

# **Annex 2**



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Our ref: RL/5506

Mr P Hockney  
Principal Planning Officer  
Development Management  
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Kent  
ME15 6JQ

16 December 2011

BY EMAIL ONLY

Dear Mr Hockney

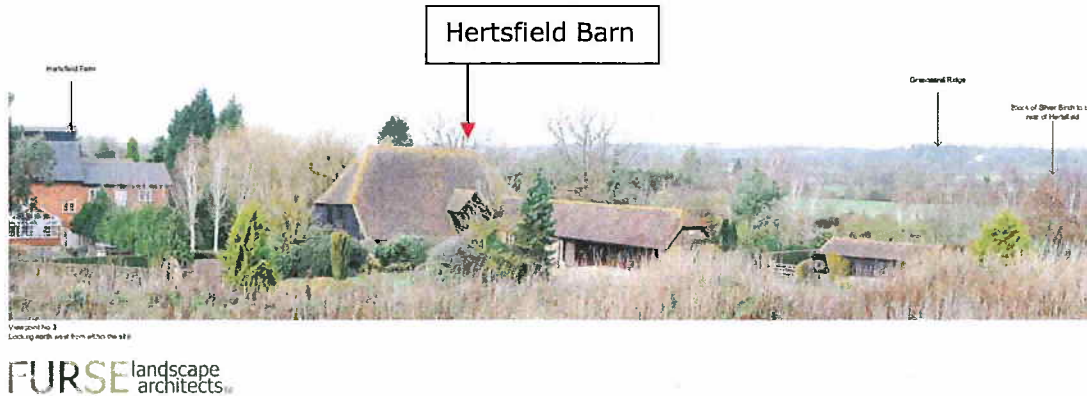
**Planning application: 11/1948**  
**Monks Lakes, Staplehurst Road, Marden, TN12 9BU**

We write in response to the planning application above on behalf of Mr. David Padden of Hertsfield Barn and comment on the proposed scheme and details concentrating primarily on the impacts on the occupiers of Hertsfield Barn as follows:

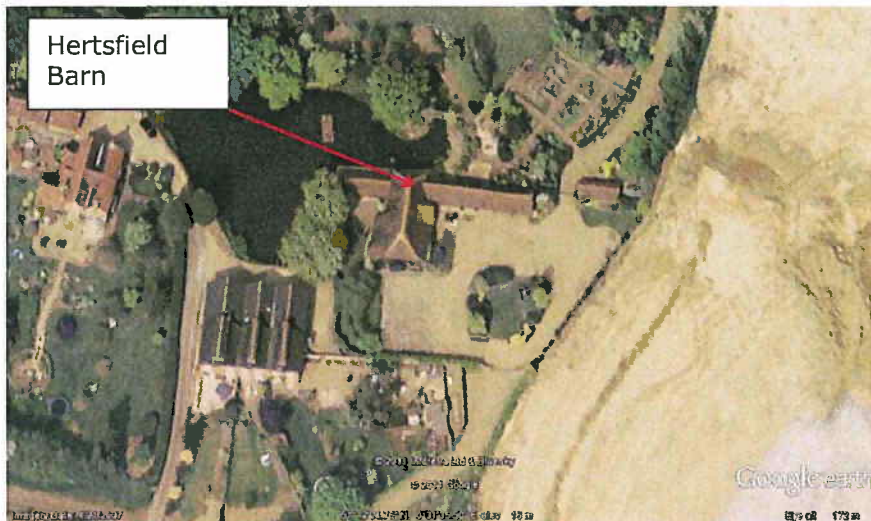
### The Application Details

1. The lakes are actually reservoirs due the size and quantity of water to be held, the description of the development does not reflect the true nature of the development including the quantity of material that has been deposited on the land which it is proposed to retain or the further quantity proposed to be imported.
2. The section plan and general arrangement plans [PDA – MOM-107, PDA-MON-103] have a 'do not scale' disclaimer, as such presumably the accuracy of these plans cannot be relied upon and we are therefore surprised the application was validated.
3. It is noted that despite being an immediate neighbour to the site our clients residential property Hertsfield Barn is not identified by name on any of the plans, or for instance in Appendix C of the Environmental Statement (ES) which refers at 1.1 in the executive summary and at 6.4 of the main assessment to the shared boundary on the west with Hertsfield Farm, Old Hertsfield and Hertsfield Cottage 1 – 6.
4. The Landscape Assessment report at Appendix D does not include an assessment of visual amenity from Hertsfield Barn in Section 3.9 of the report. This property seems to have been completely overlooked.

- The photos taken from the application site to accompany this report (extract below) includes one which looks out onto Hertsfield Barn but only identifies Hertsfield Farm and Old Hertsfield to the south and east of our client's property. It is not therefore clear that the consultants undertaking the assessment were aware of the use of Hertsfield Barn as a residence in their assessment at all.



- If the photographer had moved further north on the existing bank it would have been possible to take a photo of the front of Hertsfield Barn. The ornamental planting visible in this photo is within the garden of our client's property as shown below.



- It is noted that notwithstanding the answer at Section 22 of the application form regarding annual waste throughput only, the non-technical summary of the Environmental Statement (ES) states at paragraph 13 that the proposed scheme it is stated requires the importation of a further 51,000 cubic metres of waste material in addition to the retention of some 400,000 cubic metres of existing unauthorised spoil and waste material that has already been deposited on the site.
- The Environment Agency previously advised the quantity of material imported to the site was as follows:

There is volume difference of 645,858m<sup>3</sup>. Of the area's shown to increase in volume there is a total gain of 734,037m<sup>3</sup>. Of the area's shown to decrease in volume there is a total loss of 88,179m<sup>3</sup>

9. Whilst it is understood that there must be some allowance for discrepancies when using LIDAR data for assessment of quantities, it is not clear how the applicant and his agent have reached their figure of 400,000 cubic metres, which is 254,858 cubic metres less than the LIDAR figure. The ES confirms that the current consultants have no knowledge of the land prior to the significant deposit of land. It is understood neither Mott Macdonald nor Scott Wilson, on whose reports some reliance is placed, had prior knowledge either.
10. PPS10 Companion Guide Chapter 8 advises that the Courts have held that where a substantial part of the application relates to a county matter, then the whole application should be dealt with as such (see R v Berkshire County Council, ex part Wokingham District Council 1996 EWCA Civ 513).
11. Whilst the stated intention may eventually be the construction of lakes (or more accurately reservoirs), clearly this has resulted in a large scale waste deposit operation. As such we consider that this is primarily a part retrospective and part proposed waste matter that should be dealt with at the County level.
12. An extract from Development Control and Practice regarding a golf course development in support of this assessment is copied below;

