



Appeal Decision

Inquiry held on 25 – 26 February 2025

Site visit made on 27 February 2025

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2025

Appeal Ref: APP/U2235/W/20/3259300

Monk Lakes, Staplehurst Road, Maidstone, Kent TN12 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Monk Lakes Limited against the decision of Maidstone Borough Council.
 - The application Ref is 11/1948.
 - The development proposed is the retention of lakes known as Bridges and Puma, the retention and completion of part completed raised reservoir Lakes 1, 2 and 3 (all for angling purposes) along with a clubhouse and detailed landscaping scheme.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. A local group known as 'Mr David Padden and the Hertsfield Residents Association' was granted Rule 6 (R6) status and took a full part in the appeal and the inquiry.
3. The application and appeal have been outstanding for a considerable period, during which the nature of the scheme has changed for various reasons. The description of the proposal set out above more accurately reflects the proposal as it stands and was agreed by all parties at the inquiry. For the same reason the plans have been amended to reflect the landscaping which has been partially undertaken. Using that description and the revised plan does not cause prejudice to any party.
4. The application which is the subject of this appeal was refused by the Council on 12 March 2020. A decision on the subsequent appeal was issued on 21 November 2022 following a hearing. That appeal decision focused entirely on the issue of the validity of the appeal and was dismissed on that procedural ground. On 7 May 2024 that appeal decision was quashed in the High Court, and the appeal was remitted to the Secretary of State¹. This decision deals with the same appeal.
5. The issue of the validity of the appeal continued to be the subject of extensive correspondence between the parties in the weeks leading up to the inquiry. It is

¹ [2024] EWHC 1053 (Admin)

unnecessary to rehearse the various arguments here, as these deal with the status of the appellants and whether the pursuit of the appeal was valid. Suffice it to say that all parties agreed that the matter was resolved, that the appeal was valid and that the matter would not be pursued at the inquiry. I have no reason to disagree with the conclusion of those discussions and I am satisfied that the appeal can validly be determined.

6. The original application was accompanied by an Environmental Statement (ES), which was amended on a number of occasions as time went on². Most recently in response to a Regulation 25 letter on behalf of the Secretary of State (6 January 2025) the appellant submitted an Environmental Statement Addendum (ESA) updating the position. The R6 party and the Council expressed concern regarding the technical expertise of the author of the document, but I consider that, as a collation of the work of professionally qualified experts, it was satisfactory in terms of the EIA Regulations.
7. For a considerable period before the inquiry the R6 party and the appellant engaged in correspondence regarding the matter of Exceptional Circumstances in relation to retrospective EIA development and the ES. This matter goes back at least to a High Court judgement in 2014 and relates to any advantage relating to pre-emptive development and whether any Exceptional Circumstances exist. This resulted in the appellant submitting a proof before the inquiry on this topic, and a submission being made (with prior warning) by the R6 party just before the inquiry. I gave the appellant opportunities to respond to these submissions at the inquiry, but they indicated that they did not wish to do so and relied on the proof submitted.
8. After the inquiry closed the appellant submitted a further document dealing with Exceptional Circumstances. At the time I declined to accept this document as the inquiry had closed and no indication had been given of the preparation of such a document. I stated that I was satisfied that, with the appellant's proof and the R6 submissions, I had all the material I needed to address this matter. However, in the light of my further consideration of the importance of this matter, I changed my position and accepted a response from appellant's Counsel on the matter and gave the other parties opportunity for comment. I deal with matters relating to the ES/ESA below.
9. The evidence put forward by the Council in its proofs of evidence, particularly in relation to the heritage balance and the issue of overlooking, was frankly puzzling. Witnesses are entirely entitled to give their professional opinion, indeed they must do so. However, this evidence, in part, did not support the Council's position in the reasons for refusal and in the Statement of Common Ground (SOCG). This was explored at the inquiry. In response to my questions, it was explained that the Council's position was that the position of the authority was set out in its Statement of Case, and not as put forward (in part) by its witnesses. The Council did not make a closing submission. I have approached the evidence in this light.
10. After the inquiry closed the Kent Minerals and Waste Local Plan was adopted. This relates to one of the other material considerations (below). The parties were notified of the adoption of the Plan and asked for any comment. Responses were received from the R6 party and the appellant, and I have taken these into account³. The Council stated that they did not wish to comment.

