Development Management Committee

Members of the Development Management Committee:

Conservatives          Liberal Democrats
Mr V Thomson   Dr M Gray
(Chairman)               
Mrs L Neal     
(Vice-Chairman) 
Mrs Y Bendle 
Mr B Duffin  
Mrs F Ellis 
Mr C Gould  
Dr C Kemp 
Mr G Minshull 
Mr J Mooney 
Mrs A Thomas 

Pool of Substitutes  
Mr L Dale       Mrs V Bell 
Mr D Goldson   
Mr J Hornby 
Dr N Legg  
Mr G Wheatley 

Pre-Committee Members’ Question Time  
9.00 am       Blomefield Room

Agenda

Date  
Wednesday 16 August 2017

Time  
10.00 am

Place  
Council Chamber  
South Norfolk House  
Cygnet Court  
Long Stratton, Norwich  
NR15 2XE

Contact  
Sue Elliott tel (01508) 533869  
South Norfolk House  
Cygnet Court  
Long Stratton Norwich  
NR15 2XE  
Email: democracy@s-norfolk.gov.uk  
Website: www.south-norfolk.gov.uk

PLEASE NOTE that any submissions (including photos, correspondence, documents and any other lobbying material) should be received by the Council by noon the day before this meeting. We cannot guarantee that any information received after this time will be brought to the Committee’s attention. Please note that where you submit your views in writing to your District Councillor, this is described as “lobbying” and the District Councillor will be obliged to pass these on to the planning officer, where they will be published on the website.

This meeting may be filmed, recorded or photographed by the public; however, anyone who wishes to do so must inform the Chairman and ensure it is done in a non-disruptive and public manner. Please review the Council’s guidance on filming and recording meetings available in the meeting room.

If you have any special requirements in order to attend this meeting, please let us know in advance

Large print version can be made available
Please familiarise yourself with this information if you are not in receipt of the agenda.

If the meeting room is busy, please use the upstairs public gallery until such time as your application is heard. You will need to be in the main meeting room if you wish to speak in regard to an application. Please be aware that the Committee can over-run, and if your application is later on the agenda it may be some time before your application is heard.

GENERAL INFORMATION ABOUT DEVELOPMENT MANAGEMENT

The Development Management process is primarily concerned with issues of land use and has been set up to protect the public and the environment from the unacceptable planning activities of private individuals and development companies.

The Council has a duty to prepare a Local Plan to provide a statutory framework for planning decisions. The Development Plan for South Norfolk currently consists of a suite of documents. The primary document which sets out the overarching planning strategy for the District and the local planning policies is the Joint Core Strategy for Broadland, Norwich and South Norfolk. The Strategy is broadly consistent with the National Planning Policy Framework (NPPF) and accompanying technical guidance and was adopted by South Norfolk Council in March 2011, with amendments adopted in 2014. It is the starting point in the determination of planning applications and as it has been endorsed by an independent Planning Inspector the policies within the plan can be given full weight when determining planning applications.

South Norfolk Council adopted its Local Plan in October 2015. This consists of the Site Specific Allocations and Policies Document, the Wyndham Area Action Plan, the Development Management Policies Document. The Long Stratton Area Action Plan was also adopted in 2016. These documents allocate specific areas of land for development, define settlement boundaries and provide criterion based policies giving a framework for assessing planning applications. The Cringleford Neighbourhood Development Plan was also ‘made’ in 2014 and Mulbarton Neighbourhood Development Plan made in 2016, and full weight can now be given to policies within these plans when determining planning applications in the respective parishes. Some weight can also be given to the policies in the emerging Neighbourhood Development Plan for Easton. In accordance with legislation planning applications must be determined in accordance with the policies of the Development Plan, unless material considerations which are relevant to planning indicate otherwise.

The NPPF states that the purpose of the planning system is to achieve sustainable development. The core planning principles contained within the NPPF are summarised as:

- To be genuinely plan-led
- To drive and support sustainable economic development
- Seek high quality design
- Conserve and enhance the natural environment
- Encourage the effective use of land
- Conserve heritage assets

The factors to be used in determining applications will relate to the effect on the “public at large” and will not be those that refer to private interests. Personal circumstances of applicants “will rarely” be an influencing factor, and then only when the planning issues are finely balanced.

THEREFORE we will:

- Acknowledge the strength of our policies
- Be consistent in the application of our policy, and
- If we need to adapt our policy, we will do it through the Local Plan process.

Decisions which are finely balanced and contradict policy will be recorded in detail to explain and justify the decision and the strength of the material planning reasons for doing so.
OCCASIONALLY, THERE ARE CONFLICTS WITH THE VIEWS OF THE PARISH OR TOWN COUNCIL. WHY IS THIS?

We ask local parish and town councils to recognise that their comments are taken into account. Where we disagree with those comments it will be because:

- Districts look to ‘wider’ policies, and national, regional and county planning strategy.
- Other consultation responses may have affected our recommendation.
- There is an honest difference of opinion.
AGENDA

1. To report apologies for absence and identify substitute voting members (if any);

2. To deal with any items of business the Chairman decides should be considered as matters of urgency pursuant to Section 100B (4) (b) of the Local Government Act, 1972; [Urgent business may only be taken if, "by reason of special circumstances" (which will be recorded in the minutes), the Chairman of the meeting is of the opinion that the item should be considered as a matter of urgency.]

3. To receive Declarations of Interest from Members;
   (Please see flowchart and guidance attached, page 8)

4. Minutes of the Meeting of the Development Management Committee held on 19 July 2017;
   (attached – page 10)

5. Planning Applications and Other Development Control Matters;
   (attached – page 15)

5. (a) Enforcement Report;

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Enforcement Ref</th>
<th>Parish</th>
<th>Site Address</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CDE/2006/0269</td>
<td>CARLETON RODE</td>
<td>Land Adjacent, Fen Road, Carleton Rode, Norfolk, NR16 1RT</td>
<td>15</td>
</tr>
</tbody>
</table>

5. (b) Planning Applications;
   (attached – page 176)

   To consider the items as listed below:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Planning Ref No.</th>
<th>Parish</th>
<th>Site Address</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2017/0001/F</td>
<td>WICKLEWOOD</td>
<td>Land North Of High Common Morley St Botolph Norfolk</td>
<td>176</td>
</tr>
<tr>
<td>3</td>
<td>2017/1187/O</td>
<td>HEDENHAM</td>
<td>The Mermaid Balti House Norwich Road Hedenham NR35 2LB</td>
<td>197</td>
</tr>
<tr>
<td>4</td>
<td>2017/1268/O</td>
<td>TASBURGH</td>
<td>Land south of Saxlingham Lane, Tasburgh, Norfolk</td>
<td>207</td>
</tr>
<tr>
<td>5</td>
<td>2017/1650/F</td>
<td>DICKLEBURGH AND RUSHALL</td>
<td>Orchard Farm Norwich Road Dickleburgh Norfolk</td>
<td>214</td>
</tr>
<tr>
<td>6</td>
<td>2017/1271/F</td>
<td>WYMONDHAM</td>
<td>Offices At 46-60 Ayton Road Wymondham NR18 0QH</td>
<td>220</td>
</tr>
</tbody>
</table>
6. **Sites Sub-Committee;**

   Please note that the Sub-Committee will only meet if a site visit is agreed by the Committee with the date and membership to be confirmed.

7. **Planning Appeals (for information);**  
   (attached – page 224)

8. **Date of next scheduled meeting** – Wednesday 13 September 2017
1. GUIDELINES FOR DETERMINING THE NEED TO VISIT AN APPLICATION SITE

The following guidelines are to assist Members to assess whether a Site Panel visit is required. Site visits may be appropriate where:

(i) The particular details of a proposal are complex and/or the intended site layout or relationships between site boundaries/existing buildings are difficult to envisage other than by site assessment;
(ii) The impacts of new proposals on neighbour amenity e.g. shadowing, loss of light, physical impact of structure, visual amenity, adjacent land uses, wider landscape impacts can only be fully appreciated by site assessment/access to adjacent land uses/property;
(iii) The material planning considerations raised are finely balanced and Member assessment and judgement can only be concluded by assessing the issues directly on site;
(iv) It is expedient in the interests of local decision making to demonstrate that all aspects of a proposal have been considered on site.

Members should appreciate that site visits will not be appropriate in those cases where matters of fundamental planning policy are involved and there are no significant other material considerations to take into account. Equally, where an observer might feel that a site visit would be called for under any of the above criteria, members may decide it is unnecessary, e.g. because of their existing familiarity with the site or its environs or because, in their opinion, judgement can be adequately made on the basis of the written, visual and oral material before the Committee.

2. PUBLIC SPEAKING: PLANNING APPLICATIONS

Applications will normally be considered in the order in which they appear on the agenda. Each application will be presented in the following way:

- Initial presentation by planning officers followed by representations from:
  - The town or parish council - up to 5 minutes for member(s) or clerk;
  - Objector(s) - any number of speakers, up to 5 minutes in total;
  - The applicant, or agent or any supporters - any number of speakers up to 5 minutes in total;
  - Local member

**Member consideration/decision.**

**TIMING:** In front of you there are two screens which tell you how much time you have used of your five minutes. After four minutes the circle on the screen turns amber and then it turns red after five minutes, at which point the Chairman will ask you to come to a conclusion.

**MICROPHONES:** In front of you there is a microphone which we ask you to use. Simply press the left or right button to turn the microphone on and off

**WHAT CAN I SAY AT THE MEETING?** Please try to be brief and to the point. Limit your views to the planning application and relevant planning issues, for example: Planning policy, (conflict with policies in the Local Plan/Structure Plan, government guidance and planning case law), including previous decisions of the Council, design, appearance and layout, possible loss of light or overshadowing, noise disturbance and smell nuisance, impact on residential and visual amenity, highway safety and traffic issues, impact on trees/conservation area/listed buildings/environmental or nature conservation issues.

3. FILMING AT COUNCIL MEETINGS: GUIDANCE

Members of the public and press are permitted to film or record meetings to which they are permitted access in a non-disruptive manner and only from areas designated for the public. No prior permission is required, however the Chairman at the beginning of the meeting will ask if anyone present wishes to record proceedings. We will ensure that reasonable facilities are made available to the public and press to assist filming or recording of meetings.

The use of digital and social media recording tools, for example Twitter, blogging or audio recording is allowed as long as it is carried out in a non-disruptive manner.
HEALTH AND SAFETY INFORMATION

<table>
<thead>
<tr>
<th>Fire alarm</th>
<th>If the fire alarm sounds please make your way to the nearest fire exit. Members of staff will be on hand to escort you to the evacuation point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile phones</td>
<td>Please switch off your mobile phone or put it into silent mode</td>
</tr>
<tr>
<td>Toilets</td>
<td>The toilets can be found on the right of the lobby as you enter the Council Chamber</td>
</tr>
<tr>
<td>Break</td>
<td>There will be a short comfort break after two hours if the meeting continues that long</td>
</tr>
<tr>
<td>Drinking water</td>
<td>A water dispenser is provided in the corner of the Council Chamber for your use</td>
</tr>
</tbody>
</table>

PLANNING APPLICATIONS AND OTHER DEVELOPMENT CONTROL MATTERS

Key to letters included within application reference number to identify application type – e.g. 07/96/3000/A – application for consent to display an advert

<table>
<thead>
<tr>
<th>Key letter</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Advert</td>
</tr>
<tr>
<td>AD</td>
<td>Certificate of Alternative Development</td>
</tr>
<tr>
<td>AGF</td>
<td>Agricultural Determination – approval of details</td>
</tr>
<tr>
<td>C</td>
<td>Application to be determined by County Council</td>
</tr>
<tr>
<td>CA</td>
<td>Conservation Area</td>
</tr>
<tr>
<td>CU</td>
<td>Change of Use</td>
</tr>
<tr>
<td>D</td>
<td>Reserved Matters (Detail following outline consent)</td>
</tr>
<tr>
<td>EA</td>
<td>Environmental Impact Assessment – Screening Opinion</td>
</tr>
<tr>
<td>ES</td>
<td>Environmental Impact Assessment – Scoping Opinion</td>
</tr>
<tr>
<td>F</td>
<td>Full (details included)</td>
</tr>
<tr>
<td>G</td>
<td>Proposal by Government Department</td>
</tr>
<tr>
<td>H</td>
<td>Householder – Full application relating to residential property</td>
</tr>
<tr>
<td>HZ</td>
<td>Hazardous Substance</td>
</tr>
<tr>
<td>LB</td>
<td>Listed Building</td>
</tr>
<tr>
<td>LE</td>
<td>Certificate of Lawful Existing development</td>
</tr>
<tr>
<td>LP</td>
<td>Certificate of Lawful Proposed development</td>
</tr>
<tr>
<td>O</td>
<td>Outline (details reserved for later)</td>
</tr>
<tr>
<td>RVC</td>
<td>Removal/Variation of Condition</td>
</tr>
<tr>
<td>SU</td>
<td>Proposal by Statutory Undertaker</td>
</tr>
<tr>
<td>TPO</td>
<td>Tree Preservation Order application</td>
</tr>
</tbody>
</table>

Key to abbreviations used in Recommendations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CNDP</td>
<td>Cringleford Neighbourhood Development Plan</td>
</tr>
<tr>
<td>J.C.S</td>
<td>Joint Core Strategy</td>
</tr>
<tr>
<td>LSAAP</td>
<td>Long Stratton Area Action Plan – Pre Submission</td>
</tr>
<tr>
<td>N.P.P.F</td>
<td>National Planning Policy Framework</td>
</tr>
<tr>
<td>P.D.</td>
<td>Permitted Development – buildings and works which do not normally require planning permission. (The effect of the condition is to require planning permission for the buildings and works specified)</td>
</tr>
<tr>
<td>S.N.L.P</td>
<td>South Norfolk Local Plan 2015</td>
</tr>
<tr>
<td>WAAP</td>
<td>Wymondham Area Action Plan</td>
</tr>
</tbody>
</table>
DECLARATIONS OF INTEREST AT MEETINGS

When declaring an interest at a meeting Members are asked to indicate whether their interest in the matter is pecuniary, or if the matter relates to, or affects a pecuniary interest they have, or if it is another type of interest. Members are required to identify the nature of the interest and the agenda item to which it relates. In the case of other interests, the member may speak and vote. If it is a pecuniary interest, the member must withdraw from the meeting when it is discussed. If it affects or relates to a pecuniary interest the member has, they have the right to make representations to the meeting as a member of the public but must then withdraw from the meeting. Members are also requested when appropriate to make any declarations under the Code of Practice on Planning and Judicial matters.

<table>
<thead>
<tr>
<th>Have you declared the interest in the register of interests as a pecuniary interest? If Yes, you will need to withdraw from the room when it is discussed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the interest directly:</td>
</tr>
<tr>
<td>1. affect yours, or your spouse / partner’s financial position?</td>
</tr>
<tr>
<td>2. relate to the determining of any approval, consent, licence, permission or registration in relation to you or your spouse / partner?</td>
</tr>
<tr>
<td>3. Relate to a contract you, or your spouse / partner have with the Council</td>
</tr>
<tr>
<td>4. Affect land you or your spouse / partner own</td>
</tr>
<tr>
<td>5. Affect a company that you or your partner own, or have a shareholding in</td>
</tr>
<tr>
<td>If the answer is “yes” to any of the above, it is likely to be pecuniary.</td>
</tr>
<tr>
<td>Please refer to the guidance given on declaring pecuniary interests in the register of interest forms. If you have a pecuniary interest, you will need to inform the meeting and then withdraw from the room when it is discussed. If it has not been previously declared, you will also need to notify the Monitoring Officer within 28 days.</td>
</tr>
<tr>
<td>Does the interest indirectly affect or relate any pecuniary interest you have already declared, or an interest you have identified at 1-5 above?</td>
</tr>
<tr>
<td>If yes, you need to inform the meeting. When it is discussed, you will have the right to make representations to the meeting as a member of the public, but must then withdraw from the meeting.</td>
</tr>
<tr>
<td>Is the interest not related to any of the above? If so, it is likely to be an other interest. You will need to declare the interest, but may participate in discussion and voting on the item.</td>
</tr>
<tr>
<td>Have you made any statements or undertaken any actions that would indicate that you have a closed mind on a matter under discussion? If so, you may be predetermined on the issue; you will need to inform the meeting, and when it is discussed, you will have the right to make representations to the meeting as a member of the public, but must then withdraw from the meeting.</td>
</tr>
</tbody>
</table>

FOR GUIDANCE REFER TO THE FLOWCHART OVERLEAF.
PLEASE REFER ANY QUERIES TO THE MONITORING OFFICER IN THE FIRST INSTANCE
What matters are being discussed at the meeting?

Do any relate to an interest I have?

A. Have I declared it as a pecuniary interest?
OR
B. Does it directly affect me, my partner or spouse's financial position, in particular:
   - employment, employers or businesses;
   - companies in which they are a director or where they have a shareholding of more than £25,000 face value or more than 1% of nominal share holding
   - land or leases they own or hold
   - contracts, licenses, approvals or consents

YES

The interest is pecuniary – disclose the interest, withdraw from the meeting by leaving the room. Do not try to improperly influence the decision.

NO

The interest is related to a pecuniary interest. Disclose the interest at the meeting. You may make representations as a member of the public, but then withdraw from the room.

