

REFERENCE NO - 11/1948

APPLICATION PROPOSAL

Part retrospective planning application for the retention of two lakes known as 'Bridges' and 'Puma' and works to create 3 additional lakes all for recreational fishing, erection of clubhouse, building and associated works and landscaping.

ADDRESS Monk Lakes, Staplehurst Road, Marden, Maidstone, Kent, TN12 9BU

SUMMARY OF REASONS FOR RECOMMENDATION – (APPROVE SUBJECT TO CONDITIONS)

- It is considered that the development, subject to mitigation that will be secured via conditions and a legal agreement, would not cause harm to the landscape or visual amenities of the area; heritage assets; residential amenity; biodiversity or the River Beult SSSI; and impacts relating to flood risk, surface water drainage, and groundwater drainage can be suitably mitigated.
- The development is in accordance with the relevant policies of the Development Plan, the NPPF, and relevant policies in the emerging Marden Neighbourhood Plan.
- There are considered to be 'exceptional circumstances' for granting retrospective permission, namely the planning history and unique circumstances by which significant retrospective development came to be at the application site, and the comprehensive legal agreement that would ensure the development is completed and verified.
- The development has been adequately assessed against the pre-development state of the site (2003) and so the applicant has not gained an unfair advantage because this is predominantly retrospective development.
- The supporting information for the application, and the assessment and recommendation, has suitably addressed the reasons for the quashing of the previous decision made in 2012.
- There are no material considerations that outweigh the above.
- Therefore permission is recommended subject to a legal agreement and conditions.

REASON FOR REFERRAL TO COMMITTEE

- Cllr McLoughlin has requested the application is considered at Planning Committee if minded to approve in view of the history and the adjacent residents concern that their original objections and drainage matters have not been adequately addressed.
- Cllr D Burton has requested the application is considered at Planning Committee.

WARD	PARISH COUNCIL	APPLICANT
Marden & Yalding	Marden	Mr & Mrs Harrison

DECISION DUE DATE 23/02/20		PUBLICITY EXPIRY DATE 03/12/19	
RELEVANT PLANNING HISTORY			
App No	Proposal	Decision	Date
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	02.01.01
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	22.09.03
09/1380	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 (this related to the Mallard Lakes)	APPROVED	26.11.09
09/2027	Retrospective application for the retention of buildings and mobile facilities to serve recreational angling	TEMPORARY 3 YR PERMISSION APPROVED	04.01.10
10/0762	Erection of clubhouse including decking area, solar photovoltaic tiles and associated works to replace existing buildings on site	WITHDRAWN	
10/0766	Creation of lakes for use for recreational fishing	WITHDRAWN	

1.0 DESCRIPTION OF SITE

1.01 The application site consists of the majority of a recreational fishing complex known as 'Monk Lakes'. The application site includes 2 ground level lakes known as 'Bridges' and 'Puma' which are completed and in use in the northeast corner of the site. The vast remainder of the site to the southwest includes 3 lakes constructed above existing ground levels referred to as Lakes 1, 2, and 3. Lakes 2 and 3 are complete, and Lake 1 requires further works to complete. None of the lakes benefit from planning permission and are the subject of this application. To the southeast of the application site and part of the wider Monk Lakes site, there are lawful above ground ponds and lakes used for recreational fishing.

- 1.02 The site is to the north of the A229 (Maidstone Road) around 3.5km south of the Linton Crossroads and around 3km northwest of Staplehurst falling within Marden Parish. The site also contains an access road leading to a car park (that have planning permission), and a complex of both permanent and temporary/mobile buildings used as a shop, canteen, toilets and storage. The application site extends to some 35 hectares, although the Monk Lakes facility is larger with the lawful lakes to the east.
- 1.03 The nearest residential properties lie along Hertsfield Lane immediately to the west of the site and are Hertsfield Farm Cottages, Old Hertsfield Farmhouse, Hertsfield Barn and Hertsfield Oast. These dwellings are a minimum of 20 metres from the boundary with the application site. There are also some properties close to the site to the south on the opposite side of the A229.
- 1.04 Old Hertsfield Farmhouse is a Grade II listed building as is Hertsfield barn which is about 50 metres to the east of the farmhouse and it is considered that an element of the application site, (that part of it close to these listed buildings) falls within the setting of these listed buildings.
- 1.05 To the south east of the application site is the extensive 'Riverfield Fish Farm' complex of ponds and lakes. These are not part of the applicant's facility.
- 1.06 The northern boundary of the site runs alongside the River Beult which here is a Site of Special Scientific Interest (SSSI). The northern part of the site is within the flood zone of the river. Further north the land rises steeply upwards to the Greensand Ridge. On the northern side of the River Beult there is public footpath KM129 that runs generally on an east/west axis.
- 1.07 The site falls within the countryside but has no special landscape designation in the Local Plan.

2.0 BACKGROUND/PLANNING HISTORY

2003-2008

- 2.01 In September 2003 the LPA granted planning permission (ref. 03/0836) for the "*change of use of the 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...*" Amongst other things, the approved drawing showed 12 ponds/lakes, some of which would be above-ground lakes and this covered the current application site.
- 2.02 Between 2003 and 2008 the previous site owner commenced works in connection with that permission. It became apparent to the LPA that the 2003 planning permission was not being lawfully implemented and that the works being carried out on site were not in accordance with the approved plans. Therefore, in September 2008 the Council served an enforcement notice to deal with the breaches of planning control which required the

removal of all material and restoration of the site back to its pre-development 2003 condition.

2008-2012

2.03 The enforcement notice was subsequently appealed by the applicant. Clarification over the status of the appeals, requests for an Environmental Impact Assessment (EIA), and various extensions to deadlines to provide information requested by the Planning Inspectorate (PINS) went on for some time. Litigation also arose involving the current land owners against PINS (2009), which was decided in November 2011. The outcome of this was essentially that the appeal would continue.

2.04 At the same time in November 2011, the current planning application was submitted in an attempt to regularise the works at the site, being to largely retain development on site but with further works to remodel the banks of Lakes 1, 2, and 3. The LPA resolved to grant permission at Planning Committee in June 2012 and this was issued in September 2012.

2012- 2014

2.05 Around September 2012, the land owner asked for the enforcement appeal to be delayed for 6 months bearing in mind the grant of planning permission. The Planning Inspectorate agreed to this.

2.06 The applicant carried out some of the works approved under planning permission 11/1948 to complete the development mainly relating to lakes 2 and 3.

2.07 In November 2012, an adjoining neighbour to the site filed a Judicial Review (JR) challenge against the Council's grant of planning permission. This was filed on 4 grounds, two relating to EIA grounds, and the other two relating to groundwater flooding. The enforcement appeal was held in abeyance pending the outcome of the JR.

2.08 The JR hearing was held in November 2013 with a decision in January 2014 that quashed the grant of planning permission. The Council is therefore required to re-determine the planning application.

2.09 In summary, the JR decision found that the Council had failed to consider whether there were exceptional circumstances to grant retrospective permission (a requirement under EIA case law); and that the Council failed to properly investigate potential groundwater flooding on neighbouring land. This will be outlined in more detail below in the assessment. The effect of the Court's decision is that the planning application was returned to the LPA for redetermination.

2014-2015

2.10 In April 2014 the enforcement appeal was re-opened and the hearing was held a year later in April 2015. The grounds being debated at the enforcement appeal were only how much time the land owners should have

to restore the site back to its pre-2003 condition, and not the merits of the development.

2.11 In May 2015 the appeal decision was issued and the time periods for compliance with the enforcement notice to restore the site were amended allowing a total time of 22 months (to April 2017). Some of the requirements such as ceasing to use the lakes for fishing were required to stop immediately. The land owner has not complied with any requirements of the enforcement notice to date and is open to prosecution action from the Council. Planning Enforcement has held any action in abeyance pending the re-determination of this planning application.

2015-2019

2.12 In July 2015 additional information was submitted by the applicant in relation to this application so it could be re-determined following the JR decision, including the assessment of groundwater impacts, with evidence gathered from borehole testing. The Council employed Mott MacDonald to provide expert advice on groundwater drainage issues as this does not fall within the remit of the Environment Agency or Kent County Council as Lead Local Flood Authority.

2.13 In November 2016 the Council requested further information relating to groundwater, including further borehole testing for at least 3 months over winter, and requesting responses to consultee objections. The applicant provided this information in July/August 2017 which was sent out for further re-consultation.

2.14 In October 2018 the Council requested further information, which was provided in the form of a new Environmental Statement in February 2019, and this was sent out for further re-consultation.

2.15 In August 2019 the Council commissioned its own topographical survey of the site to verify the accuracy of the applicant's plans. Following this, the applicant submitted amended plans relating to Lakes 1-3, and the proposed clubhouse, and a short addendum to the Environmental Statement in October/November 2019 which was sent out for further re-consultation. Detailed responses relating to groundwater and surface water were provided by neighbouring residents in December 2019.