² Statement of Common Ground (SOCG) Table 2

³ Docs 12 & 13

11. The development plan includes the Maidstone Borough Local Plan Review 2021-2038 (adopted 2024) (BLP); the Kent Minerals and Waste Local Plan 2013-2030 (adopted 2025) (MWLP); and the Marden Neighbourhood Plan 2017-2031 (adopted 2020) (MNP) ⁴.
12. An application for partial costs was made by the R6 party against the appellant. This application is the subject of a separate Decision.

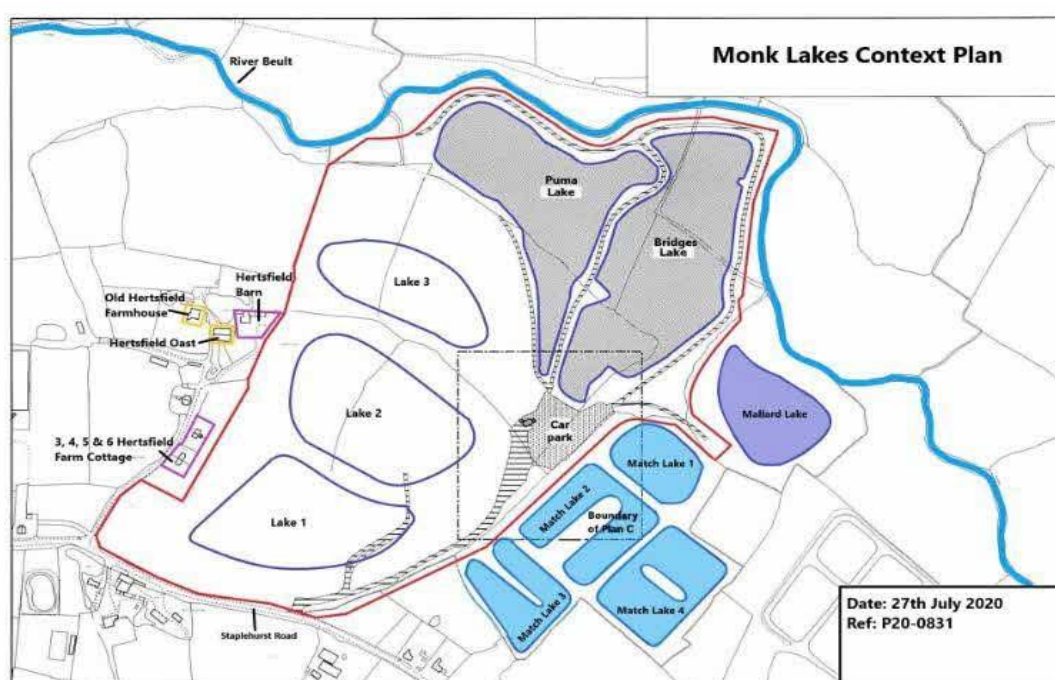
Main issues

13. There are four main issues in this case, the third of which was not a reason for refusal, but was raised by the R6 party.:
 - The effect of the proposal on the setting of Hertsfield Barn.
 - The effect of the proposal on the living conditions of residents of Hertsfield Barn and nos.3, 4, 5, and 6 Hertsfield Farm Cottages by reason of overlooking.
 - The effect of the proposal on the character and appearance of the countryside.
 - Whether the proposal conflicts with the law related to retrospective EIA development.