YES

Does the matter indirectly affects or relates to a pecuniary interest I have declared, or a matter noted at B above?

NO

The Interest is not pecuniary nor affects your pecuniary interests. Disclose the interest at the meeting. You may participate in the meeting and vote.

YES

Have I declared the interest as an other interest on my declaration of interest form? OR

Does it relate to a matter highlighted at B that impacts upon my family or a close associate? OR

Does it affect an organisation I am involved with or a member of? OR

Is it a matter I have been, or have lobbied on?

NO

You are unlikely to have an interest. You do not need to do anything further.
DEVELOPMENT MANAGEMENT COMMITTEE

Minutes of a meeting of the Development Management Committee of South Norfolk District Council held at South Norfolk House, Long Stratton, on Wednesday 19 July 2017 at 10.00 am.

Committee Members Present: Councillors: V Thomson (Chairman), Y Bendle, B Duffin, F Ellis, M Gray, C Kemp, A Thomas and (for item 3 only) G Minshull

Apologies: Councillors: L Neal, C Gould and J Mooney

Substitute Members: Councillors: N Legg for L Neal D Bills for C Gould and J Hornby for J Mooney

Officers in Attendance: The Development Manager (H Mellors), the Planning Decisions Team Leader (C Trett), the Place-Shaping and Majors Team Leader (J Hobbs), the Senior Planning Officer (C Curtis) and the Planning Officer (T Barker)

5 members of the public were in attendance

341. DECLARATIONS OF INTEREST

The following members declared interests in the matters listed below. Unless indicated otherwise, they remained in the meeting.

<table>
<thead>
<tr>
<th>Application</th>
<th>Parish</th>
<th>Councillor</th>
<th>Declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017/0219/F (Item 3)</td>
<td>GELDESTON</td>
<td>V Thomson</td>
<td>Other interest Applicant known to member</td>
</tr>
</tbody>
</table>

342. MINUTES

The minutes of the Development Management Committee meeting dated 21 June 2017 were confirmed as a correct record and signed by the Chairman.
343. **PLANNING APPLICATIONS AND OTHER DEVELOPMENT CONTROL MATTERS**

The Committee considered the report (circulated) of the Director of Planning and Environment, which was presented by the officers. The following speakers addressed the meeting with regard to the applications listed below.

<table>
<thead>
<tr>
<th>APPLICATION</th>
<th>PARISH</th>
<th>SPEAKER</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017/0219/F</td>
<td>GELDESTON</td>
<td>Mr J Wells - Applicant</td>
</tr>
<tr>
<td>(Item 3)</td>
<td></td>
<td>Cllr K Mason Billig – Local Member</td>
</tr>
</tbody>
</table>

The Committee made the decisions indicated in the Appendix to these minutes, conditions of approval or reasons for refusal of planning permission as determined by the Committee being in summary form only and subject to the final determination of the Director of Planning and Environment.

344. **QUARTERLY ENFORCEMENT REPORT**

Members noted the report of the Director of Planning and Environment. It was also noted that the Enforcement Notice for Wortwell, Station Farm (2004/0254) had been complied with and the caravan had been removed.

345. **PLANNING APPEALS**

The Committee noted the planning appeals.

346. **RETIREMENT OF CHRIS TRETT**

The Committee thanked the Planning Decisions Team Leader, Chris Trett, for his 38 years of service and wished him well for his retirement.

(The meeting closed at 10.55am)

_____________________
Chairman
PLANNING APPLICATIONS AND OTHER DEVELOPMENT CONTROL MATTERS

NOTE:
Conditions of approval or reasons for refusal of planning permission as determined by the Committee are in summary form only and subject to the Director of Planning and Environment’s final determination.

Major Applications

1  Appl. No  :  2016/2430  
Parish     :  COSTESSEY
Applicants Name  :  Mrs Katrina Kozersky
Site Address :  Land North Of Farmland Road Costessey Norfolk
Proposal  :  Outline application with access and landscaping (all other matters reserved) for 83 dwellings (including 27 affordable dwellings) with areas of public open space, sustainable drainage systems and associated infrastructure.

Decision  :  This item was deferred to a future meeting of the Development Management Committee

2  Appl. No  :  2017/0420/F  
Parish     :  COSTESSEY
Applicants Name  :  Mrs Katrina Kozersky
Site Address :  Land North of Farmland Road Costessey Norfolk
Proposal  :  Provision of two circular recreational walks, including boardwalks and associated landscaping and biodiversity enhancements (Linked with application 2016/2430)

Decision  :  This item was deferred to a future meeting of the Development Management Committee

Major Applications referred back to Committee

3  Appl. No  :  2017/0219/F  
Parish     :  GELDESTON
Applicants Name  :  Mr Julian Wells
Site Address :  Land North West Of Kells Way Geldeston Norfolk
Proposal  :  Erection of 13 residential units (Class C3) with associated landscaping, drainage and highways works
Decision: Members voted 10-1 for Approval

Approved with conditions

1 Full Planning permission time limit
2 In accordance with amendments
3 Surface water drainage
4 Ecological mitigation and enhancements
5 Highway conditions
6 External materials to be agreed
7 Slab level to be agreed
8 Boundary treatment to be agreed
9 Landscaping scheme to be submitted
10 New Water Efficiency
11 Renewable energy
12 Contaminated land scheme to be submitted
13 Implementation of approved remediation scheme
14 Contaminated land during construction

Subject to completion of S106 Agreement to secure affordable housing.

Updates to officer report

SNC Property Consultant

I am satisfied that the increased costs associated with the highway and general construction works make the applicants proposals to vary the affordable housing obligation reasonable.

NCC Highways

Conditional support following receipt of amended plans

Parish Council

Object – on the grounds that the entrance is from Kell’s Way / Geldeston Hill. We need the access to come from Yarmouth Road and a 40mph speed limit there. We also object to the loss of an affordable house. We would not want heavy traffic through the village.

Officer response: The issue of whether access to the site should be from Yarmouth Road or Kell’s Way is addressed in paras 4.30 to 4.31 of the original report which is Appendix 2 to the report. The loss of affordable housing is addressed in para 4.9 of the current report.

Local Residents

2 further letters of objection, raising concerns about the loss of affordable housing when there are young people unable to get on the property ladder and to the extra traffic through the village. Any extra expense should come from the profits and not the loss of affordable housing.

Officer response: see response to Parish Council comments

1 further letter not objecting to the development providing a speed limit is imposed along Yarmouth Road, the field access is onto Yarmouth Road, and the current 50mph speed limit on the A143 is extended east to include the Church Road junction.

Officer response: No access is proposed onto Yarmouth Road and therefore it would not be reasonable to require a lower speed limit on this road as a consequence of this proposal, nor would it be reasonable to require any changes to the speed limit on the A143 which is some distance from the site. Neither of these are required by the Highway Authority, nor referred to in the requirements of the allocation.
### Other Applications

<table>
<thead>
<tr>
<th>No</th>
<th>Appl. No</th>
<th>Parish</th>
<th>Applicants Name</th>
<th>Site Address</th>
<th>Proposal</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>2017/1119/O</td>
<td>TASBURGH</td>
<td>Mrs Eileen Coxford</td>
<td>Land to The East and West of Hall Farm Bungay Road Tasburgh Norfolk</td>
<td>Outline proposal for 3 - 4 bedroom dwelling with primary access from Bungay road and for 2 - 3 bedroom dwelling with access from Hall Farm drive.</td>
<td>The application had been withdrawn by the applicant before the meeting</td>
</tr>
</tbody>
</table>

### Removal of Section 106 Agreement

<table>
<thead>
<tr>
<th>No</th>
<th>Appl. No</th>
<th>Parish</th>
<th>Applicants Name</th>
<th>Site Address</th>
<th>Proposal</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>2017/1212/S106A</td>
<td>SEETING</td>
<td>Otley Properties Limited And Robin Wesley Key</td>
<td>Fairhead And Son Wheelers Lane Seething Norfolk NR15 1EJ</td>
<td>Discharge of S106 obligation relating to affordable housing contribution</td>
<td>Members voted 10-0 for Approval that the Section 106 planning obligation be discharged.</td>
</tr>
</tbody>
</table>
PLANNING APPLICATIONS AND OTHER DEVELOPMENT CONTROL MATTERS

Report of Director of Planning and Environment

Enforcement Reports

1 EnFORCEMENT Ref : CDE/2006/0269
Parish : CARLETON RODE

Site Address : Land Adjacent, Fen Road, Carleton Rode, Norfolk, NR16 1RT
Development : Material change of use of land to recreational and sport fishing with integral works to create fishing ponds
Developer : Mr Tunmore

1. Introduction

1.1 This report concerns enforcement action at Carleton Rode concerning the excavation and use of fishing ponds. The development has been the subject of legal proceedings brought by Mr Bryn Chetwynd against the developer, Mr Tunmore, in 2015-16, and against the Council and others in 2016-17. However the focus of this report is on whether and to what extent the requirements of the 2010 enforcement notice have been complied with, and what further action is appropriate (a) by the Council and (b) by Mr Tunmore in the light of recent events.

1.2 In 2006 the Council invited the developer to submit a planning application for the retention of the unauthorised development comprising of the creation of ponds and their use for fishing (hereafter described as “the development”). The location of the ponds is shown in appendix 1. An application was not submitted and an Enforcement report was presented to the South West Area Planning Committee on 22 May 2007 which resolved that “enforcement action be taken to restore the site to its lawful condition subject to further clarification of the dates of works and advice from specialist bodies regarding the most appropriate course of action”.

1.3 The authorised notice was not served because applications for the retention of the works were submitted, comprising an application for a Certificate of lawfulness (2007/1360 – later withdrawn and replaced by planning application 2007/2264) for ponds 1, 2 and 3, and a planning application for the retention of pond 4 (2007/1961) (see appendix 2 for the numbering of the ponds and extents of ownership).

1.4 The planning applications were approved by the South West Area Planning Committee in June 2008, but were quashed by the High Court on 13 May 2010 following a Judicial Review. Mr Justice Collins held (and the Council has accepted) that the development was Environmental Impact Assessment development (“EIA development”) within the meaning of the relevant Regulations. This meant that the applications should not have been determined without a full Environmental Impact Assessment (a process which starts with the submission of an Environmental Statement (ES)).

1.5 In July 2010 the Planning Committee resolved to authorise enforcement action. The report recognised that it may become appropriate to extend the time at which the notice came into effect or the compliance period (a discretionary power under section 173A of the Town and Country Planning Act 1990). (Appendix 3)
The authorised notice (Appendix 4) was issued on 29 September 2010 and came into effect on 29 December 2010 with compliance required by 29 June 2011. Its requirements are (please refer to Appendix 4 for the full text):

1) Undertake and submit an Environmental Assessment to be carried out in accordance with the EIA Regulations of the existing unauthorised development .... [which shall] include information relating to the hygrological and eacological impacts of the unauthorised development and of the works proposed to satisfy the requirements of 2(a) and 2(c) below

2) Submit for approval and then implement an approved scheme of works
   a) Works to reduce and maintain the total abstraction of groundwater from the site as a whole to less than 20 cum per day;
   b) A timetable for implementation of the scheme;
   c) Works to remedy the adverse ecological impacts of the development and a Management Plan to secure those measures for the future;
   d) Describe the scope of monitoring reports and timetable for submission for agreement by the LPA so as to identify the outcome of the scheme with particular reference to groundwater abstraction, hydrological and ecological impacts.

3) Submit the monitoring reports in accordance with the scope and timeable agreed and implement works identified as necessary in the light of those reports.

Since those requirements were imposed, in September 2010, and became effective in December 2010, a great deal more information has become available. However, it will be apparent that Mr Tunmore’s initial consultants (Harrison Environmental Consulting, “Harrison”) were slow to respond adequately to those requirements.

There were three requests for extensions of time to the compliance period for the Enforcement Notice which were considered by the Third Wednesday Committee (15 June 2011, 16 November 2011 and 21 December 2011). The compliance period was extended initially to 29 December 2011 and subsequently to 14 February 2012.

An “Environmental Statement” (use of the quotation marks signifies that the document was called an Environmental Statement but did not meet the definition of Environmental Statement within the EIA Regulations) was submitted in February 2012 and was considered in the context of the planning applications 2007/1961 and 2007/2264 together with the issued Enforcement Notice. To assist in reviewing these documents the Council appointed an independent consultant (Cascade) who reviewed the submissions by Harrison and set out the “further information” required under Regulation 22 of the Environmental Impact Assessment Regulations, and the requirements of the Enforcement Notice.

In October 2012 the Environment Agency (EA) issued a Transfer Licence to Mr Tunmore for the abstraction of water from Pond 1. This does not set any limits to the quantity of water which can be extracted but conditions the minimum height of the outfall pipe to 36.4 meters above Ordnance Survey Datum Newlyn (m AOD) and requires the transfer of water to Mr Chetwynd’s ponds should he request it. The EA also prepared a Determination Report which set out their assessment of the hydrology of the area.

On 24 April 2013 an update report was presented to the Development Management Committee which outlined the mitigation options which were being considered at that time, but highlighted that a number of these raised flood risk implications. Due to delays by the developer in progressing matters, the Council commissioned its own consultants, Cascade, to undertake a Flood Risk Assessment to help inform a future decision. The Council were advised by the Council’s Solicitors not to determine the planning applications at that stage, but to pursue compliance with the extant Enforcement Notice.
In August 2013 Mr Chetwynd (the adjacent land owner) submitted details relating to the drilling of a bore hole on his property which resulted in a further request for additional information (under Regulation 22) from Mr Tunmore which was submitted in January 2014. Cascade undertook a high level review of this submission of additional information which set out that the submitted details had not addressed the requirements of the Regulation 22 request and did not identify a scheme of works as required by the Enforcement Notice.

In June 2014, following a meeting including Mr Chetwynd and Cascade, Mr Chetwynd submitted a number of reports he had prepared, together with data he had recorded and copies of documents relating to an application for the Countryside Stewardship Scheme on Mr Tunmore’s land, which included surveys of the condition of the land at the time of the application. These details were forwarded to Cascade who considered them in their Mitigation Option Assessment February 2015 which is referenced in the 2016 Environmental Statement (for which see further paragraphs 6.70 and 6.96 below).

Cascade were subsequently commissioned by the Council to identify a scheme of works which should be undertaken in accordance with the Enforcement Notice and to provide a specification for those works together with management plans and monitoring for the identified scheme of works. In March 2015, consultations were undertaken on Cascade’s scheme with Mr Tunmore, Mr Chetwynd and the Environment Agency who each raised concerns regarding Cascade’s proposal.

In October 2015, Mr Tunmore’s solicitors submitted an alternative proposal which included reports from a different consultant, Mr Jan van Wonderen, VWLW Ltd. The initial proposal was rejected by the Council. However, following a meeting in February 2016 an updated Environmental Statement was submitted in November 2016 which was subject to consultations. Further information was requested in January 2017 and this has now been submitted and forms the basis of this report.

Given that Cascade had ceased to act as the Council’s reviewer, but at the request of the Council had prepared a number of reports making recommendations in relation to the scheme of works required by the Enforcement Notice, they could no longer be considered to be independent and impartial. The Council has therefore not requested Cascade to review the latest submission by Mr Tunmore’s consultant. It is not considered necessary in the circumstances to instruct another consultant and officers have relied upon the views of statutory consultees, who are technical experts in relation to hydrology and ecology and are acting in the wider public interest.

In 2011 Mr Chetwynd complained to the Local Government Ombudsman that the Council had failed to take appropriate enforcement action, and in 2014 that the Council had failed to decide the retrospective planning applications and that the approach to enforcement action was unreasonable. The Ombudsman concluded that some fault was identified but in both cases the Council’s overall approach did not constitute administrative fault.

Mr Chetwynd has also brought legal proceedings in the High Court against the Council, together with Norfolk County Council, Environment Agency, Technical consultees, Government Departments and consultants for Mr Tunmore. These claims were brought for damages based on allegedly fraudulent and criminal conduct by the Council. They were held by the Senior Master of the High Court to be totally without merit. The Council’s application to strike out Mr Chetwynd’s claim was considered at a hearing in March 2017 and was successful – see the Judgement handed down on 20 June 2017 Appendix 5.
Mr Chetwynd also brought proceedings against Mr Tunmore for damages alleged to have been caused by the development. At the hearing the court considered the hydrological information submitted by Mr Tunmore’s experts and Mr Chetwynd’s experts. The judgement can be seen at appendix 6 and Councillors will note the assessment of the experts’ opinions from paragraph 68 and (paragraph 124) the finding that the assessment of the hydrology of the fen and the impact of Mr Tunmore’s ponds, if any, on Mr Chetwynd’s ponds is a complex matter and that there are substantial differences between the two experts. Judge Reddihough sets out his conclusions (paragraph 125 to 132) and in particular:

- He found that the main flow of water to pond 1 and the artesian well at pond A is by way of upward flow through preferential pathways from the chalk aquifer and possibly some diffuse vertical flow from that aquifer. He considered that the pond 1 drawdown test provides strong evidence to support that conclusion.

- He accepted Mr Chetwynd’s evidence that, at the chalk borehole by pond B and the boreholes at Bunwell and the Tas valley, there is clear evidence that the chalk at those points is strongly confined. However, in his judgement, by reason of the nature of the materials in the buried valley, there can be preferential pathways to allow a flow upwards from the chalk at different points, such as the position of pond 1 and the artesian well at pond A.