*Three enforcement notices alleged a material change in the use of land for the deposit of waste materials at a golf course. A council's assertion that the scale of waste disposal was so great as to create a new planning unit was rejected. Under grounds (b) and (c) an appellant argued that there had been no change of use since the material deposited was not waste and the work was necessary to secure the completion of the golf course. An inspector considered whether the materials were discarded i.e. so that they were no longer part of the normal commercial cycle or chain of utility. The appellant had been paid to receive the waste and the permission for the golf course did not authorise tipping. Under (b) the cases Northavon DC v S.O.S. 3/7/1980 and West Bowers Farm Products v Essex CC 17/6/1985 were discussed, and on balance it was concluded that whilst what had been intended was the construction of golf holes, there had also been a use for the deposit of waste materials. Both grounds were rejected and the enforcement notices upheld (Oxfordshire CC 7/4/99)*

13. The requirements for a waste related application includes an assessment which addresses proposed waste types and sources. This does not appear to have been provided with the application material. Other requirements for such applications include:
  - details of the type of wastes proposed to be deposited
  - the expected duration of the operation;
  - the rate at which landfill will take place (an indication of loads per week);
  - If the proposal is likely to generate significant amounts of traffic and/or heavy vehicles and/or would involve use of roads of poor construction, width or alignment, you are strongly advised to contact the Highway Authority.

### **The Environmental Statement**

14. It is understood that no scoping opinion was sought prior to the preparation of the ES.
15. The Environmental Statement (ES) as submitted with the current application is fundamentally flawed as it uses the date of 2010 with significant unlawful development in place as its base point rather than the position in 2003, preceding the commencement of the unauthorised development a position which is the actual lawful base point. The Landscape Assessment and other reports within the ES replicate this error. In view of this it is not clear why the application has been validated.
16. In a meeting with members of the Hertsfield Residents Association on the 21 March 2011 senior officers of MBC (Rob Jarman and Alison Broom) confirmed that the development as presented in the 2010 Scott Wilson report was not acceptable and that any application and accompanying ES should compare the proposed development to the 2003 position.
17. Whilst the ES states no comment is made on the legal position with regard to the 2003 consent, it does seem to make an assumption that the 2003 development was or could still be implemented. If this is considered to be material to the assessment of the current proposal it would be sensible to resolve this once and for all through the planning enforcement appeal process (a process that has been frustrated by related matters of lawfulness and questions of implementation for over 2 years) before determining this application.
18. In terms of lawfulness it remains our assessment that the 2003 consent was never implemented as pre-commencement conditions, including condition 12 which required that no development shall take place until details of earthworks had been submitted to and approved by the local planning authority, were never discharged.
19. There are no issues of estoppel in such matters and regardless of any communications with the previous landowner that may have caused confusion in the appeals for the S.73 matters; MBC was entitled in law to issue the enforcement notice.
20. We understand the Maidstone Borough Council (MBC) sought Counsels opinion prior to the issue of the enforcement notice, and the advice concurred with our assessment .
21. We are not aware of any change in this position. The recent Order of the Court following a Judicial Review of the decision of the Inspectorate to decline to determine various appeals simply requires those appeals to be reinstated for assessment by a planning inspector.
22. In further support of our assessment of the lawful fallback position, we draw attention to the recent case of **Greyfort Properties Ltd v SoS CLG** [July 2011] in which the Court of Appeal reviewed all the previous cases on pre-commencement conditions. In 1974 full planning permission was given for the erection of 19 flats subject to conditions:

*“(3) Before any work is commenced on the flats hereby permitted the access including visibility splays shall be formed and laid out to the satisfaction of the LPA*

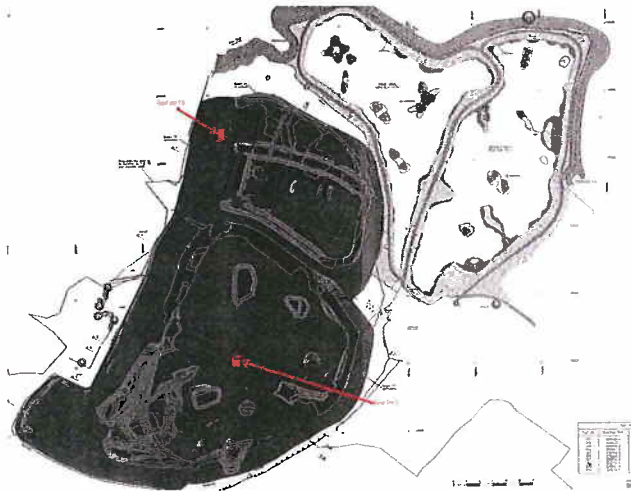
*(4) Before any work is commenced on the site the ground floor levels of the building hereby permitted shall be agreed with the LPA in writing"*

The Inspector and the High Court took the view that the refusal of a certificate of lawfulness was correct. The works that had been carried out before the planning permission lapsed were not lawfully carried out as they were in breach of condition 4. We see no difference in this case on the basis of the evidence available.

23. In addition the ES is deficient in that it provides no information as to the type of material tipped on site. The huge quantities of waste that tipped on site was unregulated, as such it is not known with any certainty what was tipped there. Local residents are concerned about odours from the site which suggests that some putrescible matter was dumped. In addition the water runoff from the site has an unpleasant odour and appears polluted.
24. It was understood from a previous report prepared by Scott Wilson which was submitted to the Council in 2010 at pre-application stage, a report that was shared with residents in August 2010, that only 10 bore holes or trial pits were made, this on a site that spans many hectares. It is noted from this report that the following material was found:

No 5: Asbestos cement tile

No 10: Asbestos cement tile

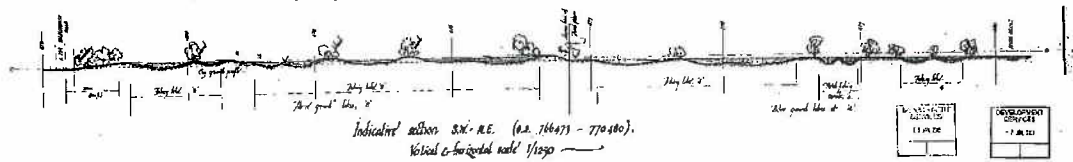


25. The approximate location of these test pits is shown above. It is curious that the ES is silent on the quality of the material tipped on the site as this has the potential for significant detrimental environmental and health impacts.

#### **Impacts on Residents of Hertsfield Barn**

26. The whole development is pushed out further to the edge of the western boundary and closer to our client's property than the scheme that was approved in 2003. On the approved plan there was a clear gap from the boundary with our client's property before the start of the 1:10 rise of the bank on the west side to form the 'above ground lake' number 8 as annotated on the plan (note not 1:8 as suggested in the ES and as proposed for this scheme).
27. The part of the 2003 indicative cross section 674/VIII-1A which is not reproduced in the current application in PDA-MON-107 shows that the construction of the above ground lakes was to

include some excavation of the lake floor, rather than increasing the height of the lake floors by 3 metres or more, as now proposed.