Reasons

The site and the surrounding area

14. The appeal site (edged red in the plan below) is around 35 ha in area. It includes 5 recreational fishing lakes – two of which are known as Puma and Bridges (ground level) and three – Lakes 1, 2 3 - which are raised above ground level. All but Lake 1 have been completed, although substantial work has been done on Lake 1.



⁴ SOCG section 6 sets out a list of those parties considered relevant

15. To the southeast of the appeal site is a further fishing area, including Mallard and Match Lakes. Beyond that is a fish farm.
16. Vehicle access is provided off Staplehurst Road to the south. This gives access to a car park and the building providing facilities for anglers. There are various tracks and paths within the appeal site providing access to the different areas.
17. To the north is the River Beult, which is a Site of Special Scientific Interest. Beyond the river is a public right of way.
18. To the west of the site, close to Lakes 1, 2 and 3, are a number of dwellings grouped along Hertsfield Lane. Those referenced in the Council's refusal are Hertsfield Barn (Grade II) and nos 3, 4, 5 and 6 Hertsfield Farm Cottages. Slightly further from the site are Old Hertsfield Farmhouse (Grade II) and Hertsfield Oast.
19. The Environment Agency maps show the northern part of the appeal site to be within Flood Zone 3, with the remainder in Flood Zone 2.

The planning history of the site

20. The SOCG at Table 1 lists the planning history of the site – except for the 2022 appeal decision and subsequent court judgement referenced above.
21. There was a lengthy debate at the inquiry as to whether any part of the appeal site has the benefit of planning permission for its current use or form. It was eventually agreed by all parties that only a small area in the southeastern area of the appeal site has planning permission. Importantly none of the 5 lakes and associated mounding on the appeal site have planning permission.
22. The key points in the planning history are:
 - In 2001 permission was granted for fishing lakes (Match and Mallard) to the east of the current appeal site. The permission included temporary works and an access within the current appeal site.
 - In 2003 permission was granted for the change of use and physical works to the appeal site to provide for recreational fishing. This included a range of ponds and lakes. Pre commencement details were reserved by condition but were never formally submitted (although the appellant maintains that Council officers were fully aware of the details and that this was confirmed to their conveyancing solicitor). I note that the development which has taken place is significantly different from this permission, which was for a number of smaller lakes with shallow bunds.
 - In 2008 the Council served an enforcement notice on the basis that the works were not being carried out in accordance with the 2003 permission.
 - In 2009 an application for retrospective permission was submitted for the change of use of Mallard and Match lakes from fish farming to angling, along with the retention of access and car parking. This was approved.
 - In 2010 limited period permission was granted for the retention of buildings and mobile facilities, for a period of 3 years. This permission has since lapsed.

- In 2011 a part retrospective application was submitted, essentially for the appeal scheme, for the retention of Bridges and Puma Lakes and works to create Lakes 1, 2 and a clubhouse and associated works. This was approved in 2012.
- This permission was subsequently quashed in the High Court on EIA grounds in January 2014⁵.
- In April 2015 a hearing was held into an appeal against the 2008 Enforcement Notice. This appeal was allowed in May 2015 solely on matters related to the time period for compliance. The Enforcement Notice has since been held in abeyance by the Council pending the outcome of the current appeal.
- In March 2020 the Council reconsidered the 2012 application, after their previous decision had been quashed. Officers recommended that permission be granted, but the Committee refused permission in November 2022.
- The appeal decision related to this refusal was quashed in the High Court in 2024⁶. This decision relates to the redetermination of that appeal.

The current proposal

23. The appeal scheme is for the retention of Bridges and Puma lakes which are effectively at ground level. It is also for the retention of raised lakes 2 and 3 in their current form on the western side of the site. Lake 1 is unfinished and requires further works – mainly lowering the banks and raising the water level. The SOCG notes that Lakes 1, 2, and 3 would be between 5 – 6.2m above the previous ground level. These lakes have sloping sides which run down to the Hertsfield Lane properties and to other parts of the site.
24. The scheme also includes a new clubhouse, approximately in the same location as the temporary building. Landscaping is proposed in the form of woodland planting along the west and south boundaries and on the lake slopes.

