

Annex 3

MA/11/1948 – Annex 3 – Commentary on issues

raised in letters of representation contained in Annex 2

- 1.1 I will deal with the points in the letters in turn starting with the letter dated 16 December 2012 from Bell Cornwell Planning Consultants on behalf of Mr David Padden.
- 1.2 Under the heading 'The Application Details' the letter raises issues in points 1 and 2 with regard to the description of the development being inaccurate as the development is for reservoirs and not lakes and raises concerns regarding the accuracy of the plans. The description of lakes or reservoirs is immaterial in the assessment of the planning merits of the application. The description and plans clearly show proposed bodies of water for recreational fishing use. The plans are submitted with detailed proposed land levels shown as well as spot levels and are drawn to a metric scale. The submitted plans are clear to enable consideration of the application.
- 1.3 Concern is raised in points 3 to 6 about the non reference to Hertsfield Barn as a residence and concern that the impact has not been considered as part of the application. The Council is aware of the existence of the dwelling and the impact on Hertsfield Barn and other residences in Hertsfield Lane have been considered in 5.7 of the main report.
- 1.4 In points 7 to 9 the letter of representation raises concern regarding the quantity of material indicated as required to complete the proposal and how this figure has been reached. The proposed scheme is a fully detailed scheme with the finished heights of the lakes clearly set out and the imported material would be required to fill the existing 'pit' and the subsequent creation of lake 1.
- 1.5 The letter refers in paragraphs 10 to 13 to whether the application is in fact a waste disposal site and the application should be dealt with by Kent County Council as the relevant authority. Under the Development Management Procedure Order 2010 an application should be submitted to the County Planning Authority if it relates to a County matter, see Regulation 10(1)(c)(i). Schedule 1, paragraph 1(1)(j) to the 1990 Act defines County matter as including the carrying out of an operation which is a "prescribed operation". The Prescription of County Matters England Regulations 2003 prescribe as County matters building/engineering operations which are "wholly or mainly for the purposes ofdepositing of waste". It is the Council's view that the operations would not be "wholly or mainly for the purposes of... depositing waste". Instead, the depositing of spoil would be incidental to primary objective to create lakes for the purposes of recreational fishing.

- 1.6 The next section of the representation is entitled 'The Environmental Statement'. Points 14 to 16 indicates that no scoping opinion was sought and alleges that the Environmental Statement (ES) is flawed as it fails to compare the proposed development with the 2003 position. There is no requirement for a formal scoping opinion application to be submitted to the Local Planning Authority prior to the submission of an ES. Whilst the ES does not compare the proposed scheme with the 2003 position the Council has assessed the development against the 2003 position as outlined in the main report.
- 1.7 Points 17 to 22 outlines arguments that the 2003 permission has not been implemented. This is the same view that the Council has and the application has been considered on the basis that the 2003 permission is not a fallback position.
- 1.8 There are issues raised in points 23 to 25 about the quality of the material imported to the site. The Environment Agency have been involved extensively in relation to the site and the unauthorised works. No action has been taken with regard to any alleged contamination of the land. The proposed material to be imported would be inert material with full details required as a planning condition. This would also be a requirement of the Environmental Permit from the Environment Agency.
- 1.9 The next part of the letter deals with 'Impacts on the Residents of Hertsfield Barn'. The issues raised in point 26 relate to the impact on the outlook of Hertsfield Barn. This issue is dealt with in section 5.7 under residential amenity and the submitted plan shows the proposed gradient and flatter element of the site between the drainage ditch and the site boundary.
- 1.10 Points 27 to 31 raise issues with regard to the accuracy or otherwise of the 2003 consent, that it is not possible to implement and is not a fallback position. It is argued that the 2003 scheme was fundamentally flawed and should not be a material consideration. However, it remains the case that the principle of such a development on this site was considered acceptable in 2003 when the Council granted planning permission. It is the Council's view that the 2003 permission has not been implemented and is not a fallback position. However, the decision to approve the 2003 application was a decision of the Council and is a material consideration in the determination of this application to which I give some weight.
- 1.11 The points raised in 32 to 35 relate to a loss of outlook. The distance between the dwelling and the top of the bank is sufficient not to result in an overbearing outlook. Although it would be a different view to the 2003 position it does not harm residential amenity.