28. In 2003 MBC considered insufficient detail was provided in this plan and therefore imposed a condition that required additional details to be submitted for approval prior to commencement of development. As such the superimposed comparison with this in Plan PDA-MON-107, cannot be relied on for accuracy.
29. If, as the previous and current landowners state, it was impossible to implement the 2003 consent due to errors in the scheme, it was their responsibility to submit a revised scheme for consideration rather than commencing or continuing works on a scheme that was vastly different from that approved, and without the discharge of pre-commencement conditions. The unauthorised works that have been undertaken were carried out at their own financial risk, and the cost of remedying this should not colour decisions that have significant impacts on the occupiers of neighbouring properties.
30. As the 2003 consent has now expired, it is not a fall-back position, and carries little weight in the determination of any new scheme. As the scheme was so fundamentally flawed that it could not be implemented as approved, it carries even less weight than this, such that it is not a material consideration.
31. We therefore consider the proposal should be assessed afresh with no fallback position and in the absence of the unauthorised development the subject of the notice currently at appeal.
32. The C-C cross section plan in the current application if read at face value gives a misleading view of the proximity of the highest part of the bank adjacent to our clients property. The cross section shows a distance of 130 metres from the section through the [unnamed] Hertsfield Barn to the top of the bank as proposed, when the distance on the general site arrangements plan [with the rider do not scale from] is scaled to be 75 metres.
33. The view from the east side front of the property looking towards the site is shown below. Unfortunately we have been unable to locate a pre development photo of the same view; however, the second photo is a view from our client's field looking away from the application site, to illustrate the character of the outlook he previously enjoyed.



34. The sight line of visual receptors as indicated on cross section C-C is not truly reflective of the view when looking out the front windows or standing in the grounds of Hertfield Barn as shown in the photo above. Under the current proposals from these positions receptors looking east will be faced with a large bank with dense planting on top rather than a view of the skyline in the distance as suggested.
35. The B-B section is more representative, although Hertfield Barn is not shown as the line does not pass through it. The actual distance from the highest part of the bank to the boundary of our client's property is less than 50 metres.
36. The proposed crest of the bank to Lake 2 is at least 5.7 m higher than the land levels at Hertfield Barn. It is now proposed that dense woodland planting should be placed on top of this to reduce the significant problem of overlooking from visitors to the lakes and loss of privacy.
37. In looking at the list of plants in the landscaping scheme proposed for this area (W2) it is noted that a field maple can grow up to 15m in height, and quercus robur grows to a height of between 25 to 30 m. The combination of the bank rising to 5.7 metres above ground level and the density and height of planting may cause overshadowing and loss of morning sunlight in the grounds of Hertfield Barn, particularly in the winter when the sun is low.
38. Contrary to the opinion in the ES at Appendix C para 10.28 it is considered that in the context of the lawful position, i.e. no development as at the 2003 base point, the combination of the bank and planting will harm the character and appearance of the area and be visually intrusive and overbearing, which would result in a loss of amenity to the occupiers of Hertfield Barn in conflicts with the provisions of policy ENV 28 of the Maidstone Borough Local Plan.
39. Without the dense planting on the west bank of lake 2 there would be significant and unacceptable degree of overlooking to Hertfield Barn causing loss of privacy and amenity. However, the suggested remedy for this, dense planting on the bank, will detract from the open outlook previously enjoyed and will have an overbearing / enclosing impact in this rural area. As such the mitigation that seeks to make the proposal acceptable in one respect has unintended consequences that would also result in unacceptable impacts on our clients amenity.
40. It should also be noted that our client owns the field to the north of his residence, and views from this land are also affected as can be seen below. The continuous line of the bank to Lakes



along the boundary of his property as proposed will continue to appear as an artificial land feature in the landscape.



41. It is noted the Flood Risk report at Appendix A refers to planting of hedges on the crest on the west bank and cautions at para 5.4 that

*'(It is important that the planting is not so dense as to inhibit growth of grass and regular inspection of the embankments).'*

42. This is necessary to ensure that the banks of the reservoirs are not compromised and appears to be inconsistent with the dense woodland planting proposed to prevent overlooking.
43. The slight/positive visual impact assessment made in Appendix D of the ES for neighbouring properties (excluding Hertsfield Barn) at 3.9 a (ii) and (iii) is of course based on a change from the current unauthorised development position as a base line, and not the 2003 pre-development position which is the correct base line. As such this assessment of impacts cannot be relied upon.
44. It is noted that the ES suggests a further 51,000 cubic metres of material is required for the proposed scheme. Based on 15 cubic metres a tipper lorry load by volume this equates to some 3,400 inwards lorry movements and a further significant amount of gate income based on the current median fee of £20 a tonne within the range is £12 - £55 a tonne (excluding landfill tax). The current H M Revenue and Customs landfill tax guidance uses a multiplier of 1.5 on each cubic metre of inert waste to calculate the tonnage (in the absence of a weighbridge). This calculation results in 765,000 tonnes of material, applying the median rate of £20 a tonne this would result in potential gate fees of £1,530,000.
45. The pre-application scheme submitted by Scott Wilson to the Council in 2010 required no additional imported material, using existing material to cut and fill. This scheme was not acceptable to our client, the HRA or MBC. It is inconceivable that a scheme which requires even more material would now be necessary or acceptable.
46. On the evidence it could be concluded that the scheme currently under consideration has been devised as another waste disposal exercise to avoid the cost of remedying the harm to local

resident's amenity by the removal of the unauthorised material on site, and as a way to make more money.

### **Flood Risk**

47. A number of assumptions are made in the Flood Risk assessment at Appendix A of the ES concerning the previous ground condition and its capacity for absorbing ground water.
48. In addition it is suggested that the ditch along the western boundary, i.e. the one next to our client's property, is more than adequate to deal with the run off from the regarded slopes that are to be created in the construction of the lakes.
49. As a matter of fact the proposed development is to retain the lakes with floors which will be sealed with clay at a level of around 3 metres above the former natural ground level. Rather than absorbing rain water, the lakes will now feed rain fall through pipes from one through to the next. There is a risk of the pipes becoming obstructed which may have consequences for neighbouring properties. There is no planning control to ensure these pipes are properly maintained.
50. Reference is made to 'enhancing the ditch' but our client notes that the discharge into the existing ditch has to be supplemented by a motorised pump that runs regularly. His observation is that there has been a significant increase of waterlogging of his garden; the pond water height has risen, as has the level of water in the ditch, since the unauthorised development was undertaken. The gardener who has attended the property since 1991 has advised our client that there is standing ground water in places that were never a problem prior to the unauthorised development.
51. Whilst the 'enhancement' of the ditch by widening the bottom width to 1 metre may improve the current situation, there is no certainty that it will return the situation to the pre-unauthorised development position or that the ditch will be adequately maintained in perpetuity. It is noted there is no condition to this effect suggested in the condition schedule submitted with the application and the efficacy of any such condition is dubious.