- He found it unlikely that a source of water for pond 1 and the artesian well is water being driven vertically from the sandy layers lower than 3 metres, which would require a head to force it upward which was higher than Pond A up the valley. He did not accept that lateral flow through the superficial deposits could give rise to the head at the artesian well or the volumes of water being discharged from pond 1 or the artesian well.

- With regard to the catchment area of the fen, Judge Reddihough considered that it was appropriate for Mr van Wonderen to use the 1.5km² groundwater catchment area as opposed to the larger surface catchment area.

- The changes in discharge levels from the artesian well seem consistent with seasonal variations and that climatic variation is a predominant reason for variability or lowering of water levels in the ponds.

In the light of the above, in considering the extent of any impact upon Mr Chetwynd’s ponds from the construction of Mr Tunmore’s ponds, he found that pond 2 and 3 had little if any impact on the ponds. He was clear in his view that pond 4 had no impact at all. With regard to the degree to which the construction of pond 1 affects Mr Chetwynd’s ponds, particularly pond A, he accepted that this has an impact on the outflow from the artesian well, which then has a direct impact on the water level in pond A, however, that in periods of drought, the water level in pond A would not have risen to the level required for overflow into pond B, even without the impact of pond 1. The case was dismissed in February 2016.

These findings are final and decisive as between Mr Chetwynd and Mr Tunmore. Although they are not legally binding on the Council as local planning authority, they must be taken into account where relevant when considering Mr Tunmore’s proposals, and should in officers’ judgment be given weight bearing in mind they were the result of a dispute over the expert opinion of Mr van Wonderen, the consultant acting for Mr Tunmore, and Dr Wilson, the consultant acting for Mr Chetwynd. That dispute was heard over several days in court and both witnesses were cross examined by counsel.
2. **Legislation**

2.1 For the avoidance of doubt, the following legislation has been taken into account where relevant to do so.

- The Wildlife and Countryside Act 1981 (as amended)
- Natural Environment and Rural Communities (NERC) Act 2006 Section 40 sets out that a public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity
- The Conservation of Habitats and Species Regulations 2010 (as amended)
- Human Rights Act 1998
- Town and Country Planning Act 1990
- Environmental Impact Assessment Regulations 2011 (as amended) – "the EIA Regulations".
- EIA Directive 2014/52/EU.

2.2 The Enforcement Notice was issued under section 172 of the 1990 Act, and its requirements are intended to remedy the breach in part, in order to ensure the hydrological and ecological impacts of the development are remedied. It was not the subject of an appeal and has taken effect. The failure to comply with its requirements within the period set by the Enforcement Notice is an offence under section 179. This report does not recommend prosecution, a punitive measure, but records and invites Councillors to consider the adequacy of the more recently submitted proposals.

2.3 If the developer complies with all the requirements of the Enforcement Notice he will secure deemed consent for those works (and the use) which the Enforcement Notice does not require him to remove (or cease) under section 173(11) of the 1990 Act. It is therefore important that the Environmental Statement ("ES") meets the requirements of the EIA Regulations and is robust. To meet the requirements of the EIA Regulations an ES must meet the definition in Regulation 2, which states "environmental statement" means a statement— (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but (b) that includes at least the information referred to in Part 2 of Schedule 4.

2.4 The question whether an ES meets the requirements of the EIA Regulations is a matter of judgment for the Council.

3. **Planning Policies**

3.1 National Planning Policy Framework
   - Section 3 – Supporting a prosperous rural economy
   - Section 10 – Meeting the challenge of climate change, flooding and coastal change
   - Section 11 – Conserving and enhancing the natural environment

3.2 Joint Core Strategy
   - Policy 1 – Addressing climate change and protecting environmental assets
   - Policy 5 – The economy
   - Policy 8 – Culture, leisure and entertainment

3.3 South Norfolk Local Plan
   Development Management Policies
   - Policy DM1.1 Ensuring Development Management contributes to achieving sustainable development in South Norfolk
   - Policy DM1.3 The sustainable location of new development
   - Policy DM1.4 Environmental quality and local distinctiveness
   - Policy DM2.9 Rural tourism and other recreational destinations
   - Policy DM3.11 Road safety and the free flow of traffic
   - Policy DM3.12 provision of vehicle parking
Policy DM4.4 Natural Environmental assets – Designated and locally important open spaces  
Policy DM4.5 Landscape Character and River Valleys

4. **Relevant Planning History**

4.1 2016/2649 Submission of Environmental Statement in connection with Enforcement Notice Ref 2006/0269 (Without planning permission the material change of use of land to recreational and sports fishing with integral works to create fishing ponds)

4.2 2010/1586 Scoping Opinion for retention of lakes for sport fishing and associated car parking and infrastructure

4.3 2009/0332 Construction of new car parking area within central area of site for disabled and general access, utilising the existing access track and turning circle and removal of Condition 8 of permissions 2007/1961/F & 2007/2264/F Refused

4.4 2009/0299 Variation of Condition 2 of permission 2007/1961 - to allow 15 fishing pegs at 10mtr spacing around the northern section of pond, with the remaining area excluded from fishing with a fence line (A) as shown on submitted plan Refused

4.5 2007/2264 Retain lakes for recreational and sport fishing, retain summerhouse and electricity hut and formation of car parking area. (Environmental Impact Assessment) under consideration

4.6 2007/1964 Retention of lake for use for sport fishing (Environmental Impact Assessment) under consideration

4.7 2007/1360 Certificate of lawful use existing for a lake (dug out), drains & tributaries de-silted, cleaned and widened during 1995 withdrawn

Enforcement History 2006/0269 Material change of use of land to recreational and sport fishing with integral works to create fishing ponds Enforcement Notice served

5. **Consultations**

**Background**

During the consideration of the planning applications 2007/1961 and 2007/2264, together with the consideration of the enforcement matters, a considerable amount of correspondence has been received from the technical consultees together with other interested parties, including the neighbouring land owner, Mr Chetwynd. This has all been taken into account, although it may not have been specifically referred to.
Summary of Consultations
In November 2016 a revised Environmental Statement was submitted and consultations were undertaken. In February 2017 further information was submitted and again consultations were undertaken. The following summary of representations relates to these recent submissions as these are the reports which form the basis for the details Mr Tunmore has submitted in relation to the requirements of the Enforcement Notice.

Prior to the publication of this report a copy was provided to Mr Tunmore and Mr Chetwynd for their comments. Mr Tunmore’s Solicitors and Mr Chetwynd have responded and a copy of their replies is attached at Appendix 7.

<table>
<thead>
<tr>
<th>5.1 Carleton Road Parish Council</th>
<th>In relation to the November 2016 ES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• None received</td>
</tr>
<tr>
<td></td>
<td>In relation to the January 2017 Further Information</td>
</tr>
<tr>
<td></td>
<td>• None received</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.2 Tibenham Parish Council</th>
<th>In relation to the November 2016 ES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• None received</td>
</tr>
<tr>
<td></td>
<td>In relation to the January 2017 Further Information</td>
</tr>
<tr>
<td></td>
<td>• None received</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.3 District Member Cllr Easton</th>
<th>In relation to the November 2016 ES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Cllr Easton confirmed that Cllr Stone would act as a substitute member due to being employed by a neighbouring landowner.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.4 District Member Cllr Stone</th>
<th>• Recommends that the latest submission now satisfies the requirements of the Council’s enforcement notice. It endorsing the recommendation of Cascade and sets a clear timescale for actions to be taken by Mr Tunmore to comply with the Enforcement Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In relation to the January 2017 Further Information</td>
</tr>
<tr>
<td></td>
<td>• None received</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.5 Environment Agency</th>
<th>In relation to the November 2016 ES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• The Environmental Statement (ES) complies with Schedule 4 of the EIA Regulations with regards to hydrological and hydrogeological information. The site conceptualisation is reasonable; we acknowledge that obviously there will always be some uncertainty</td>
</tr>
<tr>
<td></td>
<td>• Concur that the proposal to infill Pond 1 would be the best option to comply with the requirements of the Enforcement Notice to reduce the discharge from Pond 1 and to restore fenland habitat by raising groundwater levels</td>
</tr>
<tr>
<td></td>
<td>• There is no guarantee that this will result in the restoration of the presumed pre-development hydrogeological regime i.e. chalk groundwater upflow. Whilst these works appear the most likely way of achieving this, the works stipulated should not be constrained in any more onerous manner given the uncertainty</td>
</tr>
<tr>
<td></td>
<td>• Agree with the proposed monitoring sites and frequencies, and the timing of reporting and review</td>
</tr>
<tr>
<td></td>
<td>• No objection from a water quality point of view to the infilling of pond 1</td>
</tr>
<tr>
<td></td>
<td>• There is uncertainty over whether infilling of pond 1 would restore the ecological and hydrological conditions necessary to support the fen habitat; it is our view that the information put forward does meet the requirements of the EIA Regs in this respect. Satisfied that the outline scheme of works is appropriate</td>
</tr>
</tbody>
</table>
• Wild Frontier surveys undertaken in 2012 showed a significant presence of water voles around all margins of pond 1. Further survey information is required to ascertain current presence and distribution of water voles
• A Flood Risk Assessment was previously undertaken to inform the proposed mitigation options; and considered the post-construction flood risk implications for each scenario. A more specific consideration of construction impacts will be required ahead of any works commencing on site. This should include siting of the construction compound and the stockpiling of materials; impacts on flood flows and storage should be minimized

In relation to the January 2017 Further Information and data submission
• The further information provides additional details to substantiate the points that were initially made.
• The information requested relates to two components of the water balance with the potential to affect flows into the neighbouring lake system. This is not information that is or was required to understand the impacts of the development carried out by Mr Tunmore.
• They would expect the EIA to include sufficient information to understand with reasonable certainty the likely effect of that development on locally significant receptors. In this respect the monitoring, modelling and reporting of the investigations produced to date exceed their normal expectations for a development of this magnitude.

5.6 Lead Local Flood Authority

In relation to the November 2016 ES
• Consider that the development is a “water compatible development” which is an “appropriate development” in flood zones 1, 2, 3a and 3b.
• The site should therefore remain operationally safe for users in times of flood. An emergency flood plan should be put in place during any construction works.
• Not aware that the proposal will result in a net loss of floodplain storage
• Do not consider that the proposal will impede the water flows or increase flood risk elsewhere
• If there are any works which are likely to affect flows in the River Tas, this will need approval of the County Council.

In relation to the January 2017 Further Information and data submission
• Having reviewed the scope of the additional information they do not see any impact in terms of flood risk to people, property or infrastructure and therefore the request for a review is outside the scope of the LLFA to comment on. They have therefore not technically reviewed the information.
• Reiterate their previous comments.

5.7 Natural England

In relation to the November 2016 ES
• The development is unlikely to affect any statutorily protected sites or landscapes
• Should refer to standing advice regarding protected species
• The consultation documents indicate that the development includes areas of priority habitat as listed on Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. The National Planning Policy Framework states that when determining applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development can not be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated or as a last resort, compensated for, then planning permission should be refused.

In relation to the January 2017 Further Information
• None received

5.8 NCC Ecologist

In relation to the November 2016 ES
• Lack of clear understanding of baseline conditions is a problem. Ecological surveys associated with the County Wildlife Site provide useful information on broad habitat types. The ecology of the fens/ wet grassland is very closely linked with hydrology of an area and the baseline hydrology is even more uncertain. Therefore it will always be problematic to make any assessment of the ecology in relation to pre construction situation and hence “restoration” of former habitats.
• The report states that a “vegetation plan” will be produced as part of the planning phase, but as the ecology and hydrology are so closely linked any plan to change the hydrology must simultaneously consider ecological aims.
• Suggest that the 2007 management plan should be checked to see if it is still fit for purpose, specifically if it is line with current policy requirements and strategies and meets current best practice guidance.

In relation to the January 2017 Further Information
• The further information appears to have addressed the previous comments and makes clear the target for the fen re establishment and restoration in the location within and around pond 1 to replicate the area of good quality fen to the west of pond 1 as described by Applied Ecology Ltd in 2014. Consider that this would be an appropriate approach and believe that there is reasonable likelihood of such an aim being achievable.

5.9 Norfolk Wildlife Trust

In relation to the November 2016 ES
• No comments received

In relation to the January 2017 Further Information
• Note comments raised by statutory consultees by NCC Ecology and others. Comment that the ecological surveys undertaken by NWT were not intended to provide detailed ecological or hydrological information but were a broad assessment of habitats on the County Wildlife Site. As a result, they do not wish to comment further on this case which hinges on complexities of hydrology and the EIA Regulations rather than on broad issues of habitat quality.

5.10 Historic Environment Services

In relation to the November 2016 ES
• Will not have any significant impact on the historic environment and do not wish to make any recommendation for archaeological work

In relation to the January 2017 Further Information
• Re iterate previous comments
5.11 NCC Strategic Planning

In relation to the November 2016 ES
- Confirm that there are no strategic infrastructure delivery issues
- From a mineral and waste perspective, the infilling would amount to an engineering operation and not waste disposal
- As Mineral Planning Authority there are no mineral safeguarding issues

In relation to the January 2017 Further Information
- None received

5.12 NCC Highways

In relation to the November 2016 ES
- Do not appear to be any highway issues with the Environmental Statement

In relation to the January 2017 Further Information
- None received

5.13 National Planning Casework Unit

In relation to the November 2016 ES
- No comments received

In relation to the January 2017 Further Information
- None received

Other representations

In relation to the November 2016 ES, 2 letters of objection:
- The submitted ES does not provide the information required by the High Court judgement in 2010, the issued scoping opinion and does not comply with the EIA Regs or the requirements of the enforcement notice.
- The presented conceptualisation has not been evidenced
- The public authorities have not made available all the relevant environmental information in their possession consisting of:
  - 1978/79 Public Water Supply pump test information provided by the Environment Agency in December 2015 that proves there is no direct connection (as relied on in the submitted documents) between the shallow groundwater aquifer that flows through Carleton Fen with the primary Chalk groundwater aquifer
  - The Countryside Stewardship Agreement Assessment of the site in 1996 during prolonged surface water and groundwater drought conditions that had occurred since the beginning of the 1990’s
  - The above conditions officially recorded by the Metrological Office
- The presented ES contradicts the conceptualisation provided by the Environment Agency (EA) in the issued Determination Report (2012)
- Other information provided in consultation that proves the fraudulent conceptualisation for the site has not been considered by the Council or has not been adequately explained why that information is not relevant to the consideration of the provided documentation.
- The information required by the scoping opinion has not been provided and subsequently the submitted ES can not have identified the environmental effects.
- The non technical summary is inadequate for a lay person to understand the impacts or how the proposed mitigation is to achieve the stated aim
- The suggested mitigation can do no more than the over flowing conditions which have existed since 2013 which have had little positive effects on the lowered groundwater levels caused by the excavations. The correct tests have deliberately not been undertaken by the developer, their consultants or the Council, permitting the production of fraudulent documentation
- The material proposed to be used as infill were deemed by experts in 2007 as unsuitable.
- The suggestion that infilling lake 1 will negate the legal requirement to lower the outflow to below 20 cubic metres per day across the site is not true.
• The stratigraphy required by wetland experts in 2007 and by the Scoping Opinion has never been undertaken and as such the true stratigraphy of the pre developed fen which would result in a greater understanding of the water flow through the shallow groundwater aquifer and the dynamics of the hydrology has not been established.
• Alternative options, particularly the option to raise groundwater to the pre development level, established to be at least 36.9maOD, through the use of a weir in the River Tas have not been fully evaluated or tested
• The information provided by Mr van Wonderen contradicts not only the six years collected data, but also all the previous expert evidence based opinions, the regional data (Groundwater flow), the local data (Recharge of fen), and established geological (Local topography) and hydrological concepts (Groundwater flow (Darcys Law)) that supports at least some of the previously presented ES which has been under review by the Council for almost five years and the issued Water Transfer Licence Determination Report issued by the Environment Agency.
• That a temporary dam should be placed in the River Tas to retain the water level to at least 36.5maOD to assess the benefits identified by the Environment Agency.
• Questions the data relating to the draw down test and the data used in the original ES and that prepared by Mr van Wonderen.

In relation to the January 2017 Further Information
• Still does not comply with the EIA Regulations, High Court Judgement or issued Scoping Opinion, because the incomplete EIA has been undertaken by the experts from a fraudulent basis and the hydrological impacts have been deliberately assessed incorrectly.
• The Council are aware of an alternative hydrological process which was explained by Mr Chetwynd and this is now confirmed by the data provided by Mer Tunmore (2015 – 2017) and his consultants and clearly supports the conceptualisation of the site explained by Mr Chetwynd.
• The current expert (Mr van Wonderen) has now altered his position again since the submission of his earlier ES, stating that the river is again responsible for the desiccation of the fen, an area of works undertaken by Mr Tunmore which has not been assessed at all.
• The works in the river in 2004, 2009 and 2013 consist of further excavations into the water bearing strata cause damage to, and abstraction from the previously saturated fen.
• The only option which is capable of achieving raised groundwater levels to pre development conditions is the placement of a dam in the River Tas. A temporary dam should be installed at a provisional height of at least 36.6maOD (in order not to completely flood the land upstream) with immediate effect in order that the missing assessment can be undertaken and an informed decision reached.