The effect of the proposal on the setting of Hertsfield Barn

25. As mentioned above, Hertsfield Barn is not the only Listed Building in the vicinity. However, it is the only one where harm to the setting and/or to the fabric has been alleged by any party. I have no reason to disagree with that assessment as the other assets are at a considerable distance from the appeal site, which is not within their setting.
26. Hertsfield Barn dates from the late 15th or early 16th Century. It is a timber framed weatherboarded building sitting on a ragstone plinth. Originally a barn, it has been converted into a dwelling. The Council's reason for refusal and evidence deals with the effect on the setting of the asset, whereas the R6 party (one of whom is the owner of the Barn), also objects, to the proposal on the basis of the direct effect on its fabric.

⁵ SOCG 3.10 summarises

⁶ [2024] EWHC 1053 (Admin)

27. It is clear and uncontested that the nearest lakes and the associated mounding are well within the setting of the Barn, both as it existed before the development went ahead and at present.
28. In terms of the contribution which setting makes to the significance of the Hertsfield Barn, various historic plans and aerial photographs have been produced showing the Barn set within the surrounding farmland which it served. Various historic plans and aerial photographs have been produced showing the way in which the Barn and the surrounding farmland have interrelated over time.
29. In the ESA a map regression was produced showing the relationship between the Barn and the farmland to the east. However the appellant asserts that orchards and boundary treatments would have prevented long-distance views, which would have curtailed visual connections with the surrounding fields. Even if that were the case, which cannot be proven, when the Barn was converted to residential use it appears that the appeal site was opened up by the removal of orchard trees. Prior to the construction of the mounding, the asset was located in a generally flat area and there was a significant degree of intervisibility between the asset and the surrounding rural landscape.
30. It was uncontested at the Inquiry that the original farm represented a typical example of a 'loose courtyard plan' farmstead, with the movement of crops and animals into the farm from the surrounding area. Again, this demonstrates the historic relationship between the asset and its setting.
31. The appellant points to the construction and removal over time of some farm buildings within the area now occupied by the mounding and lakes. However, far from reducing the importance of the setting, as was suggested, to my mind this emphasises the way in which the wider area is an integral part of the setting of the asset. The detailed relationship has altered over time as agricultural practices and needs have changed.
32. I also agree with the heritage witnesses for the Council and the R6 party that there was a historic significance to the setting, in relation to medieval and post-medieval field patterns. To a considerable extent this can be deduced from the map regression. This emphasises the link, in this case historical, between the asset and its setting. Obviously some changes took place over time, but elements of the field pattern were still visible even up to 2003 - prior to the construction of the lakes.
33. The effect of the development on significance derived from setting is comparatively straightforward to assess. The construction of raised fishing lakes, with a slope beginning at the boundary with the Barn and rising rapidly to around 6 meters in height, has entirely severed the visual, functional and historic links between the asset and its setting. The man-made character of the bunds visually compete with the Barn itself and cause harm to the asset.
34. In terms of the National Planning Policy Framework (NPPF) the harm is less than substantial. Although there is no necessity to assess where on a scale of harm the proposal sits, this exercise has been undertaken by all parties. The R6 party's heritage witness assesses the harm as being medium. The Council's heritage witness did not assess the level of harm, while the planning witness for the Council, who had not visited the Barn, assessed it as at the lower end of the scale. The

appellant contends that there is no harm to the setting and significance of the asset.⁷