### **The Alternatives**

52. The ES assesses the impacts of compliance with the notice, and comments that it would take 40,000 lorry movements to remove 400,000 cubic metres of material (based on unspecified calculations) to achieve compliance within a period of 8 months, for a development that took years to undertake.
53. Comment is made in the ES about the cost of compliance with the notice, which it is stated could be into 'millions', although no actual detailed assessment of cost is provided, but presumably this was assessed using gate fee figures for landfill waste disposal.
54. No information is provided regarding the receipt of gate fees for the unauthorised waste material that was imported to the site, which would have been significant. According to the

Waste and Resources Action Programme (WRAP) the 2008 median gate fee for landfill (excluding landfill tax) was £20 per tonne. The highest in the range of gate fee was £40 per tonne, the lowest £11.

55. Although material was imported sporadically in the period between 2004 and 2007, activity significantly increased in 2008 and in an 8 week period starting at the time when the current owner purchased the site and until MBC issued the Temporary Stop Notice. In excess of 200 lorries a day deposited spoil on site. On the basis of 40 days, and a conservative estimate of 200 lorries with 15 cubic metres a load and applying the land fill tax multiplier of 1.5 this equates to 45,000 tonnes which has a gate fee of £900,000. This spoil may have originated from the Tesco development scheme in Hastings.
56. If one accepted the ES figure of 400,000 cubic metres of waste, using the land fill tax multiplier of 1.5 this equates to 600,000 tonnes of waste, which even at £11 a tonne could have produced gate fees of £6,600,000 and significant profits from the unauthorised importation of material.
57. It should also be noted that in addition to gate fees for waste the current and previous landowner have had the benefit of income from the two unauthorised below ground level lakes (Puma and Bridges) located in the flood plain for many years. Prices are currently £10 a rod for a day ticket and the website states this is rated as the 4<sup>th</sup> best fishery in Britain. Our client has observed that the site is well attended on a regular basis.
58. The applicant must have been aware of the Council's concerns about the development at the time he purchased the property and yet he continued with the unauthorised works, indeed he increased the intensity of importation of waste until the Council took formal action. It is disingenuous that he now complains that the cost of removing the unauthorised material is too great. Indeed in this current scheme it is proposed to import even more material.
59. If the compliance period is too short for the landowner to undertake the removal of spoil in an orderly manner, as any further action to secure compliance with the notice is at the discretion of the local planning authority it is open to the landowner to negotiate with MBC to agree a method statement and alternative timetable for the remedial works. Our client would ask that if this is the case that residents are given the opportunity to comment on any such scheme.
60. In the ES no alternative scheme of works that that would lower the base of the 'above ground' lakes down to or lower than the original ground level has been considered, or indeed a scheme for smaller lakes rather than reservoirs. It may be that a scheme of this nature would provide an acceptable compromise, but it seems the landowner does not wish to compromise, and is simply presenting a *fait accompli* to the Council and residents alike.

#### **Ecology**

61. No detailed comment is made as the base line used in the ES is 2010. Any wildlife habitats or flora or fauna of merit in the part of the site adjacent to our client's property where the significant waste tipping has taken place was lost at the time of the unauthorised development. It is therefore not surprising that there is nothing left in this area.

### **Additional Relevant Policies:**

62. The development includes the retention and importation of significant quantities of waste material. Proposals for waste related development must be assessed against relevant planning and development plan policies. This includes the advice in Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10) and the adopted Kent Waste Local Plan (March 1998). The ES is silent on these policy documents.

### **Conclusion**

Some of the plans as submitted are not acceptable as these have disclaimers regarding scaling, so cannot be relied upon for accuracy.

It is considered that Maidstone Borough Council is not the appropriate authority for this primarily waste related application. As such the application should be referred to Kent County Council. As no assessment of waste polices has been made inadequate information has been provided.

The ES is fundamentally flawed as it starts from a base point of 2010 in the context of the existing unauthorised development. As confirmed by the Chief Executive and senior Council officers in a meeting with local residents the correct assessment for any application for this site should be against the position in 2003 before the unauthorised works.

There is no fall-back position to any previous consent. The 2003 permission was in itself flawed and apparently it was not possible to implement the approved scheme. As such that consent as a result of incorrect information and the inadequate assessments made by MBC are not material considerations and carry no weight in support of the proposed scheme the subject of this application.

The proposed development would result in the retention of unregulated unauthorised waste material that has been used in land raising. The proposed lake (reservoir) base levels are 3 m above original land levels and are to be contained on the western side by a steep bank (1:8) that slopes upwards from the boundary to a crest height that exceeds 5 metres in height. This bank is then to be topped with dense woodland planting. The resultant development would be overbearing and have a detrimental impact on visual amenities of the occupiers of this Hertsfield Barn contrary to policy EN28 of the development plan.

The Flood Risk report is noted, however, the conclusions are inconsistent with our client's observations of ground conditions and the adequacy of the ditch, both before and after the unauthorised development. Any improvement to the ditch would have to be regularly maintained to ensure its continued efficacy; there are doubts that this would be undertaken in perpetuity. In addition there appears to be inconsistency regarding the proposed planting and the need to regularly inspect and maintain the bank as the proposed lakes are of a size that falls within the controls relating to reservoirs.

Our client objects to the application proposal which from the perspective of impacts on his property and amenity varies little from the scheme proposed in the 2010 Scott Wilson report, a scheme that was unacceptable to local residents and MBC.

It seems that despite extensive delays in the planning appeal and Court processes, delays as a result of the landowner's requests for time to negotiate with MBC, there is no commitment to devising an acceptable compromise solution to resolve this long outstanding matter. The landowner simply seeks to minimise his cost by retaining the unauthorised material that has been imported, and indeed to make further profit by importing additional waste.

In the absence of any suitable compromise scheme being put forward for consideration over 3 years after the issue of the enforcement notice, it is our contention that every effort should now be made by MBC to ensure that all the unauthorised material is removed from the site in accordance with the terms of the enforcement notice.

Whilst there is a cost to compliance, the current and previous landowners undertook the unauthorised development at their own risk and have profited from the unauthorised development by receipt of gate fees for the waste and income from the lakes. In any event cost of compliance should not outweigh the necessity to remedy the harm caused to local residents, including our client, as a result of the unauthorised development.

Such harm was noted in the reasons for the issue of the notice, as was the fact that there was no technical reason as to why the lakes needed to be constructed on a plateau.