6 Assessment

6.1 Background

The following assessment is based on the Environmental Statement (ES) submitted in November 2016 and the further information submitted in February 2017 in relation to the requirements of the Enforcement Notice. The submitted details refer to a range of other reports which have been prepared by other parties and these are referenced in the submitted details. Appendix 8 sets out the range of technical reports which have been submitted and considered by the Council in relation to the planning applications and enforcement notice. Each report is referenced in the following assessment and, where relevant, in the ES.

6.2 These details that have been submitted are in relation to the requirements of the Enforcement Notice which requires:
• the submission of an Environmental Statement including information relating to the hydrological and ecological impacts of the unauthorised development,
• the submission of a scheme of works to reduce and maintain the total abstraction of groundwater from the site to less than 20 cu m / day,
• works to remedy the adverse ecological impacts of the unauthorised development as identified in the Environmental Assessment and a Management Plan to secure those measures for the future.
Planning Considerations

6.3 The site of the unauthorised development is in an area of open countryside where policies seek to ensure that proposals are required in connection with an appropriate use and do not adversely affect the character of the area or amenities of neighbouring uses and are sustainable in terms of economic, social and environmental dimensions.

6.4 The site is within a County Wildlife Site. Section 11 of the NPPF sets out that the planning system should contribute to and enhance the natural and local environment by:
- Protecting and enhancing valued landscapes, geological conservation interests and soils;
- Recognising the wider benefits of ecosystem services;
- Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- Preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability and
- Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

6.5 When determining planning applications, section 11 of the NPPF sets out that local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- If significant harm resulting from a development can not be avoided (through locating it on an alternative site with less harmful impacts), adequate mitigation, or as a last resort, compensated for, then planning permission should be refused;
- Opportunities to incorporate biodiversity in and around developments should be encouraged
- Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats unless the need for, and benefits of, the development in that location clearly outweigh the loss

6.6 Policy 1 of the JCS sets out that development should minimise fragmentation of habitats and seek to conserve and enhance existing environmental assets of acknowledged regional or local importance. Where harm is unavoidable, it will provide for appropriate mitigation or replacement with the objective of achieving a long term maintenance or enhancement of the local biodiversity baseline.

6.7 Policies ENV13, ENV14 and ENV15 of the South Norfolk Local Plan were in place at the time of the judicial review but have since been replaced by policies in the Development Management Policies Document.

6.8 Policy DM1.4 sets out that a net environmental improvement will always be sought and all proposals should avoid environmental harm or where this is not possible, adequately mitigate and compensate for the adverse environmental effects of development.

6.9 Policy DM4.4 states that new development impacting on these designated sites will be required to contribute positive improvement of these natural environmental assets where opportunities arise. International, National and County-wide level sites will be accorded the highest levels of priority.

6.10 With regard to the use of the ponds for recreational and sport fishing, policies in the Development Plan do allow for recreational and tourism uses provided that there would be no harm to the value of the environmental character and resources of the wildlife site and its surroundings. Section 3 of the NPPF relates to supporting a prosperous rural economy by the promotion of development and diversification of agricultural and other land based rural businesses, and leisure developments which respect the character of the countryside.
6.11 The application sites and the adjacent land also lie within flood zones 2 and 3. Section 10 of the NPPF relates to the consideration of flood risk, with further advice being set out in the Technical Guidance to the NPPF. These set out that new development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures. The use of land for “water based recreation” and “amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities” are set out to be a water compatible development which is an appropriate use in flood zones 2 and 3. A site specific flood risk assessment should identify and assess the risks of all forms of flooding to and from the development and demonstrate how these flood risks will be managed so that the development remains safe throughout its lifetime, taking climate change into account.

Assessment

6.12 As stated above, this report relates to works which have already been undertaken comprising the formation of a range of ponds and their use for fishing. As such there is limited information relating to pre development conditions. This is particularly the case for hydrological information, although there is regional groundwater modelling work undertaken by the Environment Agency, which has allowed some historical hydrogeological insight in the regional context. Ecological information is available in terms of surveys of the site and this does allow some consideration of ground conditions at the time of the survey from the descriptions recorded (NWT1 NWT2 and Chetwynd 5).

6.13 The development which has been undertaken is EIA development and the requirements of the Enforcement Notice include the submission of an Environmental Statement (ES) together with the developers proposed scheme of works.

6.14 The November 2016 ES has been prepared with reference to the High Court Order (May 2010), the Enforcement Notice (September 2010) and Scoping Opinion (November 2010). The ES draws on a range of previous reports prepared by other parties including the original ES prepared by Harrison Environmental Consulting (Harrisons) and Cascade (see appendix 8). The ES considers the hydrology, hydrogeology, flood risk and ecology impacts of the development, together with alternative methods of mitigation / restoration to address environmental impacts identified in the ES.

6.15 The further information included:
- a non technical summary of the hydrological and ecological impacts of the unauthorised development and the justification for the identification of the proposed scheme of works
- clarification of the extent of the County Wildlife Site considered in terms of assessing the impacts of the development
- clarification of the elements of reports prepared by third parties which were being relied upon as part of the assessment
- clarification of the review of the mitigation options and the reasoning for the selection of the proposed scheme of works
- clarification of the extent of the site which had been considered in terms of reducing abstraction from the site as a whole to less than 20 cu m / day and the reasoning why it is considered that this requirement only relates to pond 1
- identification of the ecological mitigation proposed and how the proposed mitigation achieves the objectives
- Section 8 sets out where the details required in Schedule 4 of the EIA regulations are located within the submitted details and referenced documents.

6.16 The ES considers the whole of the Carleton Fen area (County Wildlife Site) which includes land owned by Mr Tunmore and Mr Chetwynd. The ponds on Mr Tunmore’s land are referred to as ponds 1 to 4 and the ponds on Mr Chetwynd’s land are ponds A to F. (See appendix 2 for the extent of ownership and position of the ponds)
6.17 Members will note that the neighbouring land owner disputes the extent of the impact of the unauthorised development on his property, together with the methodology which has been undertaken by other parties for the assessment, the validity of the monitoring which has been undertaken and the use of pre development information. The assessment in this report seeks to highlight and address the main areas of disagreement. However, Statutory Consultees and in particular the Environment Agency and Lead Local Flood Authority have considered the submitted details and have advised the Council and Local Planning Authority accordingly. Members will also note the findings of the Civil Court case where the evidence of the experts on behalf of Mr Tunmore and Mr Chetwynd was considered (paragraph 1.19 above).

6.18 Ponds 2 and 3 were the first to be developed by Mr Tunmore between 1996 and 2000 by undertaking works within the existing dykes. The ES sets out that inflows to Ponds 2 and 3 occur mainly in the form of surface water, originating as groundwater emergence in the dykes located to the northwest of the ponds. Outflow is via a 300mm diameter culvert to the River Tas. The ES states that the groundwater table configuration indicates that there is some groundwater inflow from the area to the north of Pond 2, but this will be small, given the limitations on the groundwater transmitting properties of the superficial deposits. Pond 2 and 3 are interconnected and the water level is about 35 mAoD.

6.19 Mr Chetwynd has repeatedly challenged the assessment of the inputs to pond 2 and 3, particularly with regard to the input from groundwater. These concerns have been raised with Mr Tunmore’s consultants, together with the Council’s consultants and the Environment Agency who have responded to the concerns raised. This is discussed further in the report.

6.20 Pond 1 was excavated into a wet area believed to be caused by emergence of groundwater at the north east corner. Water has continuously discharged from the pond at a significant quantity (ranging from 70 to 120 cu m/d during 2011). The water level has varied over time due to the height of an outflow control and is currently at 36.5 mAoD. The pond is about 2m to 2.5m deep.

6.21 Pond 4 is located on the right bank of the River Tas (the opposite side to all the other ponds, including Mr Chetwynd’s) and was excavated during 2005/2006. It has no evident inflows or outflows of surface water and the ES considers that the surface water level in the pond is linked to the groundwater level in the superficial deposits and that variation in the pond water level follow a similar seasonal variation to the groundwater levels in those superficial deposits.

6.22 A large amount of monitoring data has been collected in the course of the field work undertaken by Harrisons and monitoring data has also been provided by Mr Chetwynd. Further data has included water level monitoring undertaken by Harrisons during January 2016 and has continued to be collected and supplied when requested. The data has been used to formulate a conceptual understanding of the hydrology in the Carleton Fen area and its surroundings.

6.23 The development of the ponds is considered to have had negative impacts on both the hydrological and ecological status of the fen. In particular this relates to the change of use of the land from fen to open water, the lowering of the groundwater table with consequent impacts on the fen and a reduction in groundwater contribution to a nearby receptor.

6.24 The following sections consider the submitted details, the impacts which have been identified, together with the mitigation options which have been considered to formulate the scheme of works proposed to meet the requirements of the Enforcement Notice.
Hydrogeology

6.25 The geology and hydrogeology in the Carleton Fen and the immediate surrounding area is complex and the ES sets out that the conceptual understanding of the groundwater flow mechanisms has been inferred from available data, logical reasoning by numerous experienced hydrogeologists (including those with the Environment Agency) and analogy with other areas. The ES states that this does not significantly limit the ability to predict the outcome of the option implementation.

6.26 Section 4.4 of the ES sets out the baseline understanding of the hydrology of the area. It sets out that the author’s understanding of the water situation at Carleton Fen has been based on an extensive body of reports and statements prepared over the last 5 years or so and these are referenced in appendix 3 of the ES. The understanding was further elaborated through analysis of the large amount of available monitoring data.

6.27 In the area around Carleton Fen, the ES sets out that the geological information clearly identifies the Chalk as the major water bearing and water transmitting formation. The Chalk is overlain by sandy deposits for which the continuity of lateral extent is not fully certain, but which has been shown in many boreholes. The sandy deposits are in hydraulic continuity with the chalk. The Lowestoft Till overlies those deposits and forms a regional blanket coverage in the area and is of glacial origin. The Lowestoft Till has low vertical permeability which limits the amount of water which can be transmitted from the deep chalk to the surface, however water can penetrate through this to the underlying Chalk in the upland areas. The water entering the Chalk flows down gradient towards discharge zones where it exits as diffuse upward groundwater flow and / or concentrated groundwater flow.

6.28 Within the Carleton Fen, riverine deposits of limited thickness form the superficial deposits which overlay the Lowestoft Till. The superficial deposits comprise about 3m of spatially and vertically variable deposits of ill sorted fine to course sands, clays and clayey peat. From tests of the hydraulic properties of the superficial deposits, the ES sets out that there is limited capacity to transmit groundwater in a horizontal direction. As such, most of the groundwater upwelling from the Chalk to the ground surface would have run overland to the River Tas with a limited amount transferred in all directions as flow into the superficial deposits. The superficial deposits and the groundwater within them are of major significance to the ecology of the fen.

6.29 In the Carleton Fen area, a post glacial buried channel (palaeovalley) is filled with meltwater channels which can have a very significant impact on the routing of groundwater discharge. On the edge of such channels, the vertical conductivity of the deposits overlying the chalk can be significantly enhanced, resulting in very strong and localised groundwater discharge to the surface. It is considered by the ES that such conditions occur at the north east corner of pond 1 and at the “artesian” well which feeds pond A. Pre development this would have flowed overland towards the dyke that is now pond 2 and to the River Tas. The upward groundwater flow would have resulted in a high groundwater table in the surrounding fen area enabling wet conditions to support fen plant communities. The Norfolk Wildlife Trust ecology survey of 1983 indicates marshy conditions in this area.

6.30 With regard to the current conditions, the ES analyses the height of the surface water level in the ponds relative to the groundwater levels in the superficial deposits as measured in the piezometers around the ponds. From this is it considered that there is not a lateral groundwater movement within the superficial deposits from Pond 1 to Pond A. This contradicts the findings from the groundwater modelling undertaken by Harrisons and Cascade/ESI and the views of Mr Chetwynd, but was supported by Judge Reddihough in his judgement at paragraphs 125 to 127.
6.31 Mr Chetwynd has set out his understanding of the hydrology of the fen in various documents and has appointed a specialist, Dr Wilson, who has also submitted various reports including a recent report in relation to the Civil Court proceedings (Chetwynd 6 – Ref 7). They set out that Carleton Fen is located in the headwaters of the River Tas where three topographical tributary valleys from the north, west and south coalesce to form the main valley of the River Tas. The 1:50,000 geological map below shows the headwater valleys. Dr Wilson states that the extensive peat deposits in this location indicate the likelihood of persistent saturated or seasonally saturated conditions in the valley bottom.

6.32 The hydrological effect of the coalescing of the three valleys would be to channel water and near surface water towards the River Tas and through Carleton Fen. Historically this could be expected to have led to the build up of persistent saturated ground conditions in the vicinity of Carleton Fen, in addition to the naturally wetter hillslope base conditions. Surface water runoff from the boulder clay covered hillslopes will flow down towards the river. Dr Wilson considers that near surface water runoff will flow through the shallow permeable soil layers such as the sandy layer (approx. 1m thick) shown in the shallow bore holes WS3 and WS5 as being about 1.3m to 1.6m below ground level. This water movement would be towards the river.

Dr Wilson comments in relation to the assumption in other reports that the ponds, particularly pond 1 and pond A are being fed directly or indirectly from vertical flow upward from the chalk aquifer through the superficial strata. He states that while this may be a reasonable assumption for the Tas valley as a whole downstream of Forncett St Peter where the river has cut through the Chalky Bounder clay (Lowestoft Till) and the buried channel below the river is filled with permeable deposits of sand and gravel, there is a lack of hard evidence to support this proposition in the Carleton Fen headwater area of the River Tas.
6.35 Reference is made by Dr Wilson to other boreholes in the locality of Carleton Fen and the position and depth of the buried channel which cuts into the chalk, together with the material deposited in the channel. He considers evidence associated with the drilling and test pumping of the Bunwell public water supply boreholes (1978) which are in a similar valley bottom location. He states that when the superficial deposits in the buried channel were penetrated a substantial artesian head was evident in the chalk aquifer. However, subsequent test pumping of the chalk aquifer revealed no effect either on flow in the nearby River Tas or in shallow observation boreholes located in the valley bottom superficial drift deposits nearby, indicating little or no hydraulic continuity between the shallow water features and the Chalk aquifer.

6.36 The original reports submitted by Harrisons (Harrisons 5 Ref 1) considered the Chalk to be closer to the surface, however the borehole drilled by Mr Chetwynd has confirmed it to be 25m below ground level (Chetwynd 4). Dr Wilson comments that the drilling of the borehole showed that the deposits infilling the channel were acting as an effective cap on the vertical movement of water from the Chalk aquifer. Following the completion of the borehole, the water level continued to rise to elevations above ground level and continues to be maintained between 1 and 2 metres above ground level (37 to 38 m AOD).

6.37 It is stated by Dr Wilson that none of the boreholes on Mr Tunmore’s land gave any indication of the stratigraphy or thickness of the whole sequence of superficial deposits above the chalk, however, the three meter deep bores did indicate strong horizontal layering with water bearing sand / gravel layers and low permeability clay and peat horizons present in all five boreholes. He considers that pond 1, pond A and the River Tas penetrate the same shallow sandy layers and that they would appear to provide a hydraulic connection between all three water features.

6.38 Dr Wilson has assessed the data which has been submitted and comments on a number of errors which he considers are in the data relating to the datums which have been used and the datalogger hydrographs which he states are upside down. From his analysis of the data, Dr Wilson considers that there is a classic surface water and interflow response to rainfall at the Fen, with the shallow boreholes reacting quickly to both rainfall and evaporation which strongly suggests that the ground within which the lakes are placed shows a dominant shallow soil water or surface runoff response to peak rainfall events. He states that if there was a good hydraulic connection of the deeper Chalk aquifer, then you wouldn’t expect to see diurnal evapotranspirational effects in the shallow boreholes.

6.39 It is recognised that there are considerable differences in opinion between the experts for Mr Tunmore and Mr Chetwynd, and that varying opinions have also been expressed by Harrisons, Cascade and Mr Chetwynd. However, the submitted details have been considered by consultees at the Environment Agency and County Council who consider that the ES and its conclusions are acceptable.

6.40 As highlighted in the recent Civil Court case, the assessment of the hydrology of the fen is a complex matter. However, it is considered that the assessment by Mr van Wonderen should be accepted, namely that the main flow of water to pond 1 and the artesian well at pond A is by way of upward flow through preferential pathways from the chalk aquifer and possibly some diffuse vertical flow from that aquifer. While there is evidence that the chalk at the borehole by pond B and the boreholes at Bunwell and the Tas valley is strongly confined, by reason of the nature of the materials in the buried valley, there can be preferential pathways to allow a flow upwards from the chalk at different points, such as the position of pond 1 and the artesian well at pond A. This assessment accords with the findings of Judge Reddihough referred to above.

6.41 It is considered unlikely that a source of water for pond 1 and the artesian well is water being driven vertically from the sandy layers or that lateral flow through the superficial deposits could give rise to the head at the artesian well or the volumes of water being discharged from pond 1 or the artesian well.
In addition, the changes in discharge levels from the artesian well seem consistent with seasonal variations and that climatic variation is a predominant reason for variability or lowering of water levels in the ponds.