Comment

2.16 So it is important to note that the LPA has granted planning permission twice for recreational fishing lakes and a clubhouse since 2003 on the application site. The first permission was not lawfully implemented and expired, and the most recent decision was quashed and so the application is being re-determined.

3.0 PROPOSAL

3.01 The application seeks retrospective permission for the retention of the 2 below ground lakes (Bridges and Puma) in their current form in the

northeast corner and raised Lakes 2 and 3 on the west side of the site, also in their current form. Permission is also sought for raised Lake 1 and this requires additional works to complete mainly involving raising the levels of the lake bed and minor reductions in the levels of the lake banks. Permission is also sought for the erection of a new clubhouse building in the centre of the wider complex.

3.02 'Bridges' and 'Puma' lakes are excavated below ground with their water level just below ground level. Lakes 1, 2, and 3 are/would be between 5m to 6.2m above the previous ground level and have sloped sides which run down to the west boundary with some Hertsfield Road properties, to the south boundary with the A229, and within the site itself. The depth of water would be around 2m.

3.03 It is important to note that whilst much of the proposal is retrospective and there are significant above and below ground works on site, planning permission is required for the entire works to create all the lakes, and this is what is being assessed. The assessment is not a comparison between what is currently on site and what is proposed.

3.04 Landscaping is proposed largely in the form of woodland planting along the west and south site boundaries and on the lake slopes, and existing landscaping would be retained around Puma and Bridges lakes.

3.05 A new clubhouse is proposed to provide facilities for anglers which would be in a similar position as the temporary buildings adjacent to the car park. The building would be single storey with hipped roofs and finished in timber boarding and clay roof tiles. It would have a floor area of 266m² and provide toilets and showers, offices, shop, kitchen, and dining area. The existing car park would be formalised with new surfacing and marked spaces, and lowered in the region of 1m from its present position to provide flood compensation. New landscaping would be introduced in and around the car park/clubhouse.

3.06 The application is accompanied by an Environmental Statement (ES) originally submitted under the EIA Regulations 2011. The ES has been updated since the original submission in 2011 with the most recent provided in February 2019. As the development was originally submitted under the 2011 EIA Regulations it remains subject to these.

4.0 POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan (2011-2031): SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM8, DM23, DM30, DM37
- Kent Waste and Minerals Plan 2016
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EIA Regulations 2011
- Marden Neighbourhood Plan (Draft - subject to Referendum)

5.0 LOCAL REPRESENTATIONS

5.01 **Local Residents:** 3 representations were received to the quashed application and 12 have been received following re-determination. All representations (that are material to the assessment of the planning application) are summarised as follows:

- The 2003 permission has not been implemented and is not a fall-back position and consideration of the application must be based on the pre 2003 consent position.
- The previous decision in 2012 must be disregarded and policy has changed since then.
- Retrospective EIA development should only be granted in exceptional circumstances and the applicant must not gain any unfair advantage.
- Concern regarding the surface water drainage from the site and its impact on neighbouring residences.
- Waterlogging and groundwater flooding has occurred on adjoining land.
- The groundwater assessment by the applicant is not sufficient to demonstrate that off-site flooding does not occur.
- Consider there to be outstanding issues relating to the assessment of groundwater and mitigation.
- Groundwater mitigation will not be sufficient and concern in relation to the adequacy of the drainage ditch and the potential blockage of pipes between the lakes.
- A condition relating to groundwater is not appropriate.
- Concern over the safety of the reservoirs.
- The impacts on the historic environment and designated Heritage Assets (and settings) have not been properly assessed.
- Unacceptable impacts and harm to the setting and fabric of the Hertsfield Barn Listed Building.
- Harmful to landscape and incongruous.
- Contrary to the Maidstone Landscape Character Assessment, Local Plan, and NPPF.
- LVIA reaches unreasonable conclusions.
- Question whether landscaping can be provided in the context of reservoir safety.
- A new phase 1 habitat survey and ecological report is needed.
- The wildlife impact is not examined from the pre 2003 consent position.
- Harmful to residential amenity.
- Loss of privacy.
- Noise disturbance from fishers.
- Loss of light and outlook to properties from the height of the bank and the proposed planting on top of the bank.
- Overbearing and enclosing impact.
- If the planting on the bank is not carried out then there would be a loss of privacy to the properties from the users of the fishing lakes.
- The reasons for issuing the enforcement notice still stand and have not been overcome.

- The Council were justified and correct in issuing the enforcement notice.
- References to conflict with Local Plan policies.
- Current planning policy and material considerations need to be considered.
- Plans are inaccurate and misleading specifically along the west boundary.
- Lack of information.
- It has been difficult to know what information is being relied upon by the applicant.
- Inconsistency of the submissions (plans and reports).
- An entirely new Environmental Statement is needed.
- A full range of alternatives to the proposed development is required and no alternatives have been explored such as a reduced scale of development.
- The benefits of the development are very limited.
- Reference to Protocol 1, Article 1 of the Human Right Act 1998 which provides for the protection of an individuals or companies property.
- The scheme has been designed to include the importation of more material in order to make money and the previous extensive importation would have generated a sizeable income.
- Concern regarding the type of material that has already been imported onto the site and the future material to be imported.
- The application is a waste matter and therefore should be dealt with by Kent County Council.

5.02 A planning agent on behalf of a neighbouring resident has also made submissions referring to material submitted to the Judicial Review, and representations to the enforcement appeal, which included a report on groundwater flooding and a landscape and visual report. The comments made have been summarised in the issues outlined above.

5.03 A review of the application and the expert advice provided to the Council by Mott MacDonald has also been undertaken by the neighbouring resident's consultant (GeoSmart) who specialise in flood risk and drainage. In their latest comments they essentially consider that a number of issues have not been fully addressed by the applicant and do not agree with the conclusions of Mott MacDonald. This will be discussed in more detail below in the groundwater section of the report.

5.04 **Hertsfield Residents Association** (12 properties) raise the following (summarised) points:

- A fresh planning application should have been submitted following the JR quashing.
- Application fails to overcome harm identified in enforcement notice.
- Flood risk.
- Large clubhouse with both retail premises and a restaurant is entirely out of keeping with the rural environment and to the detriment of local

residents through creating additional traffic movements, noise and disturbance.

- Clubhouse is excessive in size and facilities for the scale of the site and is not necessary.
- Clubhouse is of poor design.
- Environmental Statement is deficient and with statements of conjecture or so called professional opinion.
- The application envisages the importation of a further 51,000m³ 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.
- Contaminated waste used to construct the lakes poses health risk.
- Harm to listed buildings.
- Baseline for LVIA should be 2003.
- Access by cars will cause noise and disturbance.
- The members of the HRA have endured serious harm, including flooding, loss of amenity, and impact on the setting of listed buildings.
- There is no approval for the lakes under the Reservoirs Act so the development poses a health and safety risk.

6.0 CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

6.01 Marden Parish Council:

25th March 2019: Cllrs recommendations remain the same as before and wish to reiterate their comments from previous meetings as follows:

"2011: Cllrs wished to see refusal of the 3 new lakes due to the adverse impact upon visual amenity, residential amenity and the wider countryside. Particular concern was raised regarding the flooding risk due to the loss of storage in the flood plain and the potentially contaminated soil already on site and consequently the absence of any justification for the further importation of potentially contaminated matter. This has led to further concerns regarding the potential and/or existing ground and surface water contamination. It is also noted that any Environmental Statement should relate to the site BEFORE the potentially contaminated soil was imported this is thought to be 2003. Any EIA must include an assessment of the soils that have already been imported into the site not just those the applicant might want to import. (in regard to the 2 below ground lakes Bridges and Puma) Cllrs have concerns about possible loss of storage in the flood plain and potential escape of non-native species into the river. We ask that the Borough Council gets specialist advice from the Environment Agency and Natural England. The Clubhouse and car park need to be commensurate in size with the development they have to serve and this remains

undetermined. If it is approved then a shop should be allowed only to sell products relating to recreational angling.

May 2012: Councillors would like clarification on how the applicant proposes to fill the new raised lakes and wonder whether the Environment Agency is content with any extraction from the river Beult in this period of drought?

August 2015: Cllrs have no further objection provided that the Council is satisfied with the response given by the applicant in relation to our three previous grounds of objection and that the Council is also satisfied that the applicants response to the grounds of the successful judicial review have also been overcome."

December 2019: "Cllrs duly noted the revised amendments. Cllrs had not changed their view and wished their previous comments to be reiterated."