35. From all the evidence and from my experience of the site visit, I am in no doubt that there is less than substantial harm. I consider that this harm to be medium within the scale.
36. In terms of the alleged effect on the fabric of the asset itself, both the R6 party and the appellant accept that there are damp issues affecting the Barn.⁸ It is self-evident that, if this persists, it will damage the fabric of the asset. Where these parties differ is the cause of the damp.
37. There is evidence of flooding at Barn in late 1990, stated to be due to surface water runoff from the road. However in 2002 an inspection showed no signs of damp, but in 2015 the same expert inspected the property and found clear signs of damp. This matches the owner's experience. This suggests that the current damp problems appear to have coincided with the construction of the raised lakes above the Barn. This is circumstantial evidence, but it is also notable that the damp issues arose when the mounding and potential changes to groundwater flows were undertaken. It is hard to be conclusive about this as there are no baseline measurements before the bunds and lakes were constructed.
38. The appellant, whilst accepting a damp problem coincident with the creation of the lakes, suggested that this was caused by a failure in the Barn's damp proofing at the time of the conversion to residential use. However, this was a verbal suggestion at the inquiry and was not supported by any evidence and, although a theoretical possibility, is not a suggestion to which I can give weight in the absence of evidence.
39. Overall, a reasonable assessment of the evidence and the coincidental timing of the damp problem in relation to the unauthorised works leads me to conclude that there is likely to be a causal connection. The works have in all probability led to less than substantial harm to the fabric of the asset. I judge this to be at the lower end of the scale because of the largely circumstantial nature of the evidence.
40. For the reasons set out above the proposal conflicts with BLP policies ENV1 and SP14(B), along with MNP policy BE1, which provide that the quality of heritage assets will be conserved and, where possible, enhanced.
41. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard should be had to the desirability of preserving listed buildings and their setting. Regardless of the scale, I have given great weight and importance to this harm. I come to balancing that harm against the public benefits, as per the NPPF, later in my decision.

The effect on the living conditions of neighbouring residents

42. As previously described, the bund which has been created to support the raised lakes is at a variable height – up to around 6 metres. I note the fact that the works at Lake 1 have yet to be completed and that what I saw on site is not the finished height.

⁷ Statement of Common Ground 8.1

⁸ The Council did not address this issue

43. On top of the bund is a wide area, which I walked on my visit. This is used by anglers, staff and visitors moving from one lake or one fishing position to another. Whilst moving around the site, it is most likely that people would walk along the open top of the bund, rather than walking along the lakeside, and would have no reason to go down the bund towards the adjacent properties.
44. The slope of the bund, starting at the boundary with Hertsfield Barn and Hertsfield Farm Cottages, means that the crest of the bund is not only very high when viewed from the gardens of neighbouring properties, but is also relatively close to them. The Council's evidence, which was uncontested, shows that the distances to gardens of the relevant properties is 34 – 68 metres, and 56 – 83 metres to the dwellings themselves.
45. From the top of the bund there is a clear view down into the gardens and, to a lesser extent, into the properties themselves. I accept that the distances are not insignificant but from such an elevated position overlooking would lead to a clear loss of amenity for the residents of the adjoining properties below. In coming to this view I am conscious that it was specifically accepted for the appellant that those on the bund would be able to see into the residential properties.
46. The forgoing deals with the harm caused by direct overlooking. Of similar importance is the perception of overlooking, even were no actual overlooking to take place. Standing in the garden of the Barn, as I did, persons passing by on top of the bund at an elevated level would cause a clear perception of overlooking into private space. That would also be the case at nos. 3,4,5 and 6 Hertsfield Farm Cottages.
47. It is reasonable to attempt to compare the current extent of overlooking caused by the appeal proposal with the situation before the works took place. As far as I am aware the previous situation was that there was no reason for people to walk around the level farmland, and no overlooking would have occurred.
48. I appreciate that there is an intention to undertake landscaping and planting on the slope facing the adjacent dwellings. However the details and timescale of such planting is not before me. Although this might have the potential to reduce direct overlooking, this is unproven and such planting could, in any event, increase the sense of enclosure and impact further on the landscape.
49. A decision made by the Council at a property at Hartnup Street was submitted by the appellant in relation to overlooking distances⁹. However this related to a proposed bungalow in relation to other residential properties. This bears very little comparison with the current situation – overlooking from a raised bund used for recreational purposes. It was also put forward for the appellant that much greater overlooking would be possible from one semi-detached house to its neighbour. However this again bears very little comparison to the appeal proposal.
50. Overall, the proposal would harm the living conditions of residents of Hertsfield Barn and nos.3, 4, 5 and 6 Hertsfield Farm Cottages by reason of overlooking. It conflicts with BLP policy SP15, which provides that proposals should respect the amenities of occupiers of neighbouring properties in relation to (amongst other matters) overlooking.