**Impact of each pond on Hydrology**

Reports prepared by Harrisons (Harrisons 5 – Ref 1, Harrisons 10 – Ref 4) and Cascade (Cascade 9 – Ref 5) and referenced in the ES, have undertaken groundwater modelling work to assess the impacts of the development and the likely outcome of the mitigation options. This modelling has been reviewed within the November 2016 ES and is considered by the author to be inadequate for accurate quantitative assessment of the hydrological impacts. Therefore the impacts presented in the current ES are stated to be largely qualitative, but of sufficient robustness to justify the findings derived from the impact assessment.

The EA have commented in their consultation response that they would expect the outputs of an Environmental Impact Assessment to include sufficient information to understand with reasonable certainty the likely effect of that development on locally significant receptors. In this respect the monitoring, modelling and reporting of the investigations produced to date exceed (ie are better than) their normal expectations for a development of this magnitude.

The ES considers the impacts of ponds 1, 2, 3 and 4 on the hydrological condition of the fen and these are set out below.

**Pond 1**

The ES sets out that once this pond was constructed, significant groundwater inflow into the pond became evident. Measurements in 2011 indicated an outflow ranging from 70 to 120 cu m/d and this was during a period of unfavourable climatic conditions (a drought period of three years). It is stated that the outflow is a function of the groundwater level in the Chalk aquifer and surface water level in Pond 1. A change in the pond surface level will affect the chalk groundwater level. This was demonstrated by Harrisons who undertook calculations which indicated that the superficial deposits do not have the capacity to convey this quantity of groundwater to Pond 1.

It is considered by the ES that the outflow from the “artesian” well on Mr Chetwynd’s land also originates from the Chalk aquifer and that a lowering of the of the Chalk groundwater level would result in a reduced discharge from the well. Before Pond 1 was constructed, the emergence of groundwater from the ground surface is estimated to have been at an elevation of about 36.9 mAoD, however, the water level in pond 1 has been maintained at or below 36.5 mAoD. This would have been at the expense of diffuse upward flow from the Chalk to the superficial deposits in the fen area.

Reference is made to the results of the draw down test which was undertaken by Harrisons and which showed a rapid response to flows from the “artesian” well, but limited effect on the levels in Pond A. However, Dr Wilson (Chetwynd 6 – Ref 7) considers that because Pond A is shallower than the “artesian” well and is probably sedimented, any change in the water level resulting from the dewatering of Pond 1 would occur more slowly and does not demonstrate that the source is from the Chalk rather than the superficial deposits.

The Chalk groundwater level varies seasonally and is also further lowered when prolonged conditions of below average rainfall exist. Additional lowering of the Chalk groundwater level by lowering the water level in Pond 1 will impact directly on the discharge from the ‘artesian’ well. The change in discharge caused by a change in the water level in Pond 1 level can be quantified from analysis of the data obtained from the controlled Pond 1 test conducted by Harrison Environmental Consulting in November 2011.
6.50 The ES states that there is a very significant correlation between the groundwater levels measured in Mr Chetwynd’s Chalk borehole and the outflow from the ‘artesian’ well. Such a good correlation does not exist between the groundwater table measured in borehole WS5 and the discharge from the ‘artesian’ well and this clearly indicates that the origin of discharge from the ‘artesian’ well is the Chalk aquifer.

6.51 The reduced surface water level in Pond 1 relative to the ground surface will have resulted in the lowering of the groundwater table in the superficial deposits in the immediate surroundings of Pond 1. The extent of this influence is not certain, but is conceivably about 100m.

6.52 It is considered in the ES that outflow from Pond 1 into the superficial deposits will occur in all directions and this clearly disproves the west to east groundwater flow in the superficial deposit that was considered in earlier conceptualisations. The ES states that the January 2016 data as well as earlier monitoring data is also clear about the non-existence of groundwater flow in the superficial deposits from Pond 1 to Pond A and that groundwater flow in the superficial deposits originating from Pond 1, from inflow across its eastern boundary, is directed to the River Tas. The impact of Pond 1 on Pond A is thus only possible through a reduction in outflow from the ‘artesian’ well and not from changes in inflow via the superficial deposits as was concluded from modelling by Harrison Environmental Consulting and ESI.

6.53 The ES considers that the River Tas was the main receptor of groundwater emerging from the area of Pond 1 prior to its construction, and that the river will have received more flow since the construction of Pond 1. The enhanced flow from the chalk aquifer to Pond 1 will have been at the expense of lateral groundwater flow in the chalk aquifer to more distant downstream receptors and will have reduced diffuse upward groundwater flow into the superficial deposits.

6.54 As set out above, this view is contrary to the views of Mr Chetwynd, his consultant, Dr Wilson, and the view previously expressed by the Council’s consultants, Cascade, who consider that there would be some flows to Mr Chetwynd’s ponds through the superficial deposits. The degree of these flows differs between the various parties and this relates to the interpretation of permeability tests from the shallow bore holes drilled on Mr Tunmore’s land and the assessment of the origin of the upward pressure in the “artesian” well on Mr Chetwynd’s land and the water levels and outflow in Pond 1 on Mr Tunmores.

6.55 The November 2016 ES considers that the earlier conceptualisations undertaken by others have not taken consideration of changes in the land and water environment that have taken place in the past decade or so. This includes flood diversion at Hargate to the west of Carleton Fen which it is stated has resulted in reduced flow in the drain that runs along Fen Road and is believed to have contributed to inflow into the fen via the superficial deposits along the northern limit of the fen. Also, land use change in the upland area to the north of the area of Mr Chetwynd’s ponds may have resulted in reduced recharge in the area when land use changed from arable to willow cultivation for biomass production and thus in reduced groundwater inflow via the superficial deposits into the fen area.

6.56 Mr Chetwynd has recently challenged the consideration of these impacts, following the conclusion of the Civil Court proceedings. From discussions with the Environment Agency and Lead Local Flood Authority, they do not have details of the flood diversion works referred to. Mr Tunmore’s solicitors have commented that the works were brought to Mr van Wonderen’s attention during discussions in preparation for the High Court case and in evidence given for the High Court case. Mr van Wonderen therefore considered the possible wider impacts of those works as part of his assessment of the current conditions at Carleton Fen.
I understand that Mr Chetwynd considers that full calculations should be undertaken to quantify the extent of the impact, however, the details submitted by Mr van Wonderen seek to highlight a range of external factors which cumulatively could also have contributed to the lowering water levels in the fen. This approach and use of objective evidence was supported by the Judge in the Civil case.

Overall, it is concluded that pond 1 has impacted on the outflow from the artesian well, which then has a direct impact on the water level in pond A. However, it is also concluded that in periods of drought, the water level in pond A would not have risen to the level required for overflow into pond B, even without the impact of pond 1.

Pond 2 and Pond 3

These ponds form a single water body but were created at separate times (hence the numbering). Pond 2 was created by excavating the area on both sides of the original dyke and by elevating the overflow to the River Tas. The construction of Ponds 2 and 3 is considered by the ES to have resulted in a higher surface water level relative to what existed in the dyke prior to the construction of Pond 2. This higher surface water level will have caused a reduction in the southerly groundwater flow in the superficial deposits with a benefit of keeping the groundwater table in the fen area to the north of Pond 2 at a higher level when compared with the situation without Pond 2. The higher water levels in Pond 2 will also cause a backwater effect to the wet woodland area to the northwest of Ponds 2 and 3, resulting in higher groundwater table conditions in the superficial deposits.

The ES sets out that inflows to Ponds 2 and 3 occur mainly in the form of surface water originating as groundwater emergence in the dykes located to the northwest of the ponds. Outflow is via a 300m diameter culvert to the River Tas. The groundwater table configuration indicates that there is some groundwater inflow from the area to the north of Pond 2, but this will be small, given the limitations on the groundwater transmitting properties of the superficial deposits.

From the surface water and groundwater monitoring data, the ES sets out that Ponds 2 and 3 provide no groundwater contribution to Pond A. The groundwater level monitored in borehole WS1 indicates that groundwater flow in the superficial deposits between pond 1 and pond 2 is in a southerly direction, not towards pond A. Additionally, the surface water monitoring indicates that the surface water level in pond 2 and 3 is lower than the level monitored in pond A.

Monitoring was undertaken for a period of time in relation the “Environmental Statement” prepared by Harrison and in relation to the conditions attached to the original planning permissions prior to (and quashed by the court in) the 2010 Judicial Review. Mr Chetwynd has maintained that he does not agree with the assessment of the inflow to pond 2 and pond 3 and considers that the modelling and assessments which have been undertaken on this basis are fraudulent. These concerns have been raised with the statutory consultees and consultants acting for Mr Tunmore and the Council, however it was considered that the monitoring that was undertaken was adequate to assess the impacts of the development.

As for Mr Chetwynd’s accusations of fraudulent activity by Mr Tunmore, Mr Tunmore’s consultants, the Council, consultees and government departments, these have been the subject of a court hearing in March 2017. The Senior Master clearly set out in her judgement that Mr Chetwynd’s approach was to regard professional opinions on technical matters which differ from his own views as false or fraudulent. He also regards decisions made in this manner by the public bodies concerned to act in a way with which he disagrees, even though such decisions may well be within their statutory discretion, as amounting to fraud or misconduct. The claim of conspiracy are advanced on the same misconceived basis. The case was struck out and found to be totally without merit.
While there is likely to be some groundwater inflow, from discussions with the EA and LLFA it would be difficult to precisely identify the groundwater contribution from the surface water inflow and lateral inflow. The ES also states that there is little merit in trying to measure inflows into pond 2/3 and outflows from pond 2, to determine the difference as it is considered that the accuracy of flow measurement will not be adequate. It sets out that the difference would be the balance of rainfall, water surface evaporation, and the interaction between the ponds and the superficial deposits. The latter is considered to be small given the limited capacity of the superficial deposits to transmit groundwater.

Members will also note that Judge Reddihough concluded that ponds 2 and 3 had little if any impact on Mr Chetwynd’s ponds.

Pond 4

Pond 4 is located on the right bank of the River Tas and has no surface water inflows or outflows. The surface water level in the pond is linked to the groundwater level in the superficial deposits and variation in the pond water level follows a similar seasonal variation to the groundwater levels in those superficial deposits. The pond is hydrologically (both in terms of surface water and groundwater aspects) isolated from the left bank area of the River Tas, with the river forming both a surface water and groundwater divide.

It is therefore concluded that it is only pond 1 which has a negative impact on groundwater levels in the fen area surrounding the pond, while also causing a reduction in outflow from the “artesian” well that feeds pond A on Mr Chetwynd’s land. The table below from the ES sets out a summary of the hydrological impacts resulting from the pond construction.

**Table 5: Summary of Hydrological Impacts Resulting from Pond Construction (minor change)**

<table>
<thead>
<tr>
<th>Construction item</th>
<th>Impact/Consequence</th>
<th>Relevance to Enforcement Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of Pond 1 with a surface water level lower than the groundwater emergence level during the pre-pond period</td>
<td>Reduction in the groundwater table in the superficial deposits around Pond 1 to an estimated distance of 100m</td>
<td>Indirect negative impact on the ecological wellbeing of the fen</td>
</tr>
<tr>
<td></td>
<td>Reduction in the Chalk groundwater level causing a quantifiable reduction in the discharge from the ‘artesian’ well</td>
<td>No relevance</td>
</tr>
<tr>
<td></td>
<td>Reduction in the Chalk groundwater level causing a reduction in the diffuse upward groundwater flow from the Chalk aquifer to the superficial deposits</td>
<td>Indirect negative impact on the ecological wellbeing of the fen</td>
</tr>
<tr>
<td></td>
<td>Increased inflow of deep groundwater into Pond 1 and consequent overflow considered an “abstraction”</td>
<td>“Abstraction” in excess of 20m³/d, the minimum requirement set in the Enforcement Notice</td>
</tr>
<tr>
<td>Construction of Ponds 2 and 3</td>
<td>Increase in the groundwater table in the superficial deposits in the areas to the north and wet of the ponds</td>
<td>Indirect beneficial impact on the ecological wellbeing of the fen</td>
</tr>
<tr>
<td>Construction of Pond 4</td>
<td>This pond is hydraulically isolated from the fen area on the left bank of the River Tas and the water level in the pond is representative of the groundwater table conditions in the adjacent area.</td>
<td>No relevance</td>
</tr>
</tbody>
</table>

**Impact of the development on Ecology**

The 2016 ES has considered the land owned by both Mr Tunmore and Mr Chetwynd. The Norfolk Wildlife Trust 1983 habitat survey, issued in 1983 and updated in 1998 has been used as the basis for the description of the ecological status of the area prior to pond construction.
Following the construction of the ponds a survey was undertaken by Wild Frontier in 2010 (WFE 5) and this indicates the hydrological requirements for a number of the National Vegetation Classification (NVC) communities at Carleton Fen. In general, they require wet soil conditions and can tolerate temporary flooding. Three subtypes of fen of varying quality were identified which include a small area of good quality fen, good quality fen overlain by wet woodland and areas of species poor fen with scrub.

A further survey was undertaken by Applied Ecology in 2014 (Cascade 8, Cascade 12 – Ref 10) and has been considered by the 2016 ES. This sets out that as reported by the NWT 1983 survey open fen habitat was not present in the 1980s with the habitat map and description confirming that the east side of the site (Mr Chetwynd’s ownership) comprised woodland, ponds and drainage ditches and the western side (Mr Tunmore’s ownership) was dominated by woodland and marshy grassland.

The 2014 survey identified 3 key wetland habitats on the site comprising swamp, fen and marginal vegetation. An area of good quality fen was identified to the west of pond 1.

The ES sets out that the wellbeing of the plant communities in the fen area are dependant on a number of factors, which include the climatic conditions, particularly rainfall, the depth of groundwater table from the ground surface and the management of the fen. The fen communities can be affected by prolonged drought periods due to the lowering of the groundwater table.

Fenland species depend on moist conditions within the root zone of the plants, sometimes combined with fully saturated conditions. The ES sets out that a reduction in the groundwater table in the fen area surrounding pond 1 in particular as well as the reduction in diffuse upward groundwater flow from the chalk, will have had an impact on the capillary upward flow from the water table to the root system of the fen vegetation.

The ES sets out that it should be noted that pond 2/3 have resulted in a rise in the groundwater table which will improve the fen habitat in this area.

The development of the ponds has also had some positive effects by the creation of habitats for water voles which have been recorded in a number of the ponds.

**Restoration / Mitigation Options**

From the above it has been concluded that the main impacts associated with the unauthorised development result from Pond 1 and therefore mitigation options have concentrated on addressing the impacts identified as a result of that pond.

Since 2010 a range of mitigation options have been suggested in order to address identified impacts. These have been reviewed in the current 2016 ES in the context of the fresh hydrological and ecological assessment referred to above, and in terms of the requirements of the Enforcement Notice. From this assessment a preferred scheme of works has been identified in order to meet the requirements of the enforcement notice, and an environmental assessment of the impacts which might arise during the construction and operation phase of that scheme has also been undertaken. The options considered and the preferred scheme are set out below.
The options which have been considered are:

1. Direct transfer of water downstream via overground pipe
2. Filling in and lining the ponds to approximate pre-development conditions
3. Raising the pond banks and outfall
   a. Raising the outfall level to 36.4 mAoD (current ground surface)
   b. Pond 1 water level raised to 36.55 mAoD and pipe to Pond A
   c. Pond 1 water level raised to 36.55 mAoD
   d. Pond 1 water level raised to 37.2 mAoD
4. Dam in the River Tas between Pond 1 and Pond 4
5. Dam in the ditch between Pond 1 and Pond A
6. Infilling pond 2 and 3
7. Raising the banks and outfall of Pond 2 and Pond 3

The 2016 ES sets out that previous reports have relied on groundwater modelling to identify potential impacts on hydrology and relevant receptors, with an emphasis on the impacts of mitigation options on the outflow from the artesian well on Mr Chetwynd’s land and on groundwater contribution to Pond A originating from the superficial deposits. As set out above, the November 2016 ES considers that there are insignificant direct impacts of Pond 1 on Pond A; but a quantifiable indirect impact on Pond A through the link between the water level in Pond 1 and discharge from the artesian well that feeds Pond A.

**Option 1:** The transfer of water via a pipe (Harrison’s and Cascade’s option 1) to Pond A will not satisfy the requirement of the Enforcement Notice to reduce ‘abstraction’ to less than 20m3/d. It will also have limited ecological benefits. In addition, Mr Chetwynd has set out on a number of occasions that he will not accept such an overflow due to concerns relating to the transfer of disease to his ponds and because he considers that it would not compensate for the overall losses of water level in his ponds.

**Option 2 (The ES preferred scheme):** The ES considers that the infilling of Pond 1 will result in hydrological conditions that closely resemble pre-development conditions. If the ground surface is established at pre-development levels, groundwater would naturally emerge at the north east corner of pond 1. This would bring the groundwater table up to ground surface and radial outflow of groundwater within the superficial deposits would result. The emerging groundwater would flow overland towards the River Tas with infiltration occurring into the subsoil maintaining wet conditions.

Appropriate infilling would also restore the ecology. Applied Ecology identified that this option had the greatest potential to restore fen habitat as the open water would be replaced with terrestrial habitat which could be managed to develop a tall fen plant community which would connect up to areas of fen vegetation to the north west and south east of pond 1. It would also be possible to relax habitat management to the amenity grassland around the pond which could result in additional indirect fen habitat gain.