- 6.02 **Natural England: No objections** subject to conditions securing surface water run-off during the construction phase to be directed to Puma Lake and/or the proposed temporary settling pond; surplus waters from the new lakes to be directed to Puma Lake; the existing fish fence is to be extended around the proposed new lakes to prevent the escape of fish to the River Beult SSSI during flood events; foul water to be passed through a Klargester system which is to discharge to Puma Lake; and securing the translocation of non-native species from Bridges and Puma. (This is dealt with under a separate Environment Agency permit)
- 6.03 **Environment Agency: No objections subject to conditions** covering finished levels for the clubhouse and walkway; and flood compensation measures. A separate permit outside the planning process will be required to stock non-native fish.
- 6.04 **KCC Lead Local Flood Authority: No objections** to the proposed surface water drainage strategy.
- 6.05 **KCC Ecology: No objections** subject to the precautionary mitigation measures being incorporated into any Construction Environmental Management Plan, and Natural England and Environment Agency being satisfied re. fish escape and pollutants to River Beult.
- 6.06 **KCC Highways: No objections.**
- 6.07 **MBC Conservation Officer: No objections** in terms of the setting of listed buildings (Hertsfield Barn and Old Hertsfield).
- 6.08 **MBC Environmental Health: No objections** and defer to the Environment Agency.
- 6.09 **KCC Minerals:** Advise that there is a basis for invoking the 'exemption' to minerals extraction.

7.0 APPRAISAL

Judicial Review Context for Decision Making

- 7.01 Development very similar to the current proposal was approved by the Council in 2012. The previous decision was judged to be unlawful and quashed by the High Court for the following (summarised) reasons:
1. Failure by the Council to consider whether there were exceptional circumstances justifying the grant of retrospective permission for Environmental Impact Assessment (EIA) development.
 2. Failure by the Council to adequately consider groundwater flooding within the EIA process.
- 7.02 The Claimant put forward two other grounds relating to whether the applicant gained an unfair advantage from retrospective EIA development and whether the Council unlawfully purported to deal with groundwater flooding by an ill-considered condition. These grounds were not upheld. There were no other challenges to the Council's assessment or decision on the application.
- 7.03 As the previous decision was quashed the Council must re-determine the application afresh, having regard to the Development Plan and other material considerations, including material considerations which have emerged since the matter was originally considered. However, it has been established in recent case law concerning consistency in decision making (*Davison v Elmbridge Borough Council* [2019] EWHC 1409 (Admin)) that a Council's previous planning judgement or reasoning for their decision, even if quashed, should be taken into account, and is capable of being a material consideration.
- 7.04 The proposals have changed since the previous determination by the LPA decision but they are minor in nature and the development remains very similar. The changes consist of lower sloped banks in places around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in places of no more than 1m. The height of the lake crests for Lakes 2 and 3 have not significantly changed but where they have, they would be marginally lower. The western banks begin to rise closer to the western boundary in places. The corners of the lakes are at slightly different angles and the islands within the lakes would be different in shape and location. As the changes from the previous determination are minor in nature in the context of the development, the previous planning judgement is still considered to be a material consideration.
- 7.05 Therefore the assessment below will re-visit all relevant matters but whilst doing this the Council must take into account its previous reasoning for approving the previous development, and provide sufficient and reasonable explanation if it is to reach a different view on any matters.
- 7.06 It is also of relevance that the Council previously approved fishing lakes at the site under application MA/03/0836 so the principle was accepted at this time. The 2003 permission was not implemented so is not a fall-back position, and the decision was made over 15 years ago, but the Council still

made a decision that fishing lakes developed over the application site, some of which were raised, were acceptable.

7.07 The applicant has sought to address the reasons for the quashing of the previous decision through providing additional information relating to groundwater flooding, and advancing reasons why it is considered exceptional circumstances exist to justifying the grant of permission. Other updated information has been provided in view of the time that has passed such as ecological work, and other additional information for example relating to flood risk. This has all been in the form of an updated Environmental Statement (ES) and addendums. The Council has employed a hydrogeologist expert (Mott MacDonald) to provide advice on potential groundwater flooding issues, this being a matter that is not assessed by the Environment Agency or the Lead Local Flood Authority (KCC).

Main Issues

7.08 The provision of recreational fishing lakes at a rural location such as the application site is acceptable in principle and clearly such uses require land take which is only feasible outside settlements. The Monk Lakes wider site already operates lawful fishing lakes and so the proposals also represent business expansion which is allowed in principle under policy SP21 of the Local Plan subject to an appropriate impact.

7.09 The expansion of this rural business with additional fishing lakes and facilities is acceptable in principle, and the main issues, in order to consider whether such expansion is acceptable or not, are as follows:

- Landscape and Visual Impact
- Flood Risk, Surface Water, and Groundwater Impact
- Heritage Impact
- Residential Amenity
- Biodiversity and River Beult SSSI
- Other Matters

Landscape and Visual Impact

7.10 The landscape and visual impact of the proposals needs to be assessed on the basis of there being no development where Bridges and Puma Lakes, and Lakes 1-3 are located. This is because they do not benefit from planning permission. However, the proposals must be assessed in the context of the lawful raised fishing lakes in the southeast corner of the complex and those at 'Riverfield Fish Farm' to the east, as these do benefit from planning permission.

7.11 The Council's previous assessment in 2012 was also made on this basis and concluded that there would not be any significant landscape harm from the proposals. This assessment took into account the Maidstone Landscape Character Assessment 2012 (LCA). Whilst the application must be re-determined, the Council would need to provide a sufficient and reasonable explanation if it is to reach a different conclusion, particularly as the changes to the proposals since the 2012 are of a minor nature.

7.12 Since 2012, the Council has adopted a new Local Plan (October 2017). The thrust and aims of the countryside protection policies have not materially changed and policy DM37 (expansion of rural businesses) can allow for the appropriate expansion of rural businesses subject to criterion. In 2015 the Council produced the 'Maidstone Landscape Capacity Study: Sensitivity Assessment' (LCA:SA). This was produced to assess the comparative sensitivity of the Borough's landscapes to development and formed part of the evidence base to the new Local Plan to inform the Sustainability Appraisal of development allocations. This is discussed below.

7.13 The 'landscape' impact of the development is the impact upon the character and quality of the wider landscape, whilst the 'visual' impact relates to the generally available views of the landscape and the effects of the development.

7.14 The applicant's ES concludes that the wider landscape impact of the development initially at 'day one' would be 'moderate negative' as it would be un-mitigated without landscaping being established. Once landscaping is established in years 10-15 it concludes that the impact on the wider landscape would be 'moderate positive' due to the proposed landscaping. In terms of the visual impact, the ES concludes that this would be negative from day one from a number of neighbouring properties, public footpaths on the north side of the River Beult, the Greensand Ridge, and the A229. However, from years 10-15 the impact would be 'slight' to 'moderate positive' due to the impact of the proposed landscaping.

7.15 The LCA 2012 identifies the site as falling within the 'Beult Valley' landscape character area. This has the following key characteristics:

- *Low lying broad shallow valley of the meandering River Beult and Hammer Stream within the Low Weald*
- *Many ponds and watercourses with important ecological interest*
- *Species rich native hedgerow field boundaries with mature oak trees as imposing hedgerow trees and sometimes within fields where boundaries have been removed*
- *Mixed agriculture with large fields supporting arable cultivation and small riverside fields with pasture*
- *Sparsely scattered small woodlands*
- *Historic north-south crossing points with ragstone bridges over the River Beult*

7.16 The LCA refers to the application site stating,

"58.7 In the middle of the area, at Monk Lakes and Riverfield Fish Farms there is an extensive system of man-made rectangular ponds. As part of this development, there has been extensive land raising and earth modelling along the A229 and the artificial sloping landform appears rather incongruous on the valley side. There is extensive planting of weeping

willow along the roadside which also adds to the artificiality of the landscape."

"58.15There are generally few visual detractors, although the artificial fishing lakes on the A229 are particularly incongruous."

- 7.17 The LCA considers the area is defined as having a moderate landscape condition, moderate visual sensitivity, and a high sensitivity to change. Actions include *"integrate the fishing ponds into the landscape by using more appropriate plant species and resisting further artificial earthworks."* The LCA:SA from 2015, and produced after the previous decision, essentially reaches the same conclusions and does not add any material consideration beyond the 2012 LCA.
- 7.18 The LCA clearly considers that the rectangular ponds and land raising, many of which have planning permission and are at Monk Lakes and Riverfield Fish Farm, detract from the landscape. This assessment was carried out when Lakes 1-3 were incomplete (2012) and so would have assessed the incomplete earth works as they were at the time and not how they are proposed under the application. Nonetheless, Lakes 1-3 would represent man-made raised lakes within the river valley which is a predominantly flat area.
- 7.19 Prior to development, the site was generally level with a gentle slope down to the river from south to north. The raised lakes would introduce further man made features into the river valley regarded as a sensitive landscape in the LCA. However, because they would be adjacent to and within the context of the substantial lawful raised lakes at Monk Lakes and Riverfield Fish Farm, it is considered that the three raised lakes would not appear as an incongruous feature, and their impact upon the landscape character of the wider area would not be harmful. Neither is it considered that the cumulative impact with the existing lawful lakes would be harmful to the landscape character of the area.
- 7.20 From a visual aspect, the raised banks would be visible in public views from a section of the A229, from the PROW on the north side of the River Beult, and in longer distance views from the Greensand Ridge. I agree with the previous committee report assessment that from the section of the A229 where the site is visible, the banks of the proposed lakes would not result in an unduly harmful feature as they would have a relatively gentle slope. The minor changes to the proposals since the previous assessment do not affect this opinion. Proposed landscaping around the south of Lake 1 and to the west of all three lakes would also serve to soften the impact from the A229. Under the assessment in 2012, it was outlined that the plant species in the landscaping scheme would be revised by way of condition (to remove willow). The applicant has therefore provided an amended plan removing the use of willow (a detractor identified in the LCA).
- 7.21 From PROW KM129 to the north side of the River Beult, many views of the raised lakes would be broken by vegetation and where views are open, the proposed raised lakes would be in excess of 250m from the footpath and at this distance and within the wider context, would not result in visual harm.