The unlawful waste disposal by land raising on the Land causes planning harm because there are no planning controls on the height and physical extent of the land raising, or on the types of materials that can acceptably be used in carrying out the land raising. The unlawful waste disposal and land raising also has a detrimental impact on the visual amenity of the countryside and rural area of which the Land forms part. The unlawful waste disposal and land raising adjacent to the neighbouring residential properties has an overbearing visual impact and is harmful to the amenity of the residents. The unlawful waste disposal and land raising adds to the general environmental disturbance of earthworks, vehicle movements on the Land, plant and machinery operating, and the noise and dust that these generate.

There has been no technical justification advanced why lakes have to be built on a six metre high plateau compared with the below ground lakes already constructed on the Land. This land raising has involved the deposit on the Land of construction and demolition arisings and therefore waste materials. In the absence of any technical justification for the need for these waste materials to be deposited on the Land, the primary purpose of this aspect of the development appears to be a change of use for waste disposal rather than the use of waste materials as part of an essential engineering operation.

We therefore trust that MBC will:

- Refuse this application.
- Decline any further request for delay of the enforcement appeal Public Inquiry.
- Fully defend its reasons for the issue of the enforcement notice in the planning enforcement appeal process.

On the basis of the history and background to this matter, including the enforcement notice and reason for issue and the assurances that have been given to local residents in meetings; it would be perverse to do otherwise. If MBC were to grant consent we are instructed to seek Counsels advice on a Judicial Review of any such decision.

We would be grateful for notification of any amendments to the application and for confirmation of when this matter is to be reported to the Committee.

We also request an update as to the appeal timetable and for copies of any documentation.

Yours sincerely

**REBECCA LORD MSc MRTPI**  
**Principal Planner**

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**OLD HERTSFIELD FARMHOUSE  
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21 January 2012

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Planning Department  
Maidstone House  
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Maidstone  
ME15 6JQ

For the attention of Peter Hockney Esq.

Dear Sirs

**Planning Application 11/1948 Monks Lakes**

This letter is from the Hertsfield Residents' Association (HRA), which comprises the owners of all 12 houses along Hertsfield Lane, adjacent to the Riverfield site which is the subject of the above application. The Riverfield development has been constructed in breach of planning permission and in 2008 after years of campaigning by the residents' association (whose members have been blighted by the illegal development), Maidstone Borough Council eventually commenced enforcement action against the entire development. The enforcement action is currently the subject of an appeal by the site owners and a revised date for the associated public inquiry is awaited. A public inquiry is the determined route for the appeal process because of the very significant issues with the site which has in effect operated as a waste facility for 7 years. The Hertsfield Residents Association is a Rule 6 party to that appeal.

The HRA does not believe that the application is compliant with the requirements of the Town & Country Planning Act and further objects in the strongest possible terms to the application which:

- (i) fails to rectify any of the significant breaches of planning control at the site;
- (ii) fails to rectify any of the significant issues for local residents caused by that development;
- (iii) makes the situation even worse through the further importation of 51,000m<sup>3</sup> of spoil;

- (iv) creates a wholly unacceptable additional flood risk for local residents through the construction of reservoirs above ground level adjacent to residential properties; and
- (v) envisages the construction of a large clubhouse facility, involving both retail premises and a restaurant, entirely out of keeping with the rural environment and to the detriment of local residents through creating additional traffic movements, noise and disturbance.

The application and the Environmental Assessments do not comply with the requirements for a new planning application. Previous development on the site was unauthorised and is being enforced against. There is therefore a legal requirement for this application to be an entirely new one for the development (since 2003 and now proposed) as a whole, yet it is not. The current application instead assumes that the existing construction is legitimate and seeks consent for additional works.

The application itself is voluminous, accompanied by significant pages of consultants' reports. However volume is no substitute for content. The council has previously notified the applicant of the need for an Environmental Impact Assessment (EIA). The council has also on numerous occasions confirmed both to HRA and (we assume, given that the application notes that they have consulted Peter Hockney on this issue in October 2010) the applicants that the EIA needs to take as its base position the pre 2003 landscape and to assess the impact of the development on that position, as the current site development is unauthorised. All of the significant volume of EIA material included with the application takes 2010 (ie post unauthorised development) as the base or comparator position, which therefore renders this work largely irrelevant for the purposes of determining the application. It is clear that any EIA assessment of this application against the 2003 pre development position would be extremely negative.

The applicant has additionally been notified by the Planning Inspectorate in relation to the appeal to the enforcement notice dated September 2008 that an EIA would be required regarding the development since 2003. It cannot be the case that the current application can proceed therefore without a full EIA regarding development since 2003.

The Environmental Statement included with the application also contains a purported review of the impact of the proposed development on residential amenity. At no stage were any of the residents contacted to ascertain their views and the members of HRA reject completely the conclusions of the report. For local residents whilst disruption would be significant in the short term through the developer complying with the enforcement notice issued in September 2008, it is a considerably preferred position than more limited short term activity required for further construction on this blighted development. This is because the development itself would blight local residencies and its effects would be long term. The report therefore completely lacks validity and should be set aside.



The current application appears to us to be similar in all material respects with a “pre application proposal” submitted by the developers to the council in 2010, upon which HRA has already commented. Given how clearly unacceptable those pre application proposals were, it is odd that the current actual application is so similar.

This whole development has been so problematic to the council and local residents for so many years that in the unlikely event that a recommendation to approve is made by the planning officers, the decision must go to the full planning committee. However on the assumption that the application will be rejected, the council should take all necessary steps to require PINS to continue with the enforcement appeal process within the shortest possible timescale.

### **Objections**

1. The Proposal does not address any of the significant breaches of planning permission regarding MA 03/0860 which are the subject of enforcement action commenced in September 2008. Those breaches of most specific concern to the residents are:
  - a. There is no proposed removal of any of the significant volumes of materials brought on site as unlawful waste disposal operations. The 2008 enforcement notice (attached as Appendix A) states: the importation of materials for land raising is not specifically provided for in the description of development granted planning permission MA/03/0836. No justification has been provided why the importation of materials for land raising, either at all or in the quantities that have in fact occurred, are necessary for the implementation of the development granted planning permission MA/03/0836.
  - b. There is no material alteration to the very high and steep banks (or “bunds”) on the Western side of the site, nearest the residents. The 2008 enforcement notice correctly describes these as having “an overbearing visual impact and [is] harmful to the amenity of the residents”;
  - c. There is no material proposal to reduce the earth dumped in the flood plain when any land arising in the flood plain was a precondition of the 2003 planning approval;
  - d. It is still proposed that the lakes nearest the residents are constructed on a raised platform (which has already been constructed on an unauthorised basis), when there is no technical justification for this and which was never envisaged as part of the 2003 planning application. This represents both significant visual harm and loss of privacy to the residents, but also (see Paragraph 4 later) an unacceptable additional flood and property damage risk. The 2008 enforcement notice states:

There has been no technical justification advanced why lakes have to be built on a six metre high plateau compared with the below ground lakes already constructed on the Land. This land raising has involved the deposit on the Land of construction and demolition arisings and therefore waste materials. In the absence of any technical justification for the need for these waste materials to be deposited on the Land, the primary purpose of this aspect of the development appears to be a change of use for waste disposal rather than the use of waste materials as part of an essential engineering operation.