The infilling of pond 1 will result in the loss of aquatic habitat and could impact on protected species that may inhabit the pond. Surveys have previously identified that water voles are using pond 1, although no signs of water vole burrow holes were found. It is understood that following the removal of the piped outflow and associated increase in water level, this is no longer the case. The ES recommends that a further survey is undertaken to confirm this, and this should be undertaken between April and October. An initial survey was undertaken in May 2017 and further surveys are due between July and September.

I am satisfied that the further survey work is not necessary to assess the merits of the proposed option. However, it is possible that some compensatory habitat management could be undertaken to increase the extent of habitat for water voles elsewhere within the site if necessary and this would be determined by the additional surveys.
The option to infill pond 1 has a minor impact on flood conditions. The natural emergence of groundwater would not constitute abstraction and would meet the terms of the enforcement notice.

Reports by Harrisons and Cascade have both considered the infilling of pond 1 as an option for remediation - but they proposed to dewater the pond to achieve this. The November 2016 ES considers that there are risks associated with dewatering which include reducing outflow from Mr Chetwynd’s artesian well and could result in increased upward groundwater flow from the chalk with unknown geotechnical consequences and it is therefore proposed to infill it “in the wet” (ie with water still in the pond). The Harrison and Cascade reports also proposed liners and the use of materials which the current ES does not consider represent the pre-development composition of the superficial deposits.

Option 3: The 2016 ES considers that the options relating to increasing the water level in pond 1, mainly propose levels lower than the groundwater emergence level that existed prior to the pond construction (considered to be at 36.9 mAoD), which implies that discharge from the artesian well on Mr Chetwynd’s land would still be lower than prior to the pond construction. The effect of raising the water level will radiate out into the surrounding fen area with a consequent rise in the groundwater table to an area 100m from the pond banks. This would be higher than the groundwater table that existed along the southern fringes of the pond and this would improve the ecology in this area.

With regard to the option to raise levels to 37.2 mAoD, this would increase the discharge from the artesian well beyond that during the pre development period. The higher water level is also likely to result in groundwater emerging at ground surface, which did not occur pre development. The construction of banks to increase the pond levels will reduce the capacity of the floodplain, however the flood risk assessments have concluded that this would not be significant. The options to raise water levels will reduce abstraction but there is no guarantee that it will be less than 20 cum/d and would therefore not address the requirements of the enforcement notice.

Options 4 and 5: Options to dam the River Tas and ditch between pond 1 and pond A have been considered by Harrisons, Cascade and the Environment Agency and reviewed in the November 2016 ES. This comments that factors relating to cost, regulation and compliance with the Water Framework Directive are important considerations. Furthermore, the option would result in a water level in the river upstream of the dam of 36.5 mAoD which is higher than the current water level in ponds 2 and 3 (~36 mAoD) and also higher than the ground surface elevation between pond 1 and 2 and between pond 1 and the River Tas. This could compromise the well being of the wet woodland to the west of Mr Tunmore’s land. This option is also likely to negatively impact on water voles and would increase flood risk. Additionally, it would not control abstraction from pond 1 and would not meet the requirement of the enforcement notice.

Mr Chetwynd considers that the option to raise groundwater to the pre development level, through the use of a weir in the River Tas have not been fully evaluated or tested. Mr Chetwynd considers that a temporary weir should be implemented to test the hydrological assessments which have been undertaken as he considers that this will prove that the water movement through Carleton Fen and the supply to the “artesian” well is from the superficial deposits and not from the Chalk.

Each of the reports referenced in the ES have considered the option to dam the river and have commented on the effects of this on the hydrology of the area together with the potential impacts and flood risks. The Council commissioned an additional addendum to be prepared by Cascade (Cascade 14, Cascade 15 – Ref 12) specifically relating the provision of a dam in the River Tas, which concluded against implementing such a feature.
6.92 **Options 6 and 7:** In view of the conclusions of the ES relating to the extent of impacts associated with the development, the ES has not specifically discussed the options which have previously been considered by other parties relating to the infilling of ponds 2 / 3 or raising the banks of those ponds.

6.93 As the above sets out, the November 2016 ES concludes that the infilling of pond 1 “in the wet” is the most appropriate mitigation measure and sets out the methodology for completing this.

6.94 The proposed infilling will result in a rise in the groundwater level in the north east corner of pond 1, and the effect of the higher groundwater will spread into the fen area surrounding pond 1, resulting in groundwater level conditions that existed prior to pond construction. It is estimated that the infilling would raise groundwater to within 0.5m of the ground surface. The ES states that the infilled area will result in the restoration of 1750 sq m of fen and the overall fen is likely to improve due to a general rise in the groundwater table and the implementation of the previously agreed management plan.

6.95 Maintaining ponds 2 / 3 in their current status, combined with the infilling of pond 1 will bring the groundwater level to the north of pond 2 to higher levels than during the pre-pond period. It has also resulted in higher groundwater level conditions (partly due to the back water effect) in the wet woodland areas to the west of pond 2 / 3.

6.96 It is proposed to restore fen habitat (marshy grassland / tall herb) in the area of pond 1 and its immediate margins. The further information submitted in January 2017 (JVW 7) refers to the area of good quality fen to the west of pond 1 highlighted in the Applied Ecology report in 2014 (Cascade 8, Cascade 12 – Ref 10) and sets this as the target for fen re-establishment and restoration within and around the pond 1 area. The remainder of Mr Tunmore’s land would be managed in accordance with an agreed management plan.

6.97 The implications on the ecology of the fen during the implementation of the proposed scheme of works have been considered and include details relating to the timing of the works, the protection of habitats and pollution control. Ecological monitoring will take place during the implementation of the scheme of works particularly in relation to storage locations; scrub removal; vegetation and fish removal; water vole inspection; removal of and suitability of surface soils; and vegetation establishment. The site would be managed in the longer term in accordance with an agreed management plan.

6.98 The land use requirements for the operation of machinery, storage of materials, and facilities for contractor’s personnel will form part of the planning stage prior to implementation. It is recognised that previous surveys have highlighted the presence of water voles but it is considered that they can be relocated in an approved manner to elsewhere within the same site. It is recommended that an updated survey is undertaken but it is understood that following the raising of water levels in Pond 1, water voles have ceased to use pond 1. The retention of the remaining ponds would allow for this mitigation measure.

6.99 It is estimated that 2500 to 3000 cu m of material will be needed to infill pond 1 and reference is made to materials which are potentially available on site. Some of the material referred to around pond 4 has already been used to partly infill the southern element of pond 4 and as such it is likely that suitable materials will need to be imported.

6.100 Measures are proposed to control the discharge of suspended solids to the River Tas and reference is made to the Environmental Mitigation and Monitoring Plan which was prepared by Cascade (Cascade 11 – Ref 11) in relation to traffic management, noise, air quality, lighting, water resources, ecology and arboriculture.
6.101 The ES has considered the flood risk implications of each of the options and of the proposed scheme of works. This has referred to assessments undertaken by Harrisons and Cascade and concludes that in terms of impacts on available flood storage and increase in surface run off the impacts were minor. During the implementation of the proposed scheme of works it is recommended that as part of the site lies within flood zone 3, that an emergency flood plan is in place to ensure that no materials or personnel are placed at risk of flooding.

6.102 Dr Wilson has considered various mitigation options and considers the proposal most likely to approach the historical conditions over time would be to infill the excavations on Mr Tunmore’s land and sets out an initial design concept for the infilling of pond 1 with 1m of permeable material such as sand or gravel with a layer of impermeable clay above it. However, he recognises that these measures would be expensive and would encounter a number of practical difficulties in the design and implementation of the works needed. A simpler and cheaper measure would be to raise ground levels around the ponds on Mr Tunmore’s land. He considers that this would be a palliative for the impact on Mr Chetwynd’s pond A, but would not restore the previously existing valley bottom hydrology or ecology on Mr Tunmore’s or Mr Chetwynd’s land.

6.103 Dr Wilson also considers a combination of measures which include de silting pond A to attain a better hydraulic connection with the shallow sandy layer in addition to putting one or more control weirs in the River Tas to raise water level in the river along the curtilage of Mr Chetwynd’s property. However, as set out above, the Council has to assess the proposal put forward by Mr Tunmore, and is satisfied that it is an acceptable way of meeting the requirements of the Enforcement Notice. In those circumstances it is not necessary to rule out the potential for other options to achieve some measure of success and this report does not seek to do so.

**Monitoring**

6.104 The ES recommends that a period of five years’ monitoring should be adopted with environmental management being a continuous process, with possible modification in management practice if needed.

6.105 There are a number of hydrology monitoring facilities in place across the fen and data has been collected from 2007. It is proposed that monitoring would involve measurement of the groundwater table in shallow monitoring boreholes, the water levels in ponds 2, 3, 4 and Pond A and the River Tas, measurement of the groundwater level in the chalk borehole on Mr Chetwynd’s land and discharge from the “artesian” well. In addition climate information will be needed for periodic evaluation of the water situation. It should be noted that some of this monitoring will require access to Mr Chetwynd’s land and will not be possible without appropriate consent.

6.106 The ES states that there is little merit in trying to measure inflows into pond 2/3 and outflows from pond 2, to determine the difference. It is considered that the accuracy of flow measurement will not be adequate. It sets out that the difference would be the balance of rainfall, water surface evaporation, and the interaction between the ponds and the superficial deposits. The latter is considered to be small given the limited capacity of the superficial deposits to transmit groundwater.

6.107 The frequency of monitoring of the different elements is discussed and it is recommended that this is reviewed after 6 months, with a full analysis of the water situation initiated after 6 months and repeated after a year. It is anticipated that the frequency of monitoring would reduce after a year.
With regard to ecological monitoring, it is recommended that the area of pond 1 should be monitored at 6 month intervals for the first 2 years, with an annual frequency thereafter for a further 3 years. For the remainder of the area, it is recommended that this is managed in accordance with an approved management plan and should cover:

- Maintaining and improving the species richness of the fen and grassland by cutting / grazing
- Manage the woodland and scrub including creation of open ride in the western woodland block
- Maintain a minimum of 25% of the shoreline and open water unmanaged
- Maintain a minimum of 10m between fishing pegs
- Monitor the management of the site annually.

Further details are given in appendix 5 of the final Regulation 22 response by Harrisons, referred to in the November 2016 ES.

**Compliance with Enforcement Notice**

The enforcement notice (appendix 4) requires the following:

- (1) Undertake an Environmental Assessment of the unauthorised development and to include information relating to the hydrological and ecological impacts of the unauthorised development and of the works proposed to satisfy the requirements of 2(a) and 2(c) of the notice

The Environmental Statement which has been submitted in November 2016, together with the further information submitted in January 2017, is not a single document, but draws on a wide range of reports which have been prepared by a range of parties. These are referenced in the ES, with more detailed referencing in appendix 3 of the November 2016 ES, together with Table 4.1 of the further information. These set out the elements of the referenced documents which have been used in the consideration and identification of the environmental impacts associated with the unauthorised development.

In addition, Section 8 of January 2017 Further Information, tabulates how the submitted details are considered to address the requirements of the EIA Regs schedule 4 requirements.

I acknowledge that there are differing opinions between the various experts and that concerns have been raised regarding the data which has been collected and how this has been considered and interpreted. However Members will note that there is general agreement that the principal impacts are associated with the formation of pond 1.

The raw data and assessment of that information has been challenged by Mr Chetwynd, and while I recognise that more technical information could be submitted, the technical consultees have considered the information which has been submitted and have concluded that they consider that the level of information is sufficient to make an informed decision and to address this requirements of the enforcement notice.

Mr Chetwynd has also challenged that the information which has been submitted does not meet the requirements of the Scoping Opinion issued by the Council. The Scoping opinion was issued following a request from Mr Tunmore’s consultant and outlined the information the Council considered should be included within an Environmental Statement. It is not a prescriptive document and does not seek to dictate the details of the ES. Rather the Local Planning Authority needs to consider whether sufficient information has been submitted to enable it to reach a reasoned conclusion. As set out above, it is considered by all the technical consultees and officers that the information which has been submitted is proportionate to the scale of the development and is sufficient to reach a reasoned conclusion.
In my judgment the 2016 ES with the further information submitted in 2017 satisfies the first requirement of the Enforcement Notice. Further, and in my judgment, the 2016 ES is based on the 2010 Scoping Opinion. It is a requirement of the new 2017 EIA Regulations (albeit these do not apply to this development) that an ES be based on a Scoping Opinion where one has been adopted, and may be recognised as good practice in any event.

- 2(a) Submit a scheme of works for approval to reduce and maintain the total abstraction of groundwater from the site as a whole to less than 20 cu m / day

Clearly the proposed scheme of works has not been implemented, but the first part of requirement 2 requires that it is first submitted and approved; and part of requirement 1 requires that the ES includes information relating to the proposed scheme of works. As I have advised above, Requirement 1 is satisfied by the 2016 ES together with the 2017 further information. I am also satisfied that the submitted scheme of works identified within the 2016 ES should be approved.

Numerous reports, including the November 2016 ES and January 2017 Further Information, have considered the source of water to each of the ponds and have concluded that only pond 1 has a significant input from groundwater. As such, the scheme of works proposed has sought to remove this source of abstraction by the infilling of this pond.

It is acknowledged that limited monitoring of pond 2/3 has taken place, however, as set out above, it is considered that the water level in pond 2/3 is now at a higher level than pre development and that this maintains wet conditions to the north of the ponds and in woodland. While there is likely to be some groundwater inflow into pond 2/3, from discussions with the Environment Agency and Lead Local Flood Authority, it would be difficult to precisely identify the groundwater contribution from the surface water inflow and lateral inflow. Given the wider benefits from maintaining a high water level in these ponds, if the outflow from pond 1 can be controlled as proposed, it is likely that abstraction from the site as a whole will be less than 20 cum/d.

In addition, and in terms of the impact on the adjoining site owned by Mr Chetwynd, Members will note the conclusions above and those of the Civil Court case Mr Chetwynd brought against Mr Tunmore, about the impact of the construction of ponds 2 and 3 on Mr Chetwynd’s ponds.

It should also be noted, that since the Enforcement Notice came into effect, the Environment Agency have issued a Transfer licence to Mr Tunmore in relation to pond 1 which has an unrestricted outfall.

- 2 (b) submit a timetable for the implementation of the scheme

As for Requirement 2(b), the Enforcement Notice requires that the scheme of works is implemented in accordance with the approved timetable. At present, the question is whether the timetable within the 2016 ES should be approved, and it is considered that it should.

The ES sets out that the planning stage for construction should start as soon as possible after approval of the submitted details. A start in early winter is anticipated if the scheme is approved in August, and will have benefits regarding minimising the environmental risks associated with disturbance of flora and fauna during construction. Time will be required to carry out ecological and site surveys and to obtain necessary licences. A licence for migration of water voles may take up to six weeks and the planning phase could therefore extend over a period of two months.
6.124 It is estimated that the establishment of the contractor’s site and the sorting/stockpiling of soils used for infilling Pond 1 would take no more than two weeks. Infilling of the pond is expected to take no more than one month, while demobilisation and restoration at the construction site is estimated to take no more than two weeks. This would point to a total implementation period of approximately 3.5 months.

- 2 (c) submit a scheme of works to remedy the adverse ecological impacts as identified in the Environmental Assessment and a Management Plan to secure those measures for the future

6.125 As mentioned above the Enforcement Notice requires that the approved scheme is implemented, but the issue for this report is whether the scheme of works should be approved. It is considered that it should.

6.126 The ES has considered a range of reports which have considered the ecological impacts associated with the unauthorised development and has identified a scheme of works which is considered will most likely result in the establishment of fen habitat and enhance existing areas of good quality fen on the site. Section 6 of the ES sets out the monitoring and management proposed and refers to the previously approved management plan prepared by Wild Frontier Ecology and Eco-Check Planning Consultancy which includes:

a) Maintain and improve the species richness of the fen and grassland vegetation by cutting/grazing.
b) Manage hedgerows and trees to maintain and enhance their value for wildlife by cutting.
c) Manage the woodland and scrub, including creation of open ride in the western woodland block.
d) Maintain a minimum of 25% of the shoreline and open water unmanaged.
e) Maintain a minimum of 10m between the fishing pegs.
f) Monitor the management of the site annually.

6.127 Consultation responses have considered these proposals to be acceptable and a reduced maintenance regime has now been in place at the site for a number of years which has resulted in improved conditions. I therefore consider that the submitted details are acceptable in terms of the requirements of the Enforcement Notice.

- 2 (d) a description of the scope of monitoring reports and timetable for their submission to identify the outcome of the scheme with particular reference to groundwater abstraction, hydrological and ecological impacts

6.128 Section 6 of the 2016 ES sets out the monitoring and management proposed, together with the timing of the reviews and outlines target levels for the hydrology and ecology of the site. I consider that the submitted details are acceptable in terms of the requirements of the Enforcement Notice.