- 7.22 There are longer distance views of the site from the slope up towards the Greensand Ridge. I agree with the previous assessment that due to the distance of these views and the context of other lawful lakes, the proposed raised lakes would not be significantly intrusive in the landscape. Indeed having viewed the site from here, the lakes would not be prominent.
- 7.23 Bridges and Puma lakes are at ground level and are not identified as visual detractors in the LCA. Their shape is irregular and so they appear more natural and are obviously not raised. For these reasons, and when compared to the pre-development state of the site, they do not cause any harm and they represent another water body seen in the context of lawful fishing lakes and the River Beult. The existing landscaping around them would be retained and also serves to soften the impact of these lakes. They are visible from the PROW north of the river but are 50m away and are not visually intrusive.
- 7.24 In conclusion, the proposed lakes will inevitably have some landscape and visual impact but in the context of the lawful lakes and the viewpoints available, the impact of the lakes is not considered to be harmful to the character and appearance of the area. This is in accordance with policy SP17 of the Local Plan and policies NE3 and NE5 of the emerging Marden Neighbourhood Plan (NHP). In the context of policy DM37 (expansion of rural businesses), the proposals are also appropriate in scale for the location and can be satisfactorily integrated into the local landscape.
- 7.25 Since the previous decision the Environment Agency have confirmed that the proposed clubhouse needs to be raised to have a finished floor level of 17.36m AOD with a raised walkway. This means the building would be raised around 2m above the car park level so the ridge height would sit at some 5.2m above the car park. Being within the centre of the site and so a significant distance from any public vantage points, the visual impact of the clubhouse would be minimal and it would not cause any harm to the surrounding landscape. The design is also acceptable being single storey with a shallow pitched roof, and clad in timber with a clay tile roof.

Flood Risk

- 7.26 Bridges and Puma lakes lie within Flood Zones 2 and 3, as do some areas of the raised lakes at their north end, and small areas on the west boundary. The raised lakes would result in the loss of flood storage of a maximum of 30,200m³. This would be compensated for through the lowering of land levels in the vicinity of the car park providing 16,550m³ of storage and at least 26,000m³ provided in Bridges and Puma lakes between the lake water level and pre-development ground levels (i.e. the lake levels are below the pre-development ground levels). Therefore a total of 42,550m³ compensation storage would be provided.
- 7.27 The Environment Agency have reviewed the proposals and raise no objections in terms of flood risk, compensation areas, and the assessment of flood risk for the clubhouse (including finished floor levels and a dry

walkway for access/egress), and assessment of flow impedance. This is in accordance with policy DM1 of the Local Plan.

Surface Water

- 7.28 The submitted ES considers that prior to development, surface water flowed generally in a northern direction towards the River Beult in some areas via drainage ditches. The ES considers that much of this pre-development surface water drainage system has been obscured or made redundant by the works that have occurred on site since 2003.
- 7.29 Surface water flow from the development would occur via run-off from the raised lakes. This run-off would be controlled via a series of 'french drains', pipes and drainage ditches. Notably there would be a large open surface water drainage ditch along the west boundary where lakes 1-3 border the site, which would control surface water run-off. This mitigation would take into account climate change allowances and would control run-off so it would be no worse than the pre-development rates. Otherwise much of the surface water would be contained within the lakes with overflow cascaded from Lake 1 to 3 and then into Puma Lake, which has controlled discharge to the River Beult.
- 7.30 Kent County Council acting as Lead Local Flood Authority and statutory consultee on surface water drainage matters have reviewed the development and proposed drainage strategy. They advise that provided the ditches are implemented as described then surface water flow rates from the site would be appropriately controlled and raise no objections. They also recommend that an inspection is undertaken to confirm that these measures have been implemented as described. An inspection of drainage works is not normal practice for planning applications but it is considered that this should be carried out in this particular case due to the retrospective nature and scale of the earthworks. This will be secured via the Section 106 agreement (which will be discussed in more detail below). The development is therefore in accordance with policy DM1 of the Local Plan and policy NE1 of the emerging NHP.

Groundwater

- 7.31 The failure by the Council to adequately consider groundwater flooding within the application/EIA process was a reason for the quashing of the previous decision in 2012. The applicant's ES has now carried out an assessment of groundwater impacts and the Council has employed a hydrogeologist specialist Mott MacDonald (MM) to advise, particularly as there is no statutory consultee that covers this matter. This is a particularly complicated issue and this report provides a summary of the key issues.
- 7.32 Representations made by local residents to the west of the site consider that since development has been carried out at the site, flooding and waterlogging has occurred on their land, including raised water levels on a nearby pond. One neighbouring resident has employed their own specialists (GeoSmart) who have commented on the application a number of times.

MM has considered all representations in detail including that of 'GeoSmart' in reaching their conclusions.

- 7.33 In 2015 additional information was submitted by the applicant that acknowledged groundwater flooding as a potential impact and proposed groundwater control measures to mitigate it. This was reviewed by MM on behalf of the LPA in 2016. The LPA subsequently requested clarification and further assessment of certain issues relating to groundwater and drainage, with the applicant's response provided in 2017.
- 7.34 The key deficiency of the 2015 and 2017 information was the lack of baseline data, which makes it impossible to establish conclusively what the pre-development groundwater conditions were (in 2003). Groundwater flow data from 2003 simply does not exist. Therefore to reach a decision on the application, the LPA asked the applicant to assess potential impacts against their interpretation of the likely baseline conditions, based on the available information and their professional judgement.
- 7.35 To ensure that adequate information is provided to support the revised assessment, the LPA set out a series of further issues to be addressed in October 2018. The applicant provided a further technical report in February 2019 which forms the basis for the 'Flood Risk, Hydrology, Hydrogeology and Groundwater and Drainage' chapter of the ES.
- 7.36 MM advise the LPA that the retrospective assessment of groundwater impacts is difficult due the lack of baseline data. Specifically, no pre-development groundwater level measurements are available for the site and, because of the significant earthworks undertaken at the site, the pre-development geological conditions are also uncertain. So, whilst a conceptual understanding of the pre-development hydrogeological conditions can be developed, no data is available either to verify it or, to enable precise quantification of the magnitude of change that has occurred since the site was developed. The impact assessment must therefore be based on an interpretation of the available information and reasonable assumptions.
- 7.37 Because of this uncertainty, the applicant proposed groundwater control measures to mitigate potential offsite groundwater flooding. A significant amount of work has been undertaken by the applicant to develop a conceptual understanding of pre and post-development (albeit not completed) hydrogeological conditions, which has included the drilling of additional boreholes and monitoring of groundwater levels.
- 7.38 MM advise that the total work undertaken to investigate the potential for off-site groundwater flooding impacts is proportional to the level of risk and, commensurate with their expectations for a proposed development of this nature. In summary, the applicant's ES concludes that the pre-development topography is such that the expected groundwater flow direction would be broadly northwards towards the River Beult. It considers that the magnitude of groundwater level change as a result of the development would be small.

