKGROUND**

- 6.1 The site is part of the wider Monk Lakes, formerly part of the Riverfield Fish Farm, the site has a lawful consent for use as a fish farm following the granting of MA/00/1162, which included an element of changes to the landform to create the lakes and engineer the access.
- 6.2 The western part of the application site i.e. the car park area and the adjacent land was granted consent under MA/03/0836 for the change of use of land and physical works to create an extension in the fish farm, to form an area for recreational fishing. The subsequent works that have been undertaken are not as approved under application MA/03/0836 and it is the Council's view that this permission has not been implemented. The land level changes on this adjacent area of land are out of keeping with the natural topography of the surrounding area and harmful to its character and appearance.
- 6.3 As a result, there have been enforcement investigations into the entire Monk Lakes site, including this application site. These investigations lead to an Enforcement Notice being served on 12 September 2008, which covers the entire Monk Lakes site. The Notice relates to the below summarised breach:-
- 6.4 **'Alleged breach of planning control - Without planning permission, unauthorised development consisting of engineering, mining & building**

**operations & unauthorised change of use of land to recreational fishing lakes & for waste disposal not in accordance with planning permission.'**

- 6.5 It is important to note that the lakes within the application site are considered lawful and this application does not involve any land level changes to create any new lakes.
- 6.6 The western part of Monks Lakes is the more serious problem due to the changes in land levels resulting in a steep rise in the topography of the land being particularly incongruous.
- 6.7 There has been an appeal lodged against the Enforcement Notice, which is currently being held in abeyance following a High Court challenge to a decision taken by the Planning Inspectorate regarding the procedure of the appeal.

**6. PROPOSED DEVELOPMENT**

- 7.1 The application is retrospective and contains three separate aspects. All of these aspects are unlawful and are covered as breaches of Planning Control by the Enforcement Notice that has been served over the wider site.
- 7.2 Firstly, it is for the change of use of the existing lakes from fish farming to recreational fishing i.e. from an agricultural use to a leisure use. There are no engineering works proposed as part of the application and the existing lakes are lawful in terms of the operational development to create them.
- 7.3 Secondly, the application seeks to retain the existing access onto Staplehurst Road. This access was allowed as part of MA/00/1162 as a temporary works access to be used in the original construction of these lakes. Condition 4 of MA/00/1162 required the closure of this access in the interests of visual amenity stating:-
- 7.4 **"The temporary access point to the main road should be closed off; the temporary access track and associated works shall be removed from the land and the land restored to its former condition; and the land restored to agricultural use all to the satisfaction of the Local Planning Authority on completion of the works involved in the extension to the fish farm hereby approved;  
Reason: In the interests of visual amenity and in accordance with Maidstone Borough Local Plan (1993) Policy R7."**
- 7.5 The access has not been closed off and therefore is not lawful in planning terms.

- 7.6 Thirdly, the application seeks to retain a car parking area for use by the anglers using the lakes for recreational fishing. The parking area is approximately 0.65ha in area and is shown on the plans provides for approximately 104 spaces.
- 7.7 It is important to understand that the application does not proposed any new engineering works, any new lakes or seek to regularise the unauthorised lakes located to the west of this site. Neither does the application seek to retain any existing buildings that are located within the overall Monk Lakes site.
- 7.8 The Council has to act reasonably at all times and this application has to be assessed on its own merits and not be clouded by development carried out on the adjacent site to the west. If this application is approved then, although some of the breaches would therefore become lawful it would not significantly harm the Council's case at the forthcoming appeal regarding the remaining breaches of Planning Control.

## **7. PRINCIPLE OF THE DEVELOPMENT**

- 8.1 The proposed use is as recreational fishing, Policy ENV28 of the Maidstone Borough-Wide Local Plan (2000) states that certain types of development are acceptable in the countryside. These exceptions include point 3 of the policy which is:-

**“Open air recreation and ancillary buildings providing operational uses only.”**

- 8.2 It is clear that recreational fishing is a form of open air recreation and due to the land requirement for such an enterprise it would not be possible to locate such developments within the urban area or villages.
- 8.3 The access and car parking are required in connection with the recreational use. I note the previous permission, MA/00/1162 required the closing off of the access. However, due to the change of ownership of the adjacent land, this represents the only access onto Staplehurst Road from Monk Lakes. It is therefore reasonable to treat the access and car parking as ancillary development required in connection with the open air recreation use.
- 8.4 Therefore the principle of the development is acceptable and conforms to the policies of the Development Plan.

## **8. IMPACT ON THE LANDSCAPE**

- 9.1 The application does not include any engineering works to create any additional lakes and does not require any changes to the landform of the area. In this

respect the change of use of the lakes from a fish farm to recreational fishing would have no visual impact.