2. Notwithstanding the already huge quantities of spoil brought on site on an unauthorised basis, the application envisages the importation of a further 51,000m<sup>3</sup> of spoil, necessitating in excess of 5,000 lorry movements. This will create significant noise, disturbance and loss of amenity to local residents and will by definition make worse an already unauthorised waste operation.
3. There have been a number of site surveys carried out by consulting engineers which have indicated the presence of contamination – including asbestos, metals and asphalt – within the spoil dumped on site. This poses potential health risks, but importantly is likely in our view to adversely impact the structural integrity of any banks/bunds constructed to contain above ground reservoirs. The entire exercise to import waste has resulted in serious risks for residents and users of the site. In addition, under a waste exemption license, the operator is required by law to test waste deposited on site and to keep adequate records. The LPA should require access to these records.
4. The 3 lakes proposed to be created on raised platforms at the southern end of the site, which are directly adjacent to residents along Hertsfield Lane are so large that they fall under the Reservoirs Act. The nature of their construction, being raised above ground level, makes them at greater risk of catastrophic failure than similarly sized lakes constructed below ground level as they are by definition contained within man made bunds. The risk to local residents and their properties (some of which are Listed buildings) is entirely unacceptable. Additionally both developer and any planning authority which approved such a reckless development would be at risk of significant legal liability. The application itself contains a flood risk run off calculation which states:

A breach of either of lakes 1 or 2 on the west side would seriously affect properties in Old Hertsfield. Velocities of flow at the foot of the embankment would approach 10 *m/s* although they would slow rapidly to much less while at the same time becoming deeper. Around 50 m from the toe a depth of about 0.5 m could be expected with a velocity of around 1 *m/s*. Thereafter flow would stabilise at about 0.4 m depth with a velocity of 0.9 *m/s*. However there would be local effects around obstacles such as buildings, walls and trees etc.

The above are the near field (ie the immediate vicinity of Old Hertsfield) effects and considered to be conservative figures. Middle field effects (ie between Old Hertsfield and the river where there is no property) will be increasingly less serious due to valley storage effects. It seems likely that the Large buildings of the Stile Bridge Nursery would escape the main flow.

5. In respect of the clubhouse, the current application is not dissimilar to MA 10/0762 in its size and scale. The proposed clubhouse represents a large and

visually intrusive structure in an otherwise rural landscape. HRA objects to the proposed clubhouse on the following grounds:

- a. The justification for a clubhouse to be constructed in a rural location can only be to provide required support for legally authorised activities. We do not believe that fishing does provide a justification for such a large development (at 200m<sup>2</sup> before taking account of office, toilet, storage and reception space) – such facilities are rarely found at other angling sites. Instead we believe that there is a serious risk that the clubhouse will attract (and is designed to attract) passing trade from non anglers choosing to eat in the restaurant. It is therefore an application for a new leisure facility in a rural location with a use not required for anglers.
- b. The applicants refer (for instance para 5.32 of the Design and Access Statement) to planning permission having been granted under MA 03/0836 for fishing lakes with a clubhouse. Notwithstanding that the grant of planning permission is no longer relevant as no lawful development commenced within the 5 year timescale, that planning permission was for a very much smaller (1/3<sup>rd</sup> of the size) building than proposed here. The planning committee report on 03/0836 summarised the building thus: “The proposals include the erection of a single storey "lodge" building, some 13.5m x 5.3m. This would be used for reception, administration, and storage, and would include toilets (including disabled facilities). The building would be of simple timber construction with a clay tile roof.”

That 2003 application therefore envisaged a building very much smaller than this, and which included neither restaurant nor retail facilities. The previous planning permission therefore provides no support for the current application.

- c. The previous planning application by the same developer regarding a clubhouse (MA 10/0762) stated that overall numbers of anglers on site will never exceed 120. With regard to the need for basic facilities, the rivers, gravel pits, lakes, the sea etc around the country are fished day and night throughout the season without the need for one clubhouse plus restaurant plus shop etc for every 120 anglers! If that was a basic need it would be impossible to protect the countryside. Application MA/03/0836 did not propose a restaurant or washing facilities so clearly these are not “essential facilities”.
- d. The applicants’ design and access statement asserts (paragraph 5.36) that “A shop selling angling products is a necessary part of the business”. However as the LPA will be well aware, because a lot of fishing is done in the countryside away from tackle shops, anglers are generally self sufficient and the very large majority of anglers bring all their equipment with them. The likelihood of breakages rendering an angler incapable of

fishing is extremely rare and similarly is running out of bait. Such unlikely eventualities do not justify a shop in the middle of the countryside. Shops should be in town centres and anglers are spoilt for choice in the vicinity. A simple list from the telephone directory shows many specialist fishing and tackle shops within a short drive, for instance the following:

1. Fishing World Of Kent Ltd  
telephone: 01622 892371  
27 High Street, Headcorn, Ashford. TN27 9NH
2. Nicks Tackle Shop  
telephone: 01622 673899  
10 Knightrider Street, Maidstone. ME15 6LP
3. Maidstone Angling Centre  
telephone: 01622 677326  
15 Perryfield St, Maidstone. ME14 2SY
4. Fishing Equipment Suppliers Trade-In-Tackle  
telephone: 01622 814296  
Maidstone Rd, Watlington. ME18 5EH
5. Fishing Emporium Ltd  
telephone: 01892 837040  
4 Clavadel Road, Paddock Wood, Tonbridge. TN12 6EW
6. West Malling Angling  
telephone: 01732 875515  
56-58 High Street, West Malling. ME19 6LU
7. Specialized Angling Centre  
telephone: 01634 243112  
3 Holborough Road, Snodland. ME6 5NL
8. Medway Tackle  
telephone: 01732 360690  
103 Shipbourne Road, Tonbridge. TN10 3EJ
9. Tackle & Gun Shop of Tenterden  
telephone: 01580 764851  
3 Eastwell High St, Tenterden. TN30 6AH
10. Just Baits  
telephone: 01634 817771  
70 Luton High Street, Chatham. ME5 7LJ
11. Kent Tackle  
telephone: 01580 754422  
Hastings Road, Hawkhurst, Cranbrook. TN18 4RT

Application MA/03/0836 did not propose a shop so there is clearly not a "reasonable need" for such retail premises on site. A clubhouse may be commercially desirable for the developer but it is clearly therefore not

“necessary” as claimed. A commercial desire by the developer should not override the protection of the countryside and amenity of residential neighbours.