6.129 Under section 178 of the Town and Country Planning Act 1990, the Council has the power to take action itself in default of compliance with an Enforcement Notice. This has been, in the past, a realistic possibility in this case for as long as Mr Tunmore and his consultants failed to submit an Environmental Statement containing a well considered set of proposals. That would appear to have changed, and it is considered that Mr Tunmore, still technically in breach of the Enforcement Notice and therefore at risk of prosecution under section 179, has every incentive not to introduce any further or unnecessary delay. Officers will continue to liaise with him through his consultant and monitor progress closely.
6.130 It is only once all the requirements of the enforcement notice are complied with that planning permission is deemed granted (under section 173(11) of the 1990 Act) for the use of ponds 2-4 and the works undertaken to create them. This is still some way away, but the first step is the submission of an Environmental Statement with information relating to a proposed scheme of works, and ongoing monitoring. That proposed scheme of works and associated measures are set out in the 2016 ES and the further information submitted in 2017, and are considered to be acceptable mitigation of the impact of the development on hydrology and ecology of the fen, as well as the other impacts of significance including the impact on Mr Chetwynd’s land. Accordingly it is considered that they should be approved. The Enforcement Notice Requirements 2 and 3 still require that the scheme of works is implemented and that the monitoring reports are submitted as agreed.

6.131 Meanwhile, although the Council has no power to compel withdrawal of the two outstanding planning applications (which are so historic they are governed by the 1999 EIA Regulations) officers will recommend that Mr Tunmore withdraw them. This matter is not currently before the Council and is a point of information only.

7 Conclusion

7.1 I consider that the details that have been submitted address some of the requirements of the enforcement notice and that the scheme of works as identified, together with the ecological management and monitoring proposed should be agreed. Detailed planning will now need to be undertaken with a view to being in a position to implement the approved schemes during the Autumn / winter of 2017 / 2018.

7.2 Once all the requirements of the Enforcement Notice have been complied with planning permission will be deemed granted for the retention of the works which have been undertaken to form ponds 2, 3 and 4 and their use for recreational and sport fishing.

7.3 As noted above, Section 11 of the NPPF, Policy 1 of the JCS and Policies DM1.4 and DM 4.4 set out that local planning authorities should aim to conserve and enhance biodiversity or where this is not possible to adequately mitigate and compensate for the adverse environmental effects of the development.

7.4 Given the above conclusions and the findings of the Civil Court proceedings, it can be concluded that the retention of ponds 2, 3 and 4 will not result in significant harm, and that with the mitigation proposed, the retention of the development has the potential to enhance the ecology of the County Wildlife Site. The scheme of works will also include a management plan which will secure the long term enhancement of the County Wildlife Site and as such, I consider that this approach would be proportionate and reasonable and the retention of these elements of the development would not be contrary to policy, despite the views of the court in 2010 of the development as a whole (including pond 1) and the now superseded policies ENV13 and ENV14 (paragraphs 7 and 33 of the Judgment of Collins J refer).

7.5 With regard to the impact on the character of the area, the ponds are visible from the adjacent highway, however they are seen in the context of other ponds in the locality and with the proposed maintenance regime, I consider that they will not detract from the character of the locality. There will be some associated development in the form of fishing pegs and the parking area adjacent to the hedge line, however I consider that these are not unduly prominent and do not detract from the character of the locality.

7.6 Section 3 of the NPPF, Policy 5 of the JCS and Policy DM 2.9 relate to the rural economy and provision of new leisure and tourism facilities. These seek to ensure that development does not have a detrimental effect on the local and natural environment or the character of the landscape by virtue of the nature, scale, extent frequency and timing of activities.
I consider that while the use of the remaining ponds for fishing will attract users, by the nature of the activity, I consider that it will not result in an intensive use of the site, that traffic movements are likely to be infrequent and that the use is unlikely to generate noise. I therefore consider that the use of the ponds for fishing will not have an adverse effect on the character of the area, the natural environment or the amenity of neighbouring uses.

With regard to flood risk, the implications of the proposed scheme of works and retention of the remaining ponds has been considered. The use for fishing is considered to be an appropriate use within a flood zone and the retention of the works as proposed will not have a significant affect on flood risk or on the safety of users.

The site is accessed by an existing gateway which is opposite Kilmurray. A car parking area has been created along the hedgeline and while there will be some disturbance from the movement of vehicles, I do not consider that this will result in a significant loss of amenity for neighbouring properties. The Highway Authority has raised no objection to the development.

Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration but in the instance of this application the other material planning considerations detailed above are of greater significance. This application is not liable for Community Infrastructure Levy (CIL)

8 Recommendation

8.1 It is recommended that Members agree the following in relation to compliance with the requirements of the Enforcement notice:

8.2 (1) Undertake and submit an Environmental Assessment ... of the existing unauthorised development ... to include information relating to the hydrological and ecological impacts of the unauthorised development and of the works proposed to satisfy the requirements of 2(a) and 2(c) of the notice

- That the details submitted within the 2016 ES and further information submitted in 2017 meet Requirement 1 of the Enforcement Notice. They identify the hydrological and ecological impacts of the unauthorised works and assess the impacts of the works proposed to satisfy the requirements of 2(a) and 2(c) of the notice, and no further action is required in respect of this requirement, provided the outstanding requirements of the Enforcement Notice are satisfactorily completed.

8.3 2(a) submit a scheme of works for approval to reduce and maintain the total abstraction of groundwater from the site as a whole to less than 20 cu m / day

- That the scheme of works proposed to infill pond 1 complies with this requirement of the Enforcement Notice. A detailed planning stage and further ecology assessment and obtaining relevant licenses remains necessary to enable implementation of the scheme of works, and require approval. It is recommended that the approval of these technical details are delegated to officers in consultation with the relevant technical consultees.

8.4 2 (b) submit a timetable for the implementation of the scheme

- That there is sufficient information in the 2016 ES and further information to reassure the Council that prompt implementation of the scheme of works is intended and can be delivered.

- That, in conjunction with the detailed requirements set out in relation to 2(a), approval of a detailed timetable for implementation is delegated to officers in consultation with the relevant technical consultees, with an aim to secure implementation during the winter of 2017/2018 as set out in the Environmental Statement in order to minimise impacts associated with the implementation phase.
8.5 2 (c) submit a scheme of works to remedy the adverse ecological impacts as identified in the Environmental Assessment and a Management Plan to secure those measures for the future

- That the details submitted meet the requirements of 2(c) and the management plans referred to in the Environmental Statement are acceptable and accordingly approved.

8.6 2 (d) a description of the scope of monitoring reports and timetable for their submission to identify the outcome of the scheme with particular reference to groundwater abstraction, hydrological and ecological impacts

- That the details submitted meet the requirements of 2(d) and are acceptable and accordingly approved.

8.7 To note that Requirement 2 requires the implementation of the approved scheme of works, and Requirement 3 requires Mr Tunmore to submit the monitoring reports in accordance with the scope and timetable agreed, and the implementation of any further works or modification of the scheme identified as necessary in the light of the findings of the monitoring reports.

Contact Officer, Telephone Number and E-mail: Stuart Pontin 01508 533796 spontin@s-norfolk.gov.uk
Enforcement Ref - 2006/0269
Parish - CARLETON RODE
Site - Land adjacent, Fen Road, Carleton Rode
Development - Formation of Ponds
Developer - Mr Tunmore

1. Background

1.1 The Council’s decision relating to the grant of retrospective planning permission has been successfully challenged through a Judicial Review which quashed the decision on both applications (2007/1961 and 2007/2264).

1.2 These applications now stand to be re considered and the applicant has been notified that following the ruling of Collins J, the development is considered to fall within Schedule 2 of the Environmental Impact Assessment Regulations and is EIA Development which requires the submission of an Environmental Statement. The applicant has confirmed that he intends to prepare an Environmental Statement and has been requested to submit the required details if he wishes the consultees to comment on the scope of the Environmental Statement required. In the absence of an Environmental Statement, the Council could not approve the applications.

2. Policies

2.1 ENV13 – Sites of regional and local nature conservation interest
ENV14 – Habitat protection
ENV15 – Species Protection
ENV8 – Development in the open countryside
IMP8 – Safe and free flow of traffic
IMP9 – Residential Amenity
LEI11 – Water based recreational facilities.

3. Assessment

3.1 The works to form the three water bodies have been undertaken between 1990 and 2007 (as was reported to the South West Area Planning Committee on 22 May 2007).

3.2 The Council has resolved to take enforcement action in relation to this site on 22 May 2007 and 5 October 2009, however, on each occasion the owner of the site has subsequently submitted planning applications or has undertaken the works required and consequently such action did not proceed.

3.3 The ability to take enforcement action is restricted to 4 years in the case of operational development and 10 years in the case of the use of land. If it can be demonstrated that the development has been substantially complete for a period of time in excess of this, the development can become lawful and immune from enforcement proceedings.

3.4 In considering the planning applications 2007/1961 and 2007/2264, the appearance of the development and the use of the land for angling were considered to be acceptable, however the unacceptable impacts of the development arise from the effects of the formation of the ponds on the hydrology and ecology of the fen (including adjacent land). Reports submitted in association with the applications have indicated these impacts can be remediated if the level of abstraction is reduced to de minimis levels (less than 20 cubic metres per day).
Planning Committee 21 July 2010

3.5 While the current planning applications are still to be determined, I consider that it is appropriate to serve Enforcement Notices to ensure that the works and use do not become immune from Enforcement Action. This will ensure that, should progress with those applications not be acceptable, or they are refused, the Council can pursue Enforcement Action relating to the hydrological and ecological impacts of the development and works relating to the remediation of these impacts.

3.6 In order to allow for details to be prepared and submitted with the applications it is recommended that a reasonable period is given before the notices take effect (3 months) and that a period of 6 months if given for compliance once the notices take effect. This will hopefully ensure that details are prepared in a timely manner in connection with the planning applications.

3.7 If good progress is made towards designing and achieving the required mitigation measures via the planning applications, then it may become appropriate to extend either or both periods in the Enforcement Action so that the applications can be properly assessed and determined. The Enforcement Action should remain, however, as a fall back position should adequate progress not be made or the applications are refused.

4. Recommendation

4.1 That Enforcement Action is authorised to require the implementation of a scheme of works, the details of which shall first be submitted to and agreed in writing with the Local Planning Authority. The scheme shall include:

1) Works to reduce the cumulative abstraction of water resulting from the development to less than 20 cubic metres per day.
2) An Environmental Assessment of the development including information relating to the hydrological and ecological impacts associated with the scheme.
3) A timetable for implementation of the scheme.
4) A management plan for the site to restore and safeguard its ecological value.
5) Monitoring reports to identify the outcome of the management plan and the scheme and its impacts.

4.2 Authorise Officers to vary the dates for the Enforcement Action coming into effect and compliance date if appropriate.
IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991

ENFORCEMENT NOTICE - MATERIAL CHANGE OF USE

Issued by South Norfolk District Council Ref: 2006/0269

1. THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations.

2. THE LAND AFFECTED

Land adjacent
Fen Road
Carleton Rode
Norfolk
NR16 1RT

Shown edged red on the attached plan.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission the material change of use of land to recreational and sport fishing with integral works to create fishing ponds

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years and has resulted in adverse impacts on the hydrology and ecology of the area in conflict with the provisions of Policies ENV13, ENV14 and ENV15 of the South Norfolk Local Plan and Planning Policy Statement 9: Biodiversity and Geological Conservation.

5. WHAT YOU ARE REQUIRED TO DO

1. Undertake and submit an Environmental Assessment to be carried out in accordance with the Environmental Impact Assessment Regulations of the existing unauthorised development comprising the excavation of the fishing ponds, associated works of earth movement and land raising and use of the site for fishing. The Environmental Assessment shall include information
relating to the hydrological and ecological impacts of the unauthorised
development and of the works proposed to satisfy the requirements of 2 (a)
and 2 (c) below.

2. Implement a scheme of works, the details of which shall first be submitted to
and approved in writing by the Local Planning Authority. The scheme shall
include:

(a) Works to reduce and maintain the total abstraction of groundwater from
the site as a whole to less than 20 cubic metres per day. For the
avoidance of doubt the term “abstraction” shall be as defined in section
221 of the Water Resources Act 1991

(b) A timetable for implementation of the scheme

(c) Works to remedy the adverse ecological impacts of the unauthorised
development as identified in the Environmental Assessment and a
Management Plan to secure those measures for the future

(d) A description of the scope of monitoring reports and timetable for their
submission to be agreed in writing by the Local Planning Authority to
identify the outcome of the scheme with particular reference to
groundwater abstraction, hydrological and ecological impacts

3. Submit the monitoring reports in accordance with the scope and timetable
agreed and the implementation of any further works or modification of the
scheme identified as necessary in the light of the findings of the monitoring
reports

6. **PERIOD FOR COMPLIANCE – 6 Months from the date this notice takes effect**

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on **29 December 2010** unless an appeal is made against
it beforehand.

Dated: 29 September 2010

Signed: [Signature]

The Council’s authorised Officer
REGULATION 25 NOTICE

Important: This communication affects your property


Regulation 25 Notice

1. This notice is served by South Norfolk Council ("the Council") under regulation 25 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No.293) in connection with the Council’s Enforcement Notice, dated 29 September 2010, issued in respect of:

Without planning permission the material change of use of land to recreational and sports fishing with integral works to create fishing ponds

at Land adjacent Fen Road, Carleton Rode, Norfolk, NR16 1RT

2. It is the Council’s opinion that development to which the enforcement notice relates is:

“Schedule 2 development” within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No.293) (i.e. 10m Infrastructure project – Groundwater abstraction and artificial groundwater recharge scheme not included in schedule 1- The area of works exceeds 1) which is considered likely to have significant effects on the environment for the following reasons:

(a) In the Judgement of Collins J, Dated 13 May 2010, R (oao Chetwynd) v South Norfolk Council; CO/7204/2008, he concluded that the development can be considered as a “ground water abstraction” scheme falling within schedule 2 of the EIA Regulations and that significant environmental effects were likely as a result of the development.

3. Accordingly, subject to any direction of the Secretary of State to the contrary, any appeal under section 174 against the enforcement notice must be accompanied by four copies of an Environmental Statement. Please read the notes below for information about appeals, directions and Environmental Statements.

Dated: 29 September 2010

Signed:

[Signature]
Neutral Citation Number: [2017] EWHC 1459 (QB)

Case No: HQ16X01187

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2017

Before:

SENIOR MASTER FONTAINE

Between:

(1) BRYN MICHAEL CHETWYND
(2) JOANNA VALERIE CHETWYND - and -
(1) SOUTH NORFOLK DISTRICT COUNCIL
(2) CASCADE CONSULTING LIMITED
(3) BHA CONSULTING LIMITED
   (FORMERLY BINGHAM HALL ASSOCIATES)
(4) HARRISON ENVIRONMENTAL GROUP
(5) ENVIRONMENT AGENCY
(6) NORFOLK COUNTY COUNCIL
(7) NORFOLK WILDLIFE TRUST
(8) SECRETARY OF STATE FOR
   ENVIRONMENT, FOOD AND RURAL AFFAIRS
(9) SECRETARY OF STATE FOR LOCAL
   GOVERNMENT AND COMMUNITIES

Claimants

The Claimants appeared in person.

Mrs Harriet Townsend (instructed by Norfolk Public Law) appeared for the First
Defendants and the Sixth Defendant

Mr Luke Wygas (instructed by BLM LLP) appeared for the Second, Fourth, Seventh
Defendants
The Third Defendant did not attend and was not represented
Mr Richard Banwell (instructed by Environment Agency Legal Services) appeared for the
Fifth Defendant
Mr Robert Kellar (instructed by the Government Legal Department) appeared for the
Eighth and Ninth Defendants
Mr Joseph Ollech (instructed by Mills & Reeve LLP) appeared for Mr Barry John Tunmore
and Mrs Caroline Tunmore

Hearing dates: 1st and 2nd March 2017

Approved Judgment
I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

SENIOR MASTER FONTAINE
Senior Master Fontaine:

1. In this matter there were listed before me the following applications:
   i) Applications by the First, Fifth, Sixth, Eighth and Ninth Defendants to strike out the claim against them;
   ii) An application by the Claimants for orders as follows:-
       a) to set aside the Order dated 20th June 2016 striking out the claims against the Second, Third, Fourth and Seventh Defendants pursuant to CPR 23.10;
       b) that if the Court finds that it has no jurisdiction, to stay the claims until criminal proceedings are brought against the Defendants;
       c) To join Mr Barry John Tunmore and Mrs Caroline Tunmore and Mr Jan Van Wonderen to the claim under CPR 19.2/19.4.

2. References to documents in this judgment will be to those in the Defendants’ bundle as follows [D/file number/tab/page number] and to the Claimants’ bundles as follows [C/witness statement number/tab number].