- 9.2 The retention of the access and the car parking would create some visual harm to the landscape, however, the consideration needs to be whether the visual harm is significant.
- 9.3 Since application MA/00/1162 was granted there have been significant changes in the circumstances of the site. As stated in the 'History and Background' section above, condition 4 of that permission required the access to be closed off. The reason given was in the interests of visual amenity and therefore is a significant consideration in the determination of this application. The changes in circumstances relate to the change in ownership of the Monk Lakes site and its separation from the Riverfield Fish Farm located to the south east. The ownership of the site is now such that the access is the only suitable access into Monk Lakes, therefore there is considerable need and justification for an access in this location.
- 9.4 The access, as constructed, would result in an opening onto Staplehurst Road. The access itself is currently 6 metres wide and is excessive in width. A scheme of landscaping is appropriate to soften the development and I consider that this should include the reduction in width of the access road. This opening would be visible when in the immediate vicinity of entrance, however, there would be no long distance views of the access and there would be no significant visual harm to the character and appearance of the countryside that would warrant a refusal.
- 9.5 The car parking area is significant in terms of its coverage, however, it is located at the end of the access and is a minimum of 325 metres from Staplehurst Road. It would not be visible from any public vantage points and would not result in any significant harm to the character and appearance of the countryside that would warrant refusal. I consider a landscaping scheme would be appropriate to soften the appearance of the car park and recommend a condition to secure this.
- 9.6 I consider that the access and car parking are now necessary ancillary development for the open air recreation use of recreational fishing and as such are acceptable development in the countryside. The limited visual harm that is caused from the access and car parking is not sufficient to refuse the application.

## **9. HIGHWAY SAFETY CONSIDERATIONS**

- 10.1 The access onto Staplehurst Road would have visibility splays of 160 metres in either direction. This would be adequate visibility to ensure that there would be no highway safety problems from vehicles leaving the site and entering Staplehurst Road.

- 10.2 Cllr Verrall has concerns regarding highway safety issues in connection with the use of the access and indicates that the requirement for access to be closed off was related to highway safety. However, the reason given for the condition was related to visual amenity and not highway safety. Clearly, it is extremely unlikely that the Council would have permitted an access that it considered to be unsafe, even for a temporary period.
- 10.3 The car park area has sufficient parking and turning areas to allow vehicles to enter and leave the site in a forward gear.
- 10.4 These views are confirmed by the fact that Kent Highway Services raise no objections to the application on highway grounds as they are satisfied with the access and visibility arrangements.

## **10. ECOLOGICAL ISSUES**

- 11.1 The site is adjacent to the River Beult SSSI and therefore it is important to ensure that any development does not have an adverse impact on the functioning of the SSSI.
- 11.2 There are no engineering operations proposed to change land levels as part of the application and therefore the integrity of the SSSI would be maintained. The main difference would be the use for recreational purposes rather than as a fish farm. I do not consider that the application would have a significant impact on the SSSI, Natural England have raised no objections to the application in terms of the impact on the SSSI subject to the imposition of conditions relating to the stocking of the lake closest to the River Beult with only native fish and the installation of an interceptor to stop pollutants leaching from the car park area. I consider that these conditions are appropriate for imposition.

## **11. IMPACT ON RESIDENTIAL AMENITY**

- 12.1 The nearest residential properties to the application site are 'Burrs Hill' and 'Bassetts'. These dwellings would be a minimum of 90 metres from the access road, 100 metres from the lakes and 295 metres from the car park. These distances would ensure that there would be no significant disturbance from the use of the lakes for recreational fishing or the use of the car park and access in connection with that use.
- 12.2 As a result there would be no significant impact on the level of residential amenity enjoyed by the occupiers of these dwellings.

## **12. CONCLUSION**

- 13.1 The use of the site for recreational fishing is acceptable in the countryside and the limited operational development in terms of the car parking area and access would not result in significant harm to the character and appearance of the countryside.
- 13.2 The use of the access would not result in a highway safety problem and there would be no hazard to road users from its continued use.
- 13.3 The application is considered acceptable and I recommend approval.

## **13. RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. Within 2 months of the date of this permission full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The hard landscape works shall include full written details of the proposed reduction of the width of the existing access road to not more than 3.5 metres up to a point not less than 15 metres from Staplehurst Road, the scheme shall include passing bays every 30-40 metres. The soft landscape works shall include full written details of verges lined with double staggered hedgerows and trees, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The Scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

2. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the 2011/2012 planting and seeding seasons and any trees or plants which within a period of five 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 in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

3. Within 2 months of the date of this permission full written details of the materials and finish to the surface of all areas of hardstanding shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved prior to the planting and seeding of the approved soft landscape works;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policies ENV6 and ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

4. The lakes shall be used for recreational angling only and for no other purpose;

Reason: Unrestricted use of the lakes would cause demonstrable harm to the countryside and the enjoyment of their properties by adjoining residential occupiers contrary to Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

5. The visibility splays hereby permitted and as shown on drawing number 1728/3 shall be maintained free of all obstruction to visibility above 1.0 metres thereafter;

Reason: In the interests of road safety in accordance with policy T13 of the Maidstone Borough-Wide Local Plan (2000).

6. Prior to the use of the site for recreational fishing a scheme for surface water drainage from the car parking area including a suitable proprietary bypass interceptor shall be submitted to and approved in writing and shall be installed prior to the use of the site for recreational fishing and maintained thereafter;

Reason: To ensure the integrity of the River Beult SSSI is maintained in accordance with policy NRM5 of the South East Plan (2009).

7. The lake in the north west of the site, identified as Mallard Lake on drawing number 1728/6, shall only be stocked with native fish;

Reason: To prevent damage to the River Beult SSSI as a consequence of a flood event in accordance with policy NRM5 of the South East Plan (2009).

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.