⁹ Doc 4

The effect on the landscape

51. In the SOCG between the Council and the appellant it is agreed that the proposed development does not have an adverse impact with regards to landscape and visual impact on the surrounding area. This is subject to mitigation secured by planning conditions. The R6 party does not agree with that position and called a landscape architect who gave evidence of landscape harm.
52. At the national level the Low Weald National Character Area lists key characteristics of the area, including reference to broad, low-lying, gently undulating clay vales. More locally the site is identified as being within two areas in the Kent County Council Character Assessment 2004 – with the northern part of the site sitting within the Beult Valley, and the southern parcel within the Low Weald Fruit Belt.
53. The Beult Valley is described as flat low-lying land around an incised river channel, whilst the Low Weald Fruit Belt is referenced as a flat or gently undulating mixed farmed landscape of dwarf trees, arable, hops and pasture. These descriptions of the site and its surroundings portray the area succinctly and accurately.
54. I have obviously not had the benefit of seeing the area before the unauthorised works were undertaken. There is a useful photograph (Photo A) in the landscape evidence of the R6 party, taken from the western side of the site, close to Hertsfield Barn, looking across the former flat valley landscape in 2004. The Greensand Ridge is a notable feature in the distance. Judging from this and the ES/ESA (amongst other evidence) what is now the appeal site was a series of low-lying open fields with boundary hedges and scattered mature trees. From the evidence it is clear that the Landscape Character Sensitivity of the area was high.
55. Similar to my findings in terms of the setting of the Barn, in broad landscape terms the height and steepness of the bunds are entirely incongruous. The character of the site has changed from an open flat, arable landscape to very substantial man-made banks which impact on a wide area. The magnitude of the change is substantial in relation to the earthworks and the significance of the harmful effect is major. It has been suggested that planting will reduce the impact over time, but this fails to recognise that the scale and height of the earthworks will remain, and planting would reduce the impact to only a limited extent.
56. Turning to the visual impact, this would be experienced by receptors using the footpath on the far side of the river. However, to judge from the extent of vegetation on my visit, this may not be regularly walked and is some distance from the raised lakes. Of greater significance is the impact on those using the main road to the south from which the mounding around Lake 1 (yet to be finished) would be clearly visible. However there is no footpath at this point, and the receptors are therefore likely to be travelling at some speed so the effect of the mounding would be transitory.
57. I have already dealt with the effect of the proposal on the living conditions of the residents of properties to the west. Sensitivity is related to the receptors' expectations and their acceptance of change. In this case there is nothing to suggest that any of the residential receptors are content with the change which has taken place. The scale and position of the bunding leads to a significant adverse effect on receptors, on a scale depending on which property was being considered, as sensitivity will obviously vary with distance.

58. As with landscape impact, additional planting and the continuing growth of existing vegetation will obviously change the effect on receptors. However the high earthworks would remain, however vegetated.
59. Overall, the proposal would harm the character and appearance of the countryside. It would conflict with BLP policies SP9, SP15 and QD4, along with MNP policy NE3, which seek to resist development which cause significant harm to the rural character and appearance of the area.