3. The following abbreviations are used in this judgment:

The parties/applicants/respondents
   i) The Claimants/Mr Chetwynd – used to encompass both the First and the Second Claimants. Mr Chetwynd is named on occasions for accuracy or because he made the oral submissions on behalf of both Claimants.
   ii) SNC – First Defendant
   iii) Cascade – Second Defendant
   iv) BHA – Third Defendant
   v) Harrison – Fourth Defendant
   vi) EA – Fifth Defendant
   vii) NCC – Sixth Defendant
   viii) NWT – Seventh Defendant
   ix) DEFRA – Eighth Defendant
   x) DCLG – Ninth Defendant
   xi) The Tunmores – Mr Barry John Tunmore and Mrs Caroline Tunmore.
Statutory authorities

xii) The 1990 Act – Town and County Planning Act 1990
xiii) WRA – Water Resources Act 1991
xv) FWM - Flood and Water Management Act 2010.
xvi) LDA - Land Drainage Act 1991
xvii) EIA Regs – Town and County Planning (Environmental Impact Assessment) Regulations 1999
xviii) ECHR - European Convention on Human Rights

Relevant public bodies

xix) LPA - Local Planning Authority
xx) LLFA – Lead Local Flood Authority
xxi) IDB – Internal Drainage Board
xxii) Ombudsman – Local Government Ombudsman

Planning documents

xxiii) EIA – Environmental Impact Assessment
xxiv) EN – Enforcement Notice
xxv) ES – Environmental Statement
xxvi) SO - Scoping Opinion/Scoping Document
xxvii) OWCP – Ordinary Watercourse Consent Protocol

Statements of case

xxviii) POC – Particulars of Claim
xxix) APOC – Draft Amended Particulars of Claim

Other proceedings relevant to this action brought by the Claimants

xxx) 2010 proceedings - Chetwynd v South Norfolk DC [2010] EWHC 1070 (Admin) (Judgment of Collins J);
33i) 2016 proceedings - *Chetwynd -v- Tunmore* [2016] EWHC 156 (QB) judgment of HHJ Reddihough, (sitting as a Judge of the High Court).

4. The following Witness Statements were before the Court:

For the Claimant:

Witness Statement of Bryn Chetwynd undated and unsigned, in response to SNC’s application, exhibits 1 - 4 (C1);

Witness Statement of Bryn Chetwynd undated and unsigned in response to NCC’s application, exhibits 1 - 9 (C2);

Witness Statements of Bryn Chetwynd dated 4th August 2016 in response to Cascade, BHA, Harrison and NWT with two bundles of exhibits numbered 1-40 and Appendices A and B (C3);

Witness Statements of Bryn Chetwynd dated 4th August 2016 in response to the DEFRA and DCLG’s application with bundle of exhibits numbered 1 - 15(C4);

(I have described and numbered Claimants’ witness statements as above to try and avoid confusion).


For EA: Witness Statements of Kevin Bywater dated 22nd February 2017 (Bywater 1) and 6 March 2017 (Bywater 2).

For NCC: Witness Statement of Mark M C Henderson dated 14th July 2016 (Henderson).

For DEFRA and DCLG: Witness Statements of Jade Birman dated 8th July 2016 (Birman 1) and 19th October 2016 (Birman 2).

5. I read the unsigned and undated statements of Mr Chetwynd *de bene esse*, and take their contents into account as if they were skeleton arguments.

6. Summary of conclusions in this judgment

i) The applications by SNC, EA, NCC, DEFRA and DCLG are granted and the Claim Form and Particulars of Claim against them are struck out, the Claimants to pay the costs of the actions, to be subject to either summary or detailed assessment. The claims against these defendants are found to be totally without merit.

ii) The Claimants’ application to set aside the order of 20 June 2016, striking out the claims against Cascade, BHA, Harrison and NWT are dismissed with costs, to be subject to either summary or detailed assessment. The claims against these defendants and the application are found to be totally without merit.
iii) The Claimants’ application for a stay of the claims until criminal proceedings are brought against the Defendants is dismissed, with costs, to be subject to either summary or detailed assessment. The application is found to be totally without merit.

7. This judgment deals with all applications save the Claimants’ application at Paragraph 1(ii)(c) above which I determined at the hearing. The applications are dealt with in the order in which I heard them.

Factual Background

8. The factual background applicable to all claims is complex, and is best understood by reading two judgments in which many of the issues before the Court today were before the Court on previous occasions, namely the 2010 proceedings and the 2016 proceedings. Although there was extensive written witness and documentary evidence before me it would be disproportionate to attempt to summarise all of it. For the purposes of this judgment, therefore, I summarise relatively briefly by setting out relevant facts in the chronology below, relying on the helpful chronology provided by Counsel for SNC.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.1.05</td>
<td>Mr Chetwynd registered as owner of Fen Lakes Fishery.</td>
</tr>
<tr>
<td>22.5.07</td>
<td>SNC authorised enforcement action against the Tunmore.</td>
</tr>
<tr>
<td>18+19.6.08</td>
<td>SNC granted planning permission for The Tunmore’s development, (later quashed by Collins J.).</td>
</tr>
<tr>
<td>April 2009</td>
<td>Ground and Surface Water Management Report prepared by BHA.</td>
</tr>
<tr>
<td>13.5.10</td>
<td>The two retrospective planning consents quashed by Collins J following Mr Chetwynd’s application for judicial review.</td>
</tr>
<tr>
<td>21.7.10</td>
<td>SNC authorised enforcement action against the Tunmore.</td>
</tr>
<tr>
<td>29.9.10</td>
<td>EN issued; required compliance by 29.6.11</td>
</tr>
<tr>
<td>4.11.10</td>
<td>SO provided by SNC setting out the scope of the EIA required to be undertaken by the Tunmore.</td>
</tr>
<tr>
<td>29.6.11</td>
<td>First date by which EN required compliance – extended under s173A of the 1990 Act by 6 months to 9.12.11.</td>
</tr>
<tr>
<td>16.9.11</td>
<td>Ombudsman letter finding no maladministration by SNC.</td>
</tr>
</tbody>
</table>
14.2.12 Third date by which EN required compliance. The Tunmores failed to comply by this date and have yet to comply with the EN.

15.2.12 ES submitted by Harrison, but not an ES within the meaning of the EIA Regs.

21.8.14 Ombudsman letter finding some fault but overall no maladministration by SNC.

Dec 2015 Trial of claim by Mr Chetwynd against the Tunmores – HHJ Reddhough dismisses the claim finding that causation of damage is not proved.

**Procedural History**

9. The Claim was issued on 6 April 2016. I made an order of my own initiative dated 8 April 2016 [D1/A/1] staying the claims against Cascade, BHA, Harrison and NWT on the basis that the Claim Form and Particulars of Claim did not show reasonable grounds for bringing any claims, because the claims against each of those defendants individually were not identified.

10. Harrison applied to strike out the claim against it by application dated 13th May 2016. I dealt with that application without a hearing by order of the 20th June 2016 [D1/A/4]. I struck out the claim against Harrison pursuant to the application, and of my own initiative I struck out the claims against Cascade, BHA and NWT. Applications were subsequently made by the remaining Defendants, SNC, EA, NCC, DEFRA and DCLG to strike out the claims against them [D1/B/20] [D1/C/85] [D1/D/101] [D1/E/137].

11. On a date not recorded, the Claimants served and filed what were described as “Amended Particulars of Claim as directed by Senior Master Fontaine of the High Court, Queen’s Bench Division, dated 7 May 2016”. In fact, there was no such direction by me and a direction to provide draft POC related only to the Claimants’ application at Paragraph 1(ii)(c) above. No permission has been given to amend the POC. Nevertheless, all parties took the view that it was appropriate for the applications to be considered in the context of the APoC on the basis that this presumably represents the Claimants’ best case, and that which they wish to pursue.

12. Defences have been filed by SNC, EA, and NCC, but not by any other Defendants.

**Application by SNC**

The Claim Against SNC

13. Mr Chetwynd seeks damages from SNC for alleged unlawful fraudulent and criminal conduct in the way that SNC exercised its statutory planning enforcement functions at Carlton Fen, Norfolk. Mr Chetwynd seeks damages from SNC for the alleged effect on his business of certain unlawful development carried out by his neighbouring landowners, the Tunmores. The allegations against SNC include:-
i) malfeasance (which has been assumed by all Defendants and the Court to mean misfeasance in public office);

ii) bias and discrimination;

iii) conspiracy to pervert the course of justice;

iv) fraud;

v) failure to determine the Tunmores’ retrospective planning applications for planning permission with intent to harm the economic operation of Fen Lakes Fishery;

vi) Acting contrary to the ECHR, in particular, Articles 6, 8 and 14 of Part 1 of Schedule 1, and Article 1 of Part 2 of the First Protocol of Schedule 1.

14. To deal with the application in a manner that assists the Claimants, who are acting in person, the first four of the allegedly tortious acts described above are considered as if they were intended to be within the rubric “misfeasance in public office”, and no objection was taken by the Claimants to this approach.

15. SNC makes its application on a number of grounds:

i) Under CPR 3.4(2)(a) and (c), that the claim is not clearly or adequately pleaded, and the facts relied upon do not disclose reasonable grounds for bringing the claim. The particulars are inadequate even in the APoC. The allegations of fraud, misconduct, conspiracy and criminal conduct are scandalous, being presented within insufficient particulars, and without any evidential foundation.

ii) Under CPR 3.4(2)(b), that the claim is an abuse of process, because the allegations of fraud, misconduct, conspiracy and criminal conduct are scandalous, unparticularised and unevidenced.

iii) Also under CPR3.4(2)(b), that the claim for damages for the alleged effect on the Claimants’ business of the unlawful development carried out by the Tunmores is an abuse of process because the claim cannot succeed against SNC unless such a claim had also succeeded against the Tunmores. The same cause of the same alleged losses is relied on in this claim as it was in the Claimants’ claim against the Tunmores, which was considered at a hearing over ten days in December 2015 in the 2016 proceedings. That claim was dismissed by HHJ Reddihough, sitting as a Judge of the High Court, for the reasons given in his judgment dated 4th February 2016 in the 2016 proceedings. That issue is now res judicata as between the Claimants and the Tunmores and may not be reopened in this action. SNC relies on Apsion v Dilnot [2013] EWHC 2928 (QB) at para 21 (Hickinbottom J). It would, therefore, be unfair to pursue SNC for the alleged consequences of the Tunmores’ unlawful development when the Claimants have been unable to prove that the unlawful development caused the alleged or any losses. It would also bring the administration of justice into disrepute to permit the Claimants to do so.
16. In any event, in so far as such claims can be identified they are hopeless and have no real prospect of success. Many are also time barred. I summarise below the very full and clear submissions made.

17. There was no direction or order given by Collins J to SNC following his determination in the 2010 proceedings. Thus, insofar as the claim seeks to rely on a breach of any order by Collins J it is misconceived.

18. In response to the breach of planning control at Carleton Fen, SNC has exercised its statutory powers conferred by the 1990 Act in the context of the procedural requirements and legal duties imposed by the EIA Regs. (the Regulations then in force and applicable to the retrospective application by the Tunmores and the enforcement action taken by SNC).

19. Part VIII of the 1990 Act represents a comprehensive statutory code for the enforcement of planning control. Enforcement action is taken when an EN is issued under Section 172 of the 1990 Act. It is a discretionary power exercised where the LPA judges it to be expedient.

20. There could be no suggestion that the EN did not meet the statutory requirements of the 1990 Act which include the following:

   i) Under Section 173 the EN must specify the steps which the Local Planning Authority (“LPA”) requires to be taken to achieve the statutory purpose of the EN. For example, the EN may require the alteration or removal of the works (S.173(5)(a)); it must specify the date on which it is to take effect and the period within which any requirements must be met (S. 173(8)).

   ii) SNC, as the LPA was entitled to “under enforce” because under Section 173(3) of the 1990 Act the LPA may choose to remedy the breach “wholly or partly”. In that case, under Section 173(11) planning permission will be deemed to be granted for any development not enforced against, but only once all the requirements of the EN have been met.

   iii) Further, Section 173A provides a specific power to:

   "waive or relax any requirement of such a notice and, in particular may extend any period specified in accordance with section 173(9)" i.e. the period by which the steps must be carried out”.

   iv) Where an EN has taken effect, an owner of land who is in breach of the EN is guilty of an offence under Section 179 of the 1990 Act. There are limited statutory defences to a prosecution of this offence and the penalty is a fine. SNC has a broad discretion whether to prosecute which it had to exercise with due regard to the statutory purpose of enforcement and in the public interest. In addition, where an EN has taken effect, SNC may enter the land and carry out the steps required by an EN under Section 178 of the 1990 Act. The costs of doing so are recoverable and may be secured by charge on the land.
21. There is a right of appeal against an EN under Section 174 of the 1990 Act, which must be exercised before the EN takes effect. By Section 285, the appeal is the only way in which the EN may be questioned on any of the grounds on which an appeal may be brought.

22. Regulation 25 of the EIA Regs requires, where unauthorised development is EIA development, that there is a notice that accompanies the EN requiring an ES to be submitted with an appeal against the EN. The relevant Regulation 25 Notice was served, recording SNC’s opinion that the development is EIA development, in reliance on the judgment of Collins J. Since the development is EIA development, SNC has been careful to avoid taking action that is not properly informed by an adequate level of environmental information. The Tunmores have not yet prepared an ES which meets the definition of such within the EIA Regs, in the judgment of the SNC.

23. The only other possibility of challenge to these exercises of discretion by SNC under the various statutory provisions or on other grounds of challenge, such as the lawful authorisation of the EN itself, bias or bad faith in issuing the EN, would have to be by an application for judicial review, which must be brought within the judicial review limitation period of three months, and the EN was issued in 2010. No such application for a judicial review was made. Thus, the lawful status of the EN and its specific requirements are now conclusively determined. There is no provision in the legislation for a private law claim in damages against a third party.

24. SNC accepted the ruling of Collins J. in the 2010 proceedings, acted on it, and took enforcement steps against the Tunmores in accordance with that judgment. It is a matter for SNC to decide how much further to take the enforcement process in the public interest. In the factual circumstances described in Pontin there could be no realistic prospect of a determination that the appropriate course has not been taken.

25. It is noted that the Ombudsman found no fault with the EN when she decided Mr Chetwynd’s first complaint in 2011.

26. The final decision of the Ombudsman dated 21 August 2014 following the second reference to the Ombudsman by Mr Chetwynd is of some relevance to the allegations of misconduct, fraud, conspiracy etc. The conclusion of the Ombudsman was that some fault as to the way the SNC handled the planning enforcement was identified, but the Ombudsman did not consider that SNC’s overall approach constituted any administrative fault. [D1/B/60]

27. The Ombudsman determined in that final report:-

“90 The process has taken a significant amount of time. However, I have to balance the time taken against the complexity of the information and the need for the Council to engage with several different consultants and various other statutory consultees at each stage. Although the time taken has been significant, on balance, I could not say there have been specific periods of avoidable delay or inactivity. As a result while I would urge the Council to take all necessary steps to
reach a view as quickly as possible, I do not consider there are grounds to consider the time taken as maladministration.”

28. The Ombudsman notified Mr Chetwynd that if he considered a crime had been committed this would be a matter for the Police. The final decision was as follows:-

“97 Some fault was identified regarding the consideration given to prosecuting Mr C. I do not consider this led to a significant injustice in itself. I do not consider the Council’s overall approach to considering the unauthorised development constitutes administrative fault.”

29. With regard to the claim for misfeasance in public office, it is submitted that this is informed by the leading case of Three Rivers District Councils –v- Bank of England (No 3) [2003] 2 AC 1 in which the House of Lords authoritatively determined these essential elements of the tort. In the light of that authority it is settled that such a claim requires proof of the following elements:-

i) One or more of SNC’s Officers to have acted unlawfully, knowing that he/she did so, and with intention to injure the claimant or a class of which the claimant is a subject (“targeted malice”);

ii) one or more of SNC’s Officers acted unlawfully, knowing that he/she did so, and either (a) in the knowledge that he/she would probably cause the claimant to suffer injury; or (b) recklessly because, although he/she was aware that there was a reasonable risk that the claimant would suffer loss due to an act or commission which he/she knew to be unlawful, and he/she wilfully chose to disregard that (risk) “untargeted malice”;

and in either case;

iii) the unlawful conduct caused damage to the Claimant.

30. The meaningful requirement of bad faith in the exercise of the public power is the raison d’être of the tort (per Lord Steyn at page 193). SNC also referred to the judgments of Lord Steyn at pages 187-197, Lord Hope at page 197, Lord Hutton at pages 219-228, and Lord Hobhouse at pages 228-231, and Lord Millett at pages 235-237.

31. It is submitted that the factual background of the claim, as set out in the SNC’s defence, and the lack of particularity in the APoC, demonstrate that neither conditions (i) nor (ii) of Three Rivers can be met, and the Claimants have no hope of demonstrating (iii) in the light of the 2016 judgment.

The Claimant’s Response

32. The Claimants rely on C1, which does not add in any meaningful way to the pleaded case, or engage with the legal issues identified by SNC.

33. In oral submissions Mr Chetwynd did not engage with the issues relied upon by SNC above, but made the following points:
That the Claimants had exhausted all complaint procedures open to them, both through internal processes, the Ombudsman and in Court proceedings.

That under the Convention on Access to Information 1998 (“The Aarhus Convention”) the Claimants’ costs should be determined in accordance with that Convention.

That the basis for the BHA Report dated April 2009 [C3/2] commissioned by the Tunmores, the SO provided by SNC for the EIA, and the EIA itself, were all carried out based on incorrect information. There was a conspiracy between all the Defendants to proceed based on such incorrect information knowingly, and that this was the basis for the claim in fraud.

That SNC’s refusal to determine the retrospective planning applications by the Tunmores, and their failure to pursue enforcement proceedings following issue of an EN on 29 September 2010, neither of which has been resolved to date, amounted to an abuse of power which constitutes misfeasance in public office.

SNC’s failure to act in accordance with its statutory obligations under the 1990 Act, the EIA Regs and its own planning policy guidance [C3/5], also amounts to misfeasance in public office.

By SNC’s adoption of the ES prepared by Harrison as the basis of the plan for enforcement, SNC had misdirected itself which was an abuse of power amounting to misfeasance in public