- 1.12 Point 36 of the letter states that the proposal includes dense woodland planting should be placed on top of the crest to prevent overlooking and loss of privacy. I consider that the distance between the crest of the lakes and neighbouring properties is sufficient to prevent an unacceptable loss of privacy and the proposed planting would further filter any views.
- 1.13 I do not agree with assertion in point 37 that a view of new tree planting would harm a resident's outlook. Neither would the trees at that distance cause a significant loss of light.
- 1.14 In points 38 and 39 there is additional concern raised about loss of outlook and privacy, which have been dealt with above.
- 1.15 Point 40 makes reference to views from a field owned by the client of Bell Cornwell. There would be no grounds to refuse an application on the basis of a loss of outlook from land with a lawful use for agriculture.
- 1.16 The letter in points 41 and 42 refers to potential conflict between the planting and the stability of the reservoir banks. This matter is noted in the application documents and a condition or obligation in a Section 106 agreement would be imposed to secure appropriate planting.
- 1.17 Point 43 refers to the issue of the 2003 position being the correct baseline, which has been the basis of the consideration of this application.
- 1.18 The issue of further importation of material is raised in points 44 to 46 with regard to the potential income and questioning the need for the material to complete the development. It is demonstrated from the submissions that the material is required to complete the proposed scheme. The income from or cost of completing the development is not a weighty planning consideration in this matter.
- 1.19 The letter in points 47 to 51 concerns 'Flood Risk' and the ability of ground conditions for absorbing water and concern regarding drainage ditches. The matter of flooding and flood risk has been considered fully by the Environment Agency and no objections are raised on the grounds of flooding. The proposed improvements and enhancements can be secured by way of a condition and the Section 106 agreement would ensure full implementation.
- 1.20 The section entitled 'The Alternatives' comments on the cost of compliance and period of time for compliance with the EN within points 52 to 59. The Council has assessed the scheme on the basis that it would be successful in the enforcement appeal and the 2003 permission is not a fallback position. Therefore the cost and time to comply with the EN is not a consideration in the determination of the application.

- 1.21 Point 60 states that there are no alternative proposals in terms of lakes of a lower level or smaller lakes. The planning application has to be dealt with as submitted on whether the proposal put forward is acceptable on planning grounds.
- 1.22 The single point 61 deals with 'Ecology' and concerns that the base date surveys were 2010. The unauthorised works have changed the wildlife habitat on the site. However, the proposal includes significant landscaping proposals and wildlife enhancements as well as measures, including no additional abstraction from the river, to ensure the characteristics of the River Beult SSSI are unharmed. These measures and enhancements have been assessed by Natural England, the Kent Wildlife Trust and Kent County Council Ecology and none of these organisations raise any objections to the proposal.
- 1.23 The point 62 entitled 'Additional Relevant Policies' outlines policies relevant to waste disposal. As stated earlier the development is for the creation of lakes for recreational fishing and not a waste disposal site. The relevant policies are those that deal with that use and development and the importation of material including the traffic movements associated with such an importation have been assessed as part of the determination of the application.
- 1.24 The second letter of representation on the application was been submitted by the Hertsfield Residents Association (HRA), which comprises the owners of all 12 houses along Hertsfield Lane and dated 21 January 2012.
- 1.25 The first paragraph is a factual commentary of the enforcement action and appeal position in relation to the HRA.
- 1.26 The letter then makes 5 points (numbered i-v). For ease these are reproduced below (in italics) and commented on immediately after.

(i) fails to rectify any of the significant breaches of planning control at the site;

Although the planning application is partially retrospective, it also includes a proposed development and has to be considered as to whether it is acceptable in planning terms and not solely whether it rectifies breaches of planning control (though it is considered that the harm caused by these breaches should be addressed by requiring a scheme of implementation as discussed in the main report).

(ii) fails to rectify any of the significant issues for local residents caused by that development;

The planning merits of the scheme have been fully considered in light of the comments received from relevant consultees.

(iii) makes the situation even worse through the further importation of 51,000m3 of spoil;

The further importation of material is required to complete the scheme and fill the 'pit' where lake 1 is proposed.

(iv) creates a wholly unacceptable additional flood risk for local residents through the construction of reservoirs above ground level adjacent to residential properties; and

The concern regarding flood risk is addressed by the requirement of the Reservoirs Act and the provisions to ensure that the banks are secure. This would be further secured through the completion of a Section 106 agreement to ensure that the development is fully implemented.

(v) envisages the construction of a large clubhouse facility, involving both retail premises and a restaurant, entirely out of keeping with the rural environment and to the detriment of local residents through creating additional traffic movements, noise and disturbance.

The clubhouse would replace the existing buildings on the site and the size and particularly low eaves combined with the distance from public vantage points would ensure that this would not harm the rural character of the area. Furthermore, a condition would be imposed to ensure that the clubhouse was only used for purposes ancillary to the use of the site for recreational fishing.