- 7.39 MM advise that the applicant's evidence does acknowledge the potential for an off-site impact on groundwater level but the overall tone of the document attempts to diminish the significance of this. Whilst the ES suggests that groundwater impacts due to the development have been minimal, this has not been conclusively demonstrated. Neither has the potential for increased groundwater levels been discounted. MM advise that the development may not have increased groundwater levels in the vicinity of the western site boundary but, since this has not been discounted, they must conservatively assume that groundwater levels at the site may have been increased by the proposed development and thus, mitigation is required. In the absence of baseline data MM advise this is a sensible approach to take and that whilst there is still some uncertainty regarding the ground and groundwater conditions (both on and off-site), this is the usual situation for any proposed development.
- 7.40 The ES considers that groundwater impacts can be mitigated through a groundwater interceptor ditch along the west boundary and has provided an outline design. It would be designed in two parts, a lower part with a perforated pipe to convey groundwater to the River Beult, and the upper part, an open surface water ditch (as outlined in the surface water assessment above). The applicant considers that this would prevent any potential increase in groundwater level west of the site boundary, above the recorded water level at the pond at Hertsfield Farm to the west, and that once implemented, the offsite impacts would be negligible.
- 7.41 MM agree that the proposed drainage system is a suitable solution but the outline design needs to be refined. They advise that the detailed design could be approved by the LPA via a condition which would need to include the following:
- Detailed construction drawings showing all elements of the groundwater and surface water drainage system;
 - Calculations of the anticipated volume of groundwater to be intercepted by the system;
 - Sensitivity testing of the design to allow for any uncertainties;
 - Confirmation (where possible) of the elevations of relevant off-site receptors;
 - A narrative explaining the operating assumptions behind the design;
 - A maintenance plan for the groundwater interceptor drain and surface drainage ditch;
 - Demonstration that the design will resist long-term threats to its integrity and effectiveness;
 - A site inspection and groundwater level monitoring plan to verify that site conditions are consistent with the established hydrogeological conceptual site model and design assumptions
 - A protocol for responding to any unforeseen ground/groundwater conditions during construction.
 - A Verification Report including photographs of the excavations before and after placement of the drainage system components and as-built drawings

- 7.42 It is considered that the mitigation (drainage ditch system) is appropriate in view of the expert advice that, in the absence of evidence to the contrary, there is some potential that groundwater levels at the site may have been increased by the proposed development.
- 7.43 One local resident's consultant (GeoSmart) has made detailed comments on a number of occasions most recently in December 2019, including on MM's advice to the LPA. In summary, they do not consider groundwater impacts have been sufficiently assessed by the applicant, do not consider the feasibility of the proposed mitigation has been demonstrated and so consider a condition is not appropriate, they also raise a number of technical issues, and disagree with some of the advice provided by MM.
- 7.44 In providing their advice, MM have reviewed all representations in relation to groundwater. They have also reviewed the latest representations from 'GeoSmart' and they advise that their conclusions are not affected by this most recent representation. They maintain their advice and recommendations, and that a condition is appropriate.
- 7.45 Whilst disputed by the resident's consultant, it is considered acceptable to require the fine detail of the mitigation via a condition. This is on the basis that the principle of this approach has been sufficiently assessed and scrutinised by MM and they are satisfied the ditch system is in principle a suitable solution and that the applicant's outline design is conceptually sound subject to refinement that the LPA can secure via conditions with the ongoing support of MM.

Heritage Impact

- 7.46 The previous assessment considered there to be no significant impact upon the setting of listed buildings being Hertsfield Barn (GII) and Old Hertsfield (GII) both to the west of the site.
- 7.47 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The NPPF requires the local planning authority, when assessing an application to 'identify and assess the particular significance of any heritage asset that may be affected by the proposal.
- 7.48 Hertsfield Barn, a timber framed barn of 15th Century or early 16th Century age with attached 19th Century cattle shelter, is adjacent to the site and is seen in the context of part of the proposed development. The site previously provided a generally flat and open setting to the east of the Barn. This would be changed to grassed banks that would be planted with vegetation. Whilst the land to the east was previously generally level and largely open and this formed part of the historic setting of the barn, I do not consider the application site is an important part of the listed barn's

significance and this derives more from the fabric and architectural merit of the building itself, and its group value and association with the Old Hertsfield, and Hertsfield Oast as a small farm complex. The development would not affect this group value or association and therefore the barn's significance. Old Hertsfield Farmhouse is 18th century, possibly with earlier core, and the listing record states that part of the reason for the listing is for its group value. This building is separated from the site by Hertsfield Barn and Hertsfield Oast such that the proposed development is not clearly seen in the context of the listed building and for this reason the development would not harm the setting or significance of the building. The application site is also not an important part of this listed building's significance similar to Hertsfield Barn. Nor is it considered that introducing sloped grassed and landscaped planted banks would represent a development feature that would be harmful to, or incompatible with, the listed building's settings.

7.49 The Conservation Officer has also assessed the proposals and considers that although the bunding relating to the creation of one of the lakes would lie close to the listed Hertsfield Barn, the impact on its setting is not damaging to its setting or significance. This is in accordance with policies SP18 and DM4 of the Local Plan. He considers there would be no harm to Old Hertsfield.

7.50 Representations have been made that groundwater has caused damage to Hertsfield Barn through damp and so harm is being caused to the fabric of this listed building. As outlined above, there is uncertainty regarding ground and groundwater conditions both on and off site and so it is not conclusive that the development has resulted in groundwater impacts off-site, let alone causing any impact upon the listed building itself. Notwithstanding this, groundwater impacts would be mitigated by the proposed drainage system as outlined above.

Residential Amenity

7.51 I agree with the 2012 assessment that due to the distance from the nearest houses to the west, 3-6 Hertsfield Cottages (28m) and Hertsfield Barn (30m), the proposed gradient of the banks (around 1 in 8), and the overall height of around 6.2m above neighbouring levels, the lakes would not have an unacceptably oppressive impact upon the houses or their outlook, or result in any significant loss of light. This is also the case for the rear gardens of 3-6 Hertsfield Cottages some of which adjoin the site boundary. The minor changes to the proposals since the previous assessment, including where the slope begins to rise closer to the western boundary in places, do not affect this conclusion. The grounds of Hertsfield Barn adjoin the site but this is a parking/turning area and orchard, and the property enjoys other private garden space so that outdoor living conditions would not be unacceptably impacted. Nor do I consider the proposed tree planting and landscaping would have any unacceptable impacts in terms of light or outlook.

7.52 There are two properties on the south side of the A229 to the south of Lake 1, Hurst Green Barn and Swan Oast. Hurst Green Barn would be closest at

20m from the start of the banks, separated by the A229, and at this distance the lakes would not have an unacceptably overbearing impact upon the property or its outlook, or result in any significant loss of light. Swan Oast would be 45m away. Any other nearby properties would be a sufficient distance such that no harm to amenity would be caused.

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

Biodiversity & River Beult SSSI

7.54 The applicant has reviewed historical images in order to ascertain what habitats were like in 2003. This shows that the site was used for commercial agriculture in 2003, and prior to that date there were two lakes within the Monk Lakes site, and fish farming lakes to the east. The ES considers that it is likely that habitats would have been of limited biodiversity value. The Council's aerial photography from 2003 is consistent with this and so I consider it is a reasonable conclusion that the majority of the site would have been of limited biodiversity value due to the agricultural uses. However, the site did feature field boundary hedgerows and trees which would have offered biodiversity value.

7.55 Whilst the development is not complete, the ES has carried out an ecological assessment of the current site which includes habitats such as semi-improved grassland, scattered trees and scrub, standing water, ditches, and emergent and ruderal vegetation around lakes. The assessment concludes that the site provides suitable habitat to support small numbers of protected species but populations are unlikely to be significant. The potential for reptiles is negligible to low, amphibians low, moderate potential for bats, and negligible potential for badgers, dormice, water vole, and otter. On this basis, the development would not have any harmful impacts upon protected species or biodiversity to warrant objection in accordance with policy DM3 and policy NE4 of the emerging NHP. Some mitigation measures are proposed in order to ensure no harm to protected species during construction.

7.56 Habitat retention is provided along site boundaries and enhancements in the form of new native planting including trees, shrubs and grassland areas, aquatic planting, landscape management to benefit wildlife, and enhancements to the River Beult. These landscaping measures are considered proportionate to provide biodiversity enhancement at the site.

7.57 KCC Ecology have assessed the application and are satisfied with the conclusions of the ES regarding protected species/habitat and advise that the precautionary mitigation measures would be acceptable which will be secured by condition.

- 7.58 With regard to the River Beult SSSI, the potential for impacts are from the introduction of non-native fish to the river and pollutants from run-off. With regard to foul water/pollutants, a 'Klargester' system will be used to treat water, with foul water being passed through the system and subsequently discharged into Puma Lake, which Natural England considers is acceptable subject to it being secured by condition. Natural England also require that surface water run-off during the construction phase be directed to Puma Lake and/or the proposed temporary settling pond in order to prevent sediments flowing into the River Beult SSSI, that surplus waters from the new lakes to be directed to Puma Lake, and that the existing fish fence is to be extended around the proposed new lakes to prevent the escape of fish to the River Beult SSSI during flood events. As with the previous decision, this will be secured by condition.
- 7.59 With regard to non-native fish escape, as the ground level lakes nearest the River Beult would be allowed to merge with the River Beult in the event of a flood (as they would provide some flood compensation) it is proposed that these lakes would not contain any non-native species (and so they would need to be removed). The fish would be translocated to the raised lakes which would not merge with the River Beult during flood events due to being at a higher level. Natural England considers this is reasonable and proportionate. The Environment Agency advises that the practice of stocking non-native fish and moving live fish between waterbodies requires full engagement with the Environment Agency fisheries team. They advise that this is a process assessed and secured through other official consenting process, outside of the planning regime and requires a permit so essentially there are separate regulations that cover this matter. The proposals are for non-native fish to be in the raised lakes which is acceptable, and the separate Regulations would protect the River Beult SSSI. Permits will also be required for any discharge of water to the River Beult from lakes or ditches. It is concluded that the development, individually or in combination with other developments, is not likely to have an adverse effect on the SSSI.