Retrospective EIA development

60. Having made my assessment on the planning merits above, and in finding harm in respect of heritage, landscape and residential amenity issues, I now turn to the matter of retrospective EIA development, on which a number of legal submissions were made.
61. It is common ground that the proposal comprises EIA development as defined in Regulation 2, and that the scheme went ahead without planning permission and without an EIA. The appeal therefore relates to retrospective EIA development.
62. The position is most usefully summarised in a case relating to this same site¹⁰ where the judge summarised the test as follows: “*..retrospective permission for EIA development should only be granted first in exceptional circumstances and secondly if the developer does not obtain any improper advantage from the pre-emptive development.*”
63. The R6 party and the appellant broadly agree on the legal position. The position of the appellant is that it takes issue, largely factually, with the R6 party about whether those tests are made out in this case.
64. Dealing first with exceptional circumstances, the appellant and the Council referenced the planning history of the proposal, stretching back over a considerable period of time, coupled with the fact that the development has already taken place. It is true that the site has a lengthy history, However, many proposals have planning histories stretching over a period of years or decades, with a number of planning and enforcement decisions and court judgements. This proposal is by no means exceptional in that respect. The fact that a development of this scale has gone ahead without planning permission is unusual, but far from exceptional – and stems from the appellant’s decision to proceed without permission.
65. Turning to the ‘improper advantage’ from the pre-emptive development, there are a number of areas where the fact that the proposal is almost entirely retrospective has meant that full and proper assessment of the baseline before the works went ahead has not proved possible. In particular this relates to the main issues for this appeal as well as groundwater/flooding (referenced below). While assumptions may be possible related to the baseline, there remains a high degree of uncertainty from which the developer may benefit.
66. In addition, I would normally expect to consider alternatives to a proposed EIA development. This would include a ‘do nothing’ approach – i.e. leave the land undeveloped – with consequences for a range of issues. This is effectively not a

¹⁰ *R (Padden) v Maidstone BC* [2014] EWHC 51 (Admin).

consideration, given the work which has been undertaken – and was effectively ruled out in the appellant's ES.

67. For the above reasons I concur with the R6 party that the development would conflict with the law related to retrospective EIA development.

Other matters

Flooding and hydrology

68. The SOCG between the Council and the appellant provides that all groundwater, flooding, and drainage issues can be satisfactorily addressed and mitigated subject to planning conditions and/or legal agreement. However this is not accepted by the R6 party, who have expressed concern related to the importation of material which could potentially affect surface water and groundwater regimes, and the increase in flood risk due to the loss of the floodplain.
69. It was noted in the ES and the ESA that there is no available site-specific groundwater information for the 2003 pre-development scenario. Monitoring since 2015 has been on-site only. The ESA explains how the 'retrospective baseline' was defined, given that the fact that the works have been undertaken prevent full analysis of the pre-development position.
70. This absence of pre-development information has also had consequences for the assessment of the proposed mitigation scheme which, in any event, is far from detailed. However it is not contested that groundwater levels are higher on the site than at Hertsfield Barn – leading to a presumed groundwater flow towards the Barn. This is a reasonable assumption.
71. In the absence of persuasive evidence to the contrary, I consider that the expert and circumstantial evidence leads to the conclusion that the mounding works have had damaging groundwater effects on Hertsfield Barn and the wider area.
72. As previously referenced, the appellant suggested that the Barn was structurally flawed in relation to its foundations and damp proofing. However, this unsupported allegation came late in the process and I give it no weight.
73. The evidence does not provide a clear understanding to determine the likely significant environmental effects of the development on the water environment and flood risk. I conclude that the likelihood is that the development has caused harm to the adjoining property. I am not persuaded that this could be mitigated due to the limited information available. This matter weighs to a limited extent against the proposal.

Mineral extraction and waste

74. MWLP Policy DM7 deals with safeguarding mineral resources and provides that non-mineral development that is incompatible with minerals safeguarding will not be granted except in particular circumstances. It is agreed that the site is partially within the Minerals Safeguarding Area. However the only evidence before me is the suggestion that any extraction would not be appropriate in this sensitive location close to the river. This matter therefore does not add to my consideration of this case.