- 1.27 The following three paragraphs of the letter deal with the issue that was also raised in the letter from Bell Cornwell that the ES does not assess the application against the 2003 position. As indicated earlier, whilst the ES does not compare the proposed scheme with the 2003 position the Council has assessed the development against the 2003 position as outlined in the main report.
- 1.28 A point is raised in the letter that none of the residents of properties in Hertsfield Lane were contacted in relation to the assessment of residential amenity that has been submitted as part of the application. There is not a requirement within planning law for the applicant or their representatives to engage with neighbours prior to submitting an application. This does not automatically mean that any assessment put forward as part of an application lacks validity.
- 1.29 Detailed points of objection are then raised under the broad headings of i-v above. Objection 1 deals with the lack of addressing the breaches of planning consent on the site. Detailed points a-d are then raised with (a) stating the lack of removing any material from the site. As stated earlier the scheme has to be considered as to whether it is acceptable in planning terms and not whether it rectifies breaches of planning control.

- 1.30 Objection 1b states there is no material alteration to the very high and steep banks. As a comparison, rather than the banks exceeding a height of 5.5m a minimum of 30m from the boundary of the application site the reformed land would be almost a metre lower and at least 42m from the site boundary. This lowering and re-grading of the land would move the banks further back from the boundary and reduce the oppressive nature.
- 1.31 The next objection 1c deals with the lack of reducing the earth that has been deposited within the floodplain. The Flood Risk Assessment has assessed the impact of the development on the area in terms of flood risk and flood storage capacity. Furthermore, the Environment Agency have assessed the details of the application and raise no objections to the scheme with regard to the impact on flood waters.
- 1.32 It is asserted in objection 1d that the lakes nearest the residents should not be raised and that this was never envisaged as part of the 2003 application. I do not consider that the 2003 application is a fallback position for the development and the application has to be considered on its own merits and the creation of above ground lakes is not unacceptable in principle. However, it was stated that the lakes outside the flood plain were 'above ground' and indicated a maximum slope gradient of 1 in 8. Therefore, it is my view that the raising of land was part of the original 2003 proposal.
- 1.33 Objection 2 concerns the importation of further material and the noise disturbance and loss of amenity from lorry movements would occur. The importation of the material would be strictly controlled through the agreed implementation programme and enforced through the Section 106 and conditions. This would be done to minimise the impact on nearby occupiers.
- 1.34 The letter raises concerns about the quality of the material already deposited on site and as stated already, the Environment Agency have been involved extensively in relation to the site and the unauthorised works. No action has been taken with regard to any alleged contamination of the land. The proposed material to be imported would be inert material with full details required as a planning condition. This would also be a requirement of the Environmental Permit from the Environment Agency.
- 1.35 The objection 4 deals with a potential breach of lake 3 and its impact on adjacent dwellings. The fact that the lakes are of a size that they fall under the Reservoirs Act would mean that the structural stability of the lakes would be closely monitored in order to ensure compliance with the Reservoirs Act. The Environment Agency confirm that all reservoirs capable of holding more than 25,000 m³ of water above natural ground level (being held back by a bund or dam) are required to have a contracted Supervising Engineer at all times and periodically an Inspecting

Engineer must be appointed to inspect the reservoir. The Environment Agency is the Enforcement Agency for this.

- 1.36 Objection 5 relates to the clubhouse and concerns that the clubhouse is unjustified and would attract passing trade (objection 5a). The clubhouse would be conditioned to be ancillary to the use of the site for recreational fishing and not for any other purposes. The principle for the need for some buildings on site was accepted when temporary consent was granted for the retention of the existing buildings on site. The permission given was only temporary as the nature of the buildings was not appropriate for permanent permission.
- 1.37 A comparison is drawn under objection 5b between a proposed clubhouse under the 2003 application and this application. As stated I do not consider that the 2003 permission is a fallback position and the proposal for a clubhouse to serve the proposed facility should be considered on its own merits. Given that the principle of the need for building(s) on the site has been previously accepted the key considerations of the proposal are the impact of the clubhouse. The clubhouse would replace the existing buildings on the site and the size and particularly low eaves combined with the distance from public vantage points would ensure that this would not harm the rural character of the area.
- 1.38 Objections 5c, 5d and 5e state that the facilities within the clubhouse are not essential, there is no need for a shop on site and the clubhouse would not be ancillary. There is no requirement within planning policies to only allow essential facilities at such sites. The considerations are whether the facilities are reasonable and whether the resultant building or buildings cause any planning harm. The facilities are not of a scale that can be deemed to be unreasonable for the running of the site and there is no significant planning harm caused by the building. The clubhouse would be kept ancillary to the use of the site for recreational fishing by planning condition which would be enforceable if a breach was to occur. An ancillary retail element has been accepted under the granting of consent for the temporary buildings and a suitable condition ensuring this would be appropriate.
- 1.39 The assertion of objection 5f is that the building is out of keeping with the area and should be of outstanding architecture. There is no requirement within policy for rural buildings to be of outstanding architecture. Furthermore, the design of the building is rural in nature and would not be prominent in the landscape. The scale and design of the building is considered acceptable and would not result in significant harm to the character and appearance of the rural area.
- 1.40 The third letter of representation on the application was been submitted by Bell Cornwell Planning Consultants on behalf of Mr David Padden and

dated 25 May 2012. This letter includes an attached letter from a geologist regarding the geological makeup of the area and its impact on surface water drainage.