Other Matters

Construction

- 7.60 The development at the site has so far required significant earthworks that were carried out under a licence/permit issued by the Environment Agency. The site was subject to a Paragraph 19a Waste Exemption, originally granted in February 2004 for an estimated 1.5 million tonnes of material, and this was renewed in March 2007 for a further 1 million tonnes of material. The further soil importation to complete the development is estimated at circa 89,000m³ which would require an Environmental Permit (EP), and the ES states that inert material would be used. The Environment Agency advises that it is likely that a bespoke EP would be required for the earthworks. The EP will have to be in place prior to soil importation and associated activities taking place on site. It will cover the operation of the site whilst the lakes are being constructed, cover the materials being brought onto the site, pollution prevention measures, drainage, monitoring

(gas, surface waters, noise, dust), and post-operation monitoring requirements. Significant lorry movements have taken place and further lorry movements would be required. Such movements do not have significant adverse impacts upon neighbouring amenity. Kent Highways advise that the access to the site is suitable for the proposed development and as before request limits on the times and number of movements. Times and movements were not restricted under the previous decision and I do not consider this is necessary for any highway safety reasons.

7.61 It is considered that the construction works to date, which were carried out under an Environment Agency licence have not resulted in any significant adverse impacts upon the local area or local amenity, and the further works required, will be subject to an EP. Nonetheless, in view of the scale of the works and proximity to residential properties, it is considered that a Construction Management Plan is appropriate in this particular case to protect amenity.

Minerals

7.62 Part of the site falls within safeguarding areas for 'alluvial river terrace deposits' and 'river terrace deposits' under the Kent Minerals and Waste Local Plan (KMWLP). So as to avoid sterilisation of minerals, policy DM7 of the KMWLP states that permission will only be granted for development where certain exceptions are met. The applicant's view is that mineral extraction would not be appropriate due to potential unacceptable impacts to the River Beult SSSI, flood risks issues, and noise, vibration and air quality issues for nearby dwellings.

7.63 The assessment here must once more only be based on the pre-development condition of the site (2003) and not take into account any impacts associated with the development currently on site. In my view, there are certainly risks of harmful impacts upon the SSSI from a potential quarry in such close proximity to the River Beult and also from noise and disturbance to nearby properties. One may argue that this has/could occur as a result of the proposed development through the extraction and importation of soil, and general earthworks but no known harm to the SSSI has occurred as a result of the development so far. Considerable assessment of the impacts of the development has been carried out by the applicant, statutory consultees, and the LPA, and mitigation as part of any planning permission, and via Environment Agency permitting controls would prevent any harmful impacts from further works at the site. To my mind it is not practicable to have quarry operations in such close proximity to the River Beult SSSI due to the potential risks to the SSSI and to a lesser degree the potential impact upon nearby residential properties. It is therefore considered that criterion 2 of policy DM7 is satisfied. KCC Minerals have been consulted and advise that there is a basis for invoking the 'exemption' to minerals extraction and it is considered that the above reasons are sufficient.

Representations

- 7.64 Matters raised that are relevant to planning and not considered above relate to concern that contaminated material has been imported to construct the lakes and this poses a health and water quality risk; whether the landscaping is compatible with reservoir safety; lack of approval under the reservoirs act; accuracy of plans and information; confusion regarding information; water quality, and the protection of property under the Human Rights Act 1998.
- 7.65 As stated above, the material imported to date was carried out under licence by the Environment Agency and the Agency at the time deemed that the materials being brought on the site were appropriate and acceptable with regards to human health and impacts upon water.
- 7.66 With regard to reservoir safety, this is dealt with under separate legislation and the Environment Agency has confirmed that there are currently no breaches under the Reservoirs Act at the site.
- 7.67 As already stated, the Council commissioned its own survey of the site and it is considered that the amended plans submitted accurately reflect what the applicant is proposing. As a significant amount of information had been submitted on the application since it was submitted in 2011, the applicant provided an amended Environmental Statement in February 2019 to provide all the relevant environmental information in one place. Since then an Environmental Statement Addendum was submitted in October, some amended plans submitted in November, and there have been a number of responses to consultees. It is considered that all the relevant environmental information can easily be found since the new Environmental Statement was submitted in February 2019, and consultations have been carried out with relevant parties.
- 7.68 In terms of water quality, as stated above, the material imported to date was carried out under licence by the Environment Agency and the Agency at the time deemed that the materials being brought on the site were appropriate and acceptable with regards to human health and impacts upon water and the environment. As such, it is not considered that any imported material would cause any significant pollution issues. Notwithstanding this, if a permit from the Environment Agency is necessary for any discharge of ground and surface water via the proposed mitigation system this separate permitting regime would adequately cover this matter.
- 7.69 With regard to the reference to the protection of property under the Human Rights Act 1998, this states that every person is entitled to the peaceful enjoyment of his possessions and no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. For the reasons outlined in the assessment above, it is considered that the proposed development, subject to suitable mitigation, would not compromise this right, or any others under the Human Rights Act.
- 7.70 In terms of the proposed landscaping on the banks of the lakes, the Reservoirs Team at the Environment Agency have advised that it isn't ideal to plant trees on embankments due to potential root penetration causing

preferential flow routes for water and falling trees causing damage. They don't advise whether this is right or wrong but state that the opinion of the Construction Engineer appointed under the Reservoirs Act should be sought. The appointed Construction Engineer has advised that the landscaping proposals are acceptable in terms of dam safety under the Reservoirs Act. On this basis, it is considered that the proposed landscaping is acceptable.

Alternatives

- 7.71 The ES considers that there would be no significant adverse impacts from the proposed development, however, the EIA Regulations require an outline of the main alternatives studied by the applicant and an indication of the main reasons for the choice made, taking into account the environmental effects.
- 7.72 The ES has studied the 'do nothing' scenario and states that this would result in half completed reservoirs without mitigation. The ES considers the mitigation would provide benefits to the environment consisting of, but not limited to, landscaping, biodiversity, flood risk and hydrology. The 'do nothing' scenario actually means not carrying out the development at all, and means there would be no lakes on the site at all (rather than left uncomplete) but I agree that the creation of the lakes and landscaping would certainly provide some benefits to the environment, predominantly through biodiversity enhancement. In the absence of any significant adverse harm, I consider the 'do nothing' alternative is not a reasonable proposition. I agree that an alternative site is not realistic bearing in mind the applicant's existing lawful fishing business at the application site.
- 7.73 The ES considers alternative forms of development, and consideration of a reduced form of development has been raised by local residents. The ES considers a scheme that would not involve bringing any further imported soil onto the site. It states that Lake 1 could not be completed as proposed and so could not be used for angling purposes and so the associated recreational benefits would not arise. The ES concludes that alternative solutions would not provide the overarching benefits associated with the fully mitigated development. I do not consider the arguments for a lesser or alternative scale of development have been robustly studied, however, this does not mean that the EIA is not a valid EIA, or that permission should be refused, and in view of the totality of environmental information and the proposed development not causing any significant adverse harm, I do not consider there is a need for further assessment of alternatives.

Exceptional Reasons

- 7.74 EIA case law has established that retrospective EIA development should only be granted in 'exceptional circumstances' and that an applicant should not gain an unfair advantage from a retrospective development. The previous decision was challenged on the grounds that the Council failed to consider whether the applicant gained any unfair advantage but this

challenge did not succeed. The challenge did succeed on the basis that the Council failed to consider the question of 'exceptional circumstances'.

7.75 The ES has now correctly taken 2003 (pre-development) as the baseline and assessed the development against this and the assessment carried out by LPA has been on this basis. For this reason, the applicant has had to carry out the same assessment had the development not been partly retrospectively and so no unfair advantage has been gained.

7.76 Regarding 'exceptional circumstances', the site's history and how it has come to be developed is considered to be an unusual and exceptional case. The site gained planning permission for development in the form of some raised fishing lakes in 2003. This commenced, and the importation of significant materials granted under a licence from the Environment Agency occurred to implement that permission. The Council served an enforcement notice in 2008 as this was not being carried out in accordance with the approved development. Following an appeal, the enforcement proceedings took 7 years to conclude. In the meantime planning permission was granted under this application in 2012, and the applicant implemented some of the approved works. The JR then quashed the decision in 2014.