- e. The proposed development will increase noise, light pollution and disturbance from the site to the detriment of the local residents. In addition, the building would attract additional clientele (restaurant, bar, conferences etc) who have no connection to anglers taking part in a competition, hence this will increase traffic flow into a rural location and cause potential hazard especially at the junction between the site and the main A229 road. The applicants propose a planning condition to restrict the use of the clubhouse to purposes ancillary to the principal use of the site (recreational angling) but this is an unenforceable condition and the applicants have demonstrated a long history in any event of ignoring planning conditions.
- f. The proposed building is completely out of keeping with local architecture and does not meet the criteria for outstanding architecture which under local and regional development plans are a prerequisite for building in a rural area.

### **Conclusion**

It is the very clear view of the HRA that the application should be refused. If, in spite of the evidence to the contrary, the planning officers are minded to recommend approval, it is equally clear that the decision should go to a full planning committee especially given the very long and problematic history of the site.

On the basis that the application is refused, the LPA should act as soon as possible to require the Planning Inspectorate to recommence the enforcement appeal.

Yours faithfully

For and on behalf of Hertsfield Residents' Association



JM Edwards

Chairman

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www.bell-cornwell.co.uk

Please reply to: Hook

Our ref: RL/5506

Mr P Hockney  
Maidstone Borough Council

Via EMAIL only

25 May 2012

Dear Mr Hockney

**Application 11/1984**  
**Site: Monks Lakes, Staplehurst Road, Marden**

It is disappointing to note that you have not to date responded to our telephone message on the 15<sup>th</sup> May 2012 regarding the timing of your intended report to Committee on the above.

We write to advise that following the site meeting on the 4<sup>th</sup> May 2012 with Barrie Neaves of the Environmental Agency, a meeting you were invited to attend, we now have an explanation concerning the flooding at our client property. Mr. Neaves had discussed the matter with a geologist from the EA who advised that the problems were most likely to be as a result of the unauthorised works on the neighbouring land due to the weight and compaction of unauthorised material. This has in effect reduced the capacity of the gravel aquifer layer, which is in the main contained by clay, so the water seeks the weakest path to escape and this appears to be the pond and immediate area at Hertsfield Barn. This is explained in the attached letter from an independent geologist.

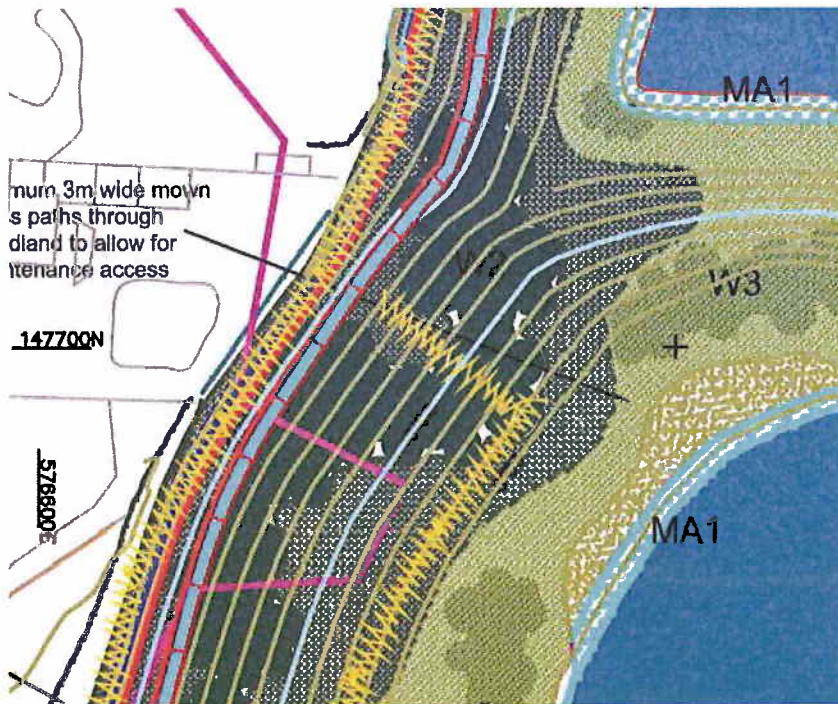
We also understand that the EA will confirm their geologist's advice in writing, although we understand the EA's duty as a statutory consultee is limited to providing advice regarding river flooding.

On the facts it can be reasonably concluded that the unauthorised works have, and if the proposed were approved, will continue to have a direct impact on ground water levels at our client property such that unless the pond is continually pumped to remove the additional water that is being displaced from the aquifer layer it will cause damage to his house which located is immediately adjacent to the pond. This problem is not as a result of river flooding, surface water or ditch drainage.

We note the additional material provided by the applicant in March. We would comment that the reports deals with potential erosion, burst banks and other scenarios, but not the geological impacts of the unauthorised importation of significant quantities of material, which does not appear to have been considered, therefore no mitigation measures for these detrimental off site impacts are proposed.

We note the revised FRA states at 5.4 that the banks of the lakes will be grassed and thinly planted with appropriate trees, and that normally tree

planting on slopes of embankments dams is discouraged. This does not accord with the landscaping proposals which show W2 dense woodland planting on the banks close to our client's property (the dark green area). It seems the reports are not compatible.



<b>W2 Dense Woodland Mix (Boundary Belt)</b>			
<i>Planting to be planted in random species groups of 7-25 at varying centres between 1.5-3.5m centres, (average 2.5m for trees and 1.5m for shrubs) throughout woodland clumps.</i>			
15	605	<i>Sorbus aucuparia</i> (Rowan)	Feathered, 2x, 125-150, B, Branched 3
15	605	<i>Acer campestre</i> (Field Maple)	Feathered, 2x, 125-150, B, Branched 3
15	605	<i>Fagus sylvatica</i> (Beech)	Feathered, 2x, 150-175, B, Branched 3
20	806	<i>Fraxinus excelsior</i> (Ash)	Whip, 2x, 150-175, B, Branched 3
5	202	<i>Betula pendula</i> (Birch)	Feathered, 2x, 125-150, B, Branched 2
10	403	<i>Quercus robur</i> (English Oak)	Feathered, 2x, 125-150, RB, Branched
5	560	<i>Crataegus laevigata</i> (Hawthorn)	Whip, X/1/0, 100-125, B
5	560	<i>Ilex aquifolium</i> (Holly)	40-60, C, 2L, Leader and laterals
5	560	<i>Prunus spinosa</i> (Blackthorn)	1+0 or 1/0, 40-60, B, Leader
5	560	<i>Viburnum opulus</i> (Guelder Rose)	1+1 or 1/1, 40-60, B, Branched 2

At varying centres between 1.5m and 3.5m centres, with average 2.5m centres for trees and 1.5m centres for shrubs

The EA have provided us with a letter dated 9<sup>th</sup> March 2012 which they sent to the applicant (MBC were copied) and in which a number of concerns are raised. Firstly it is noted that the applicant would need to obtain a bespoke permit from the EA to import additional material and there is no guarantee that the applicant will be able to obtain one. Secondly we note that despite the problems of excessive ground water that has been experienced by our client since the unauthorised works, it is estimated that it will take nearly 7 years to fill the three lakes as proposed. It is noted that there would have been no opportunity for the applicant to extract water from the river Beult last winter. The EA have concerns about how the site will be operated in the future. This it brings into question the deliverability of the proposed development

We note the letter from the applicant's agent to the Council dated 13<sup>th</sup> February 2012). In response we would comment that the applicant is also responsible for the condition of the land, not just the previous landowner. He was responsible for the importation of significant quantities of unauthorised materials from the moment he purchased the site, and continued

until the Council served a Stop Notice. He would of course have received the gate fees for the importation of this waste material.