- 1.41 The letter outlines concerns with the existing situation in that the unauthorised landform may have damaged the natural drainage route and contributed to greater run off onto a neighbouring property at Hertsfield Barn. The letter from the geologist recommends that restoration work be carried out and drainage facilities put in place on the application site to rectify this matter. This harm would be remedied as part of the proposal and the upgrading of the drainage channel and the creation of an overflow system that would direct water from lake 1 down to lake 3.
- 1.42 The point is made that the Environment Agency is only a statutory consultee on river flooding and not other matters. Whilst the Environment Agency are statutory consultees on flooding matters their response includes comments on other aspects of the development.
- 1.43 It is stated that the material does not deal with the geological impact of the unauthorised importation of material and no mitigation to alleviate these issues is proposed. However, the accompanying letter from the geologist recommends that restoration work be carried out and drainage facilities put in place on the application site to rectify this matter. These facilities are proposed and will be secured by way of a condition.
- 1.44 An issue is raised with regard to proposed planting on the banks of the river and the need to ensure compliance with the Reservoirs Act in terms of stability. A condition is included within the recommendation to ensure that the species included within the planting scheme are compatible with the requirements of the Reservoirs Act.
- 1.45 The letter notes the response from the Environment Agency on the matters of the bespoke permit from the Environment Agency and concern regarding the deliverability of the scheme due to the inability to extract water from the River Beult. The applicant has indicated how the lakes would be filled without any further extraction required from the river over and above the existing permitted level. There would be a significant period of time before the lakes would be able to be used but the facility does have usable lakes and I do not consider that the scheme would be undeliverable.
- 1.46 There is an issue raised with regard to the current owner and the importation of material and subsequent gate fees. I do not consider that these are significant planning considerations in relation to this scheme and the issue of viability is not significant given that the Council's view is that the alternative is the requirements of the enforcement notice and the

complete removal of the material. However, the scheme has to be judged on its own merits and whether it is acceptable in planning terms.

- 1.47 The letter again indicates that the 2003 consent is not considered a fallback position. This is a position that the Council agrees with.
- 1.48 The planning agent indicates that the 2003 permission did not provide for the significant importation of materials to the site and the existing and proposed developments bear no resemblance to that which were approved in 2003. The 2003 permission included above ground lakes and as such I do not agree that there would be no importation of material.
- 1.49 A point is raised that the movement of material off site would be more harmful to residents than the proposed scheme. This application has not been judged as a comparison with the unauthorised development or indeed the requirements of the Enforcement Notice but rather on its own planning merits.
- 1.50 There is concern regarding the assertion that the proposal is the only viable scheme. As stated above in 1.46 the viability of alternative schemes or the requirements of the Enforcement Notice is not a significant planning consideration in the determination of this application.
- 1.51 The letter includes reference to the National Planning Policy Framework (2012) regarding the conserving and enhancing the natural environment, prevent risks from pollution and land instability. The issue of the visual impact of the proposal on the character and appearance of the surrounding area has been fully considered in the main report. The alleged contamination of the imported material was investigated by the Environment Agency and no action was taken and planning conditions are proposed to ensure the quality and use of the proposed material is acceptable.
- 1.52 The letter states that the site is classified as greenfield and not previously developed land as the lawful use of the site is agricultural. It is my view that the land is a greenfield site due to its lawful use for agriculture and furthermore, following the completion of the scheme, if approved, the site would remain classified as a greenfield site and not a previously developed land.
- 1.53 There is an assertion from the letter that the development is not sustainable as the owners are the only persons that have benefitted from the unauthorised development and any recreational developments could be provided through a reduced scheme and that the applicant's desire for profit does not carry more weight than the environmental issues and impacts on residents. I do not agree that the owners are the only people to benefit as the scheme would result in wider improvements for flood

storage, ecological enhancements as well as a recreational facility that would be used by the public. I do agree that the applicant's desire for profit should not be given more weight than the environmental issues and impacts on residents in the determination of the planning application and the considerations in the main report have been assessed on this basis.