7.77 The site history demonstrates why significant retrospective development exists at this site, which has been through a combination of two planning permissions. The first was not implemented properly but significant material was brought on site (some of which would have been necessary to implement the permission) before the Council served an enforcement notice. The second was quashed but further work was carried out prior to this. The enforcement notice requires the site to be restored to its pre-2003 condition but any action in relation to the notice has been held in abeyance by Planning Enforcement pending the outcome of this planning application. All these factors and the scale of the works involved represent unique, very unusual, and exceptional circumstances as to why a retrospective EIA application is before the Council.

7.78 In addition to this, a new Section 106 legal agreement (that is being progressed) would secure the following measures:

1. To submit an Environmental Permit (EP) application within 6 months of permission being granted;
2. To submit a landscape management plan within 1 month of permission being granted;
3. To complete the landscaping along part of the western boundary with residential properties within 6 months of permission being granted;
4. To complete the surface water and groundwater drainage mitigation along the western boundary within 9 months of permission being granted;
5. To carry out an inspection, with the Council and Kent County Council, of the surface water drainage works to demonstrate that the works have

been implemented in accordance with the approved details including a verification report;

6. To complete the flood compensation works within 12 months of permission being granted;
7. To start the soil importation within 6 months of the EP being granted;
8. To complete the soil importation within 3.5 years of the EP being issued;
9. To complete the development (excluding the clubhouse) in accordance with the approved details within 6 months of the completion of the soil importation;
10. To submit a land survey of the site to the Council to demonstrate that the development has been completed in accordance with the approved plans/details within 3 months of completion of the development;
11. A s106 monitoring fee of £1,500

(Requirements 4, 5, 10 and 11 are additional to the s106 agreement that accompanied the previous decision)

7.79 The legal agreement ensures that the applicant carries out various requirements to a timetable to ensure that the development is completed in a timely manner. In addition, it requires the applicant to verify that the development has been completed in accordance with the approved plans. In view of the scale, retrospective nature, and this being EIA development, it is considered that exceptionally, such measures are necessary and reasonable. These requirements go far beyond normal practice and it is considered that the above requirements also represent exceptional circumstances that justify the granting of retrospective EIA development in this particular case.

8.0 CONCLUSION

8.01 In addition to local policies supporting the expansion of business enterprise, national policy (NPPF paragraphs 80 & 83) indicates that significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs. It also indicates that planning decisions should enable the development of land-based rural businesses and sustainable rural leisure developments which respect the character of the countryside.

8.02 For the reasons outlined above it is considered that the development, subject to the mitigation outlined and controlled by condition, would not cause any harm to the landscape or visual amenities of the area, heritage assets, residential amenity, biodiversity or the River Beult SSSI, and impacts relating to flood risk, surface water drainage, and groundwater drainage can be suitably mitigated. On this basis, the development is in accordance with the relevant policies of the Development Plan, the NPPF,

and relevant policies in the emerging Marden Neighbourhood Plan. I have also considered carefully all representations made in reaching this conclusion.

8.03 There are considered to be exceptional reasons for granting retrospective permission, namely the exceptional circumstances surrounding the history of the retrospective development, and the comprehensive legal agreement that would ensure the development is completed and verified, and the applicant has clearly not gained an unfair advantage because this is retrospective development.

8.04 For these reasons, permission is recommended subject to a legal agreement and the following conditions.

9.0 RECOMMENDATION

Subject to the prior completion of a legal agreement to provide for the Heads of Terms set out below and subject to the conditions as set out below, the Head of Planning and Development **BE DELEGATED POWERS TO GRANT PLANNING PERMISSION**, and to be able to settle or amend any necessary Heads of Terms and planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Heads of Terms:

1. To submit an Environmental Permit (EP) application within 6 months of permission being granted;
2. To submit a landscape management plan within 1 month of permission being granted;
3. To complete the landscaping along part of the western boundary with residential properties within 6 months of permission being granted;
4. To complete the surface water and groundwater drainage mitigation along the western boundary within 9 months of permission being granted;
5. To carry out an inspection, with the Council and Kent County Council, of the surface water drainage works to demonstrate that the works have been implemented in accordance with the approved details including a verification report;
6. To complete the flood compensation works within 12 months of permission being granted;
7. To start the soil importation within 6 months of the EP being granted;
8. To complete the soil importation within 3.5 years of the EP being issued;

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9. To complete the development (excluding the clubhouse) in accordance with the approved details within 6 months of the completion of the soil importation;
10. To submit a land survey of the site to the Council to demonstrate that the development has been completed in accordance with the approved plans/details within 3 months of completion of the development;
11. A s106 monitoring fee of £1,500

Conditions:

1. The development hereby permitted shall be carried out strictly in accordance with the following approved plans:

PDA-MON-101	(Site Location Plan)
0183-04/02 Rev H	(Proposed Site Layout)
0183-04/03 Rev D	(Proposed Landscaping Plan)
0183-04/04 Rev B	(Proposed Clubhouse and Car Park Layout)
0183-04/05 Rev B	(Clubhouse - Proposed Floor Plans & Elevations)
0183-04/06 Rev A	(Vehicular Access Point)
0183-04/07	(Flood Compensation Plan)
2675/ML/G	(Flood Compensation Plan)
5881 3D-F XSections	(Proposed Cross Sections Sheets 1 to 3)

Reason: For the purpose of clarity, and to ensure a satisfactory appearance to the development and impact upon residential amenity.

2. Prior to the importation of any material, a Construction Management Plan and Code of Construction Practice shall be submitted to and approved in writing by the local planning. The approved details shall be fully implemented. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority.

The code shall include:

- a) An indicative programme for carrying out the works
- b) Measures to minimise the production of dust on the site(s)
- c) Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- d) Measures to minimise light intrusion from the site(s)
- e) Management of traffic visiting the site(s) including temporary parking or holding areas
- f) Provision of off road parking for all site operatives
- g) Measures to limit the transfer of mud and material onto the public highway
- h) The location and design of site office(s) and storage compounds

Reason: In view of the scale and length of time to carry out the development and in the interests of highway safety and local amenity.

3. Prior to the importation of any material or the carrying out of any further development, the detailed design of the groundwater interceptor drain shall be submitted to and approved in writing by the Local Planning Authority. The detailed design should be supported by site-specific data, calculations, and justified assumptions that fit with the established hydrogeological conceptual site model and shall include the following:
 - a) Detailed construction drawings showing all elements of the groundwater and surface water drainage system;
 - b) Calculations of the anticipated volume of groundwater to be intercepted by the system.
 - c) Sensitivity testing of the design to allow for uncertainties, including aquifer thickness and permeability, hydraulic gradient and future increases in groundwater level (e.g. due to climate change).
 - d) Confirmation (where possible) of the elevations of relevant off-site receptors.
 - e) A narrative explaining the operating assumptions behind the design, including how the groundwater drainage system would interact with the site surface water system and discharge to the river under a range of groundwater level and river stage conditions. This should be supported by hydrogeological cross-sections illustrating the conceptual site model.
 - f) A maintenance plan for the groundwater interceptor drain and surface drainage ditch, to ensure its long-term integrity and functionality. This should identify who is responsible for maintenance and a means of demonstrating that the plan is being adhered to.
 - g) Demonstration that the design will resist long-term threats to its integrity and effectiveness, such as climate change, settlement, further developments at the site, etc.

The scheme shall be completed in accordance with the approved details.

Reason: To protect neighbouring properties against potential groundwater level impacts.

4. Prior to the importation of any material or the carrying out of any further development, the following details shall be submitted to and approved in writing by the Local Planning Authority:
 - a) A site inspection and groundwater level monitoring plan, to be implemented during construction of the groundwater interceptor drain and associated works, to verify that site conditions are consistent with the established hydrogeological conceptual site model and design assumptions. This should include a protocol for responding to any deviations that would impact on the effectiveness of the approved design, and reporting these to the Local Planning Authority.

The groundwater level monitoring data shall be collated for submission to the Local Planning Authority in a verification report, upon completion of

the groundwater interceptor drain works. The verification report shall also include the following information:

- i) Photographs of the excavations before and after placement of the drainage system components;
- ii) As-built drawings showing the surveyed elevations of installed drainage system components.

Should any deviations from the established hydrogeological conceptual site model or design assumptions be identified, the contractor shall cease works and agree any proposed alterations to the design with the Local Planning Authority in writing, prior to their implementation.

Reason: To protect neighbouring properties against potential groundwater level impacts.

5. Prior to the importation of any material or the carrying out of any further development, the detailed design of the surface water drainage system, which shall be based on the strategy presented in Drawing 29431/001/SK03 prepared by Peter Brett Associates (3 July 2015), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved details.

Reason: To mitigate any flood risks associated with surface water.