It would seem that little if any real consideration has been given by the applicant or his agent to the removal of material from the site. The sole purpose of the application seems to be to retain what is there, import more (together with whatever gate income can be made) and to avoid the enforcement appeal.

The agent seems to assume that the 2003 permission is 'existing' although we and the Council say this is not a fall back position.

If the 2003 permission had been lawfully implemented, following the discharge of pre-commencement conditions, the approved plans did not provide for the significant importation of materials to site or for the lake floors to be 3 metres or more above natural ground level. The existing and proposed developments bear no resemblance to that which was approved in 2003. We do not accept the assertion that the application proposals would result in lesser impacts on our client than the 2003 permission.

We do not accept that a reduction in the material on site would be more harmful to residents as suggested. The earth movements to remove the unauthorised material would be for a limited period, rather than being faced with the scenario of this harmful development remaining in place in perpetuity.

We note the comments regarding economic viability, although it seems no detailed viability assessment has been provided, or indeed any information regarding the profits made from the unauthorised importation of significant quantities of waste material. The question of viability must have been a matter that the applicant assessed prior to the purchase of the site, this is a business decision he made and we do not consider it carries greater weight in the balance of material consideration than the need to remedy the harm to local residents from this significant unauthorised development. Contrary to the applicants agents conclusion we do not accept that this fundamentally flawed proposal is 'the right balance'.

Attention is drawn to the National Planning Policy Framework which has superseded the PPGs and PPS policy and guidance previously referred to in our letters. The core principles include '*recognising the intrinsic character and beauty of the countryside...contribute to conserving and enhancing the natural environment*'. The proposed development conflicts with these.

Section 11 refers to conserving and enhancing the natural environment, paragraph 109 advises that the planning system should '*prevent both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.*

At 120 it is stated that '*to prevent risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location.*', and that '*where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and or landowner*'.

Para 121 states that planning policies and decisions should ensure that '*the site is suitable for its new use taking into account of ground conditions...adequate site investigation information prepared by a competent person is presented.*'

In this instance there is insufficient information regarding contamination, a matter we have previously raised with the Council.

We would further comment that this land is not previously developed for the purposes of the NPPF. Its last lawful use was for agriculture so it is in effect a green field site for planning



assessment, no matter what unauthorised development currently exists and this is the context for consideration of the application.

We do not consider this development is sustainable, which in the context of the NPPF means *'ensuring better lives for ourselves don't mean worse lives for future generations' ... positive growth- making economic, environmental and social progress for this and future generations..'* The only person/s who have benefited from this unauthorised development to date are the land owner/s who have received the profits from the land fill.

Any recreational benefits from fishing lakes could be provided, if indeed there is sufficient water to fill any lakes, could be provided through a much reduced scheme that does not result in the unacceptable detrimental impacts on the occupiers of neighbouring properties that arise from this proposal. The applicant's desire to profit from the development does not carry more weight in the planning assessment than the environmental issues and impacts on local residents.

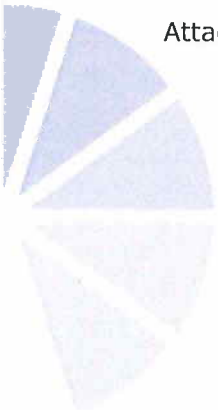
We trust that this additional material will be reported to the Committee, and would be grateful for confirmation of the proposed meeting date. We look forward or reading your assessment of the application.

Yours sincerely

**REBECCA LORD MSc MRTPI**  
**Senior Principal Planner**

**Direct Dial: 01256 382036**  
**E-mail: Rlord@bell-cornwell.co.uk**

Attachment: letter from Dr. Richard J Fox Ph.D (geol).



RE: Recent excessive ingress of Ground Water into Hertsfield Barn Pond.

To whom it may concern.

Dear Sir/Madam,

The local geology, rocks and sediments of an area can have a significant impact on the local water-course and groundwater flow patterns. Human activity on the other hand can detrimentally and easily changes the natural water-course balance or direction of groundwater flow.

The geology of the southern area of Maidstone Borough, including Staplehurst, the River Beult and Hertsfield Barn is underlain by Weald Clay capped by 'Drift' deposits of sand and gravels (see Figure below).

Weald Clay, like many other types of clay, is impermeable, which means that it acts as a vertical barrier to water flow. However, the sands and gravels of the overlying Drift are highly permeable and porous and can act as preferential flow paths for ground water into the local water-course. Commonly, the Drift deposits bordering the River Beult act a conduit for local drainage into the river. For many years this relationship has been in balance in the Hertsfield Barn area, until recently.

It is hereby concluded that compaction of the porosity and permeability system of the Drift deposits around Hertsfield Barn, from activity at the local Waste Disposal site, has significantly damaged the drainage patterns of the Drift and its flow directionality. The net effect of this impact has resulted in the continual flooding of the Hertsfield Barn pond, which now requires electrical pump emptying into the River Beult to avoid flooding surrounding properties. Local groundwater flow now appears to be preferentially diverted into the pond, as the pond was originally filled manually for many years before the Waste Disposal site development.

I believe that restoration work now needs to be carried out and drainage facilities put in place on the Waste Disposal site property to rectify this matter.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Richard J. Fox".

Dr. Richard J Fox Ph.D (geol).

LEGEND	
Geological Classification	
	UPPER CHALK FORMATION
	MIDDLE CHALK FORMATION
	LOWER CHALK FORMATION
	UPPER GREENSAND FORMATION (EXCEPT DEVON)
	GAULT FORMATION
	LOWER GREENSAND GROUP
	WEALD CLAY FORMATION
	TUNBRIDGE WELLS SAND FORMATION
	WADHURST CLAY FORMATION
	ASH-DOWN FORMATION
	Middle Medway Catchment
	Upper Medway Catchment
	Upper Beul and Teise Excluded Areas
	Main Rivers
	Urban Areas
	Leigh Barrier
	Indicative Fluvial Flood Plain