75. On the matter of the deposit of waste material to form the bunds, there is little evidence before me as to the nature of the material used. The appellant asserted that the role of the Environment Agency when materials were being imported was 'light touch', and there is no substantive evidence before me to conclude on what I can appreciate is a sensitive matter for local residents.

Conditions and s106

76. The Council and the appellant have agreed a range of conditions and matters contained in a s106 obligation. These deal with matters particularly including landscaping and drainage. Although these provisions meet the relevant tests I do not consider they come close to overcoming the substantial harm identified above.

Planning balance and conclusion

77. It is unnecessary to restate the harm to the setting of Hertsfield Barn, to the living conditions of residents of various properties, and to the character and appearance of the countryside. These are harms which bring the proposal squarely in conflict with the provisions of the development plan. Added to which is my concern related to flooding matters.
78. Set against those harms are certain benefits stemming from the proposal. In particular I heard evidence as to the recreational, tourist and educational benefits of the development – evidence from interested persons as well as the appellant. There are also some limited employment and economic benefits accruing from the development. However the weight to these is tempered to an extent by the presence of the fishing facility adjacent to the appeal site, which could offer similar benefits. The ecological benefits of the scheme are not insignificant, but – as with other matters – it is hard to compare these against the baseline where no development had taken place.
79. Overall the benefits of the proposal are limited and come nowhere close to outweighing the harm caused by the proposal. I have concluded that the development has led to less than substantial harm to the significance of a designated heritage asset, and I have weighed the limited public benefits against this harm – these do not outweigh the harm in terms of paragraph 215 of the Framework.
80. In addition to my conclusions on the planning merits, I have also found that the development would conflict with the law related to retrospective EIA development.
81. For the reasons given above the appeal should be dismissed.

Phillip J G Ware

INSPECTOR

Annex 1 - APPEARANCES

FOR THE APPELLANT:

Emily Harrison	Taytime Ltd
Edward Skeates	Chartered Surveyor
Guy Harrison	Taytime Limited

FOR THE LOCAL PLANNING AUTHORITY:

Richard Timms	Principal Planning Officer
Janice Gooch FRSA MA MSc CHE IHBC	Principal Conservation Officer
Sue King BA(Hons)	Senior Planning Officer

FOR THE RULE 6 PARTY:

Ben Fulbrook of Counsel instructed by Mr David Padden

He called:

Stephen Dole BA(Hons) MA MRTPI	Planning Manager, Denton Homes
Christopher Griffiths LLB(Hons) MA IHBC	Director, HCUK Group
Paul Ellis BSc PhD CGeol	MD Geosmart Information Ltd
Andrew Smith BSc (Hons) MSc CMLI	fabrik Chartered Landscape Architects

INTERESTED PARTIES:

Mark Foster	Local resident
Alan Pavey	Marden Wildlife Group
John Terry	Proprietor of local fishing business
Darryl Parker	Co-chair of Residents Association

Annex 2 - INQUIRY DOCUMENTS

- Doc 1 Opening statement by the Council
- Doc 2 Opening statement by the Rule 6 party
- Doc 3 Opening statement by the appellant
- Doc 4 Extract from report on bungalow proposal submitted by the appellant
- Doc 5 Reservoirs Act certificate submitted by the appellant
- Doc 6 Aerial photo and commentary submitted by the Rule 6 party
- Doc 7 Comment on Doc 6 by the appellant
- Doc 8 Comment on Doc 6 by the Council
- Doc 9 Closing statement and submission on Exceptional Circumstances by the Rule 6 party
- Doc 10 Closing statement by the appellant

Annex 3 - DOCUMENTS SUBMITTED AFTER CLOSING

- Doc 11 Appellant's response to R6 submission on exceptional Circumstances
- Doc 12 Final comment from R6 on exceptional circumstances
- Doc 12 R6 comment on the adoption of the Kent Minerals and Waste Local Plan.
- Doc 13 Appellant comment on the adoption of the Kent Minerals and Waste Local Plan.