6. Prior to the importation of any material, details of any boundary treatments and their implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

7. Prior to the importation of any material or the carrying out of any further development, details of catch fences to prevent fish from entering the river system in times of flood shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To protect the River Beult SSSI.

8. Any surface water run-off during the construction phase shall be directed to Puma Lake and/or the proposed temporary settling pond as outlined in the 'Water Resources Management Strategy' (22/03/12).

Reason: To ensure sediment does not flow into the River Beult SSSI.

9. All surplus water from the new lakes shall be directed to Puma Lake as outlined in the 'Water Resources Management Strategy' (22/03/12).

Reason: To ensure sediment does not flow into the River Beult SSSI.

10. Prior to the importation of any material or the carrying out of any further development, a Construction Environmental Management Plan relating to biodiversity (CEMP Biodiversity), that shall follow the precautionary mitigation measures detailed in section 5.10 to 5.17 of the ecological report (Preliminary Ecological Appraisal (Phlorum Ltd, August 2017)), shall be submitted to and approved in writing by the local planning authority. The CEMP Biodiversity shall include the following:
- a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of protecting biodiversity.

11. The development of the clubhouse shall not commence above slab level until samples of the timber cladding and clay roof tiles to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development.

12. In addition to the requirements of the Section 106 Agreement, all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in full in the first planting season following the completion of lakes 1, 2 and 3, and prior to any use of any part of lakes 1, 2 and 3. Any trees or plants which within a period of ten 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.

13. The development shall be carried out in accordance with the River Beult Habitat Enhancement Scheme received on 10/11/11.

Reason: To ensure appropriate biodiversity enhancements.

14. All vehicular access for the importation of material, vehicles for the re-profiling of the lakes and the embankments, and the implementation of the planting proposals, shall use the spur off the existing access directly off the A229 (Staplehurst Road), as shown on drawing number 0183-04/06 RevA (Vehicular Access Point).

Reason: To protect the amenities of adjoining residents and in the interest of highway safety.

15. The clubhouse shall be constructed with its finished floor level no lower than 17.36m AOD and with access as shown on drawing no. 0183-04/05 RevB.

Reason: To protect the building and occupants in the event of a flood.

16. Once the approved parking/turning areas have been implemented they shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

17. The development hereby permitted shall be used for recreational angling and purposes ancillary only.

Reason: An unrestricted use could cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

18. No angling shall take place between the hours of 10pm and 8am within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

Reason: To protect the nearby residents from noise and disturbance at such times.

19. No parking in connection with angling shall take place within the areas hatched and annotated on Layout Plan 0183-04/02 Rev H.

Reason: To protect the nearby residents from noise and disturbance.

20. All access will be via the existing consented access directly from the A229 and there shall be no vehicular or pedestrian access to the site from Hertsfield Lane.

Reason: To protect the amenities of adjoining residents.

21. The clubhouse shall not be used for any overnight accommodation.

Reason: To prevent danger to human life in the event of a flood and to prevent inappropriate residential accommodation.

22. The clubhouse hereby approved shall be used for purposes ancillary to the use of the site for recreational angling and for no other purpose.

Reason: An unrestricted use could potentially cause harm to the residential amenity of neighbours and the character and amenity of the countryside.

23. No lighting shall be installed on the site without prior written consent from the Local Planning Authority.

Reason: To protect the character and appearance of the countryside.

24. Any foul water shall be passed through a Klargester system, which is to discharge to Puma Lake as set out in the 'Phlorum' letter dated 20th May 2019, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent harm to the River Beult SSSI.

Item 13

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Monk Lakes,
Staplehurst Road,
Marden

11/1948

Representation

A 10 page representation has been received from a Planning Agent on behalf of a neighbouring resident which was sent to Members/Substitute Members of Planning Committee and officers. The representation is attached and officer's response is set out below. Where there is not a response to an issue raised it is because it has been considered in the main report.

Relevance of the Enforcement Notice Served in 2008

The representation considers the reasons for issuing the Enforcement Notice (EN) are a formal statement of the Council's assessment of the impact of the development which has taken place, and that a refusal of the application would accord with the Council's reasons for issuing the EN in 2008. Specific reference is made to reasons for issuing the EN relating to landscape impact and amenity (outlook and privacy) with the suggestion that the earthworks enforced against in 2008 were not dissimilar to what is now proposed.

The reasons for issuing the EN, (excluding those relating to the car park and access which have since been granted planning permission), are summarised as follows:

- There were no controls on the height and extent of land raising;
- It was causing a detrimental impact on the countryside;
- It had an overbearing visual impact and was harmful to the amenity of residents;
- Environmental disturbance from earthworks, vehicle movements, noise and dust;

- Lack of a technical justification for a 6m high plateau compared to the ground level lakes;
- Without any properly designed scheme of development the works were considered to be waste disposal;
- Potential highway safety issues from lorry traffic;
- Land raising within the flood zone and potential flood risks;
- Impact upon the River Beult SSSI;
- Further importation of material;
- Harm from the buildings in place to carry out works;
- Uncontrolled 24 hour use which could harm residential amenity;
- Visual harm from temporary buildings;
- Unrestricted retail use (tackle shop) contrary to policy;
- Various harmful paraphernalia (bins, signs, tables etc.);
- The fact that none of these issues were considered under planning permission 03/0836 and so these matters had not been considered.

The earthworks in 2008 as the EN sets out were uncontrolled meaning there was no properly designed final scheme of development and there were no controls over any necessary mitigation whatsoever. It is considered that the harm identified stems from the uncontrolled nature of the development.

In contrast, the proposed development under the planning application is accompanied by an Environmental Statement with substantial evidence and information and clear plans, including proposed mitigation. The planning application has been assessed by statutory consultees (with no objections), the Local Planning Authority, and local residents, and the planning issues raised under the EN are matters considered in the assessment. In recommending planning permission, the mitigation of any impacts would be secured via planning conditions and the legal agreement.

Whilst the EN is a material consideration, the applicant has submitted this planning application in an attempt to regularise the situation at the site. The proposed development including the proposed mitigation is significantly different to the earthworks and situation when the EN was served. It is therefore not accurate to compare the proposed development with the situation when the EN was served, and the EN does not preclude planning permission being granted.

Differences from the 2012 Proposal

Planning Committee Report

The representation considers the development now being considered is substantially different in terms of its scale, nature, and impacts from that considered in 2012, referring specifically to the heights of the banks.

As outlined at paragraph 7.04 of the main report, the main changes from the previous decision are lower sloped banks in places around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in places of no more than 1m. The height of the lake crests for Lakes 2 and 3 have not significantly changed but where they have, they would be marginally lower.

Whilst the 2012 report refers to various heights including 5m and 4m heights, the Council commissioned its own land survey in September 2019 and this compares the previously proposed levels to that now proposed and this is what the above assessment has been based on. It is therefore considered that the lakes would not be over 2m higher than the previous scheme as suggested.

As also outlined at paragraph 7.04, the western banks begin to rise closer to the western boundary in places than previously proposed and the corners of the lakes are at slightly different angles and the islands within the lakes would be different in shape and location.

Officers have fully assessed the latest proposals and consider the changes from the previous determination are minor in nature in the context of the wider development and so the previous planning judgement is still a material consideration. However, it is for Members to decide what weight to give to the previous decision and ultimately to reach a decision on the development now proposed.

'Matters of Judgement'

The issues relating to landscape, amenity, and heritage including the fabric of Hertsfield Barn have been raised previously and are fully considered in the main report.

Other Matters

The representation considers that the proposed development is a 'waste disposal operation' because the EN considered this to be the case in 2008 and this has not been assessed. As outlined above, the EN referred to works being carried out in 2008 and in the absence of any properly designed scheme of development there was uncertainty what the works were for, and therefore the works were considered to represent 'waste disposal'. However, since that time, and as evidenced through the supporting documentation for the planning application the material brought on site (that was permitted under an Environment Agency licence) forms an integral part of the development for which planning permission is now sought. Therefore it is now apparent, furnished with the additional application documents that this does not represent 'waste disposal' but works in connection with the planning application.

As outlined in the main report, the Council's consultant (Mott MacDonald) are advising that the proposed drainage system to mitigate groundwater impacts is a suitable solution subject to the fine detail being provided via recommended conditions 3 and 4. Their expert view is that the proposed scheme will be effective in mitigating any impact, and their expert advice will be sought when the details are submitted for consideration.

The safety of the raised lakes is dealt with via separate legislation under the Reservoirs Act and so is not a planning matter. Notwithstanding this, the Environment Agency confirmed in September 2019 that an enforcement notice was served on the site in early 2018 for non-compliance with the Reservoirs Act but this has been removed and any issues have been resolved.

The grant of permission would effectively nullify the EN because the Council would have decided that the proposed development is acceptable. If there was any breach of planning permission or planning conditions should it be granted, enforcement action could be taken as would be the case for any other breach of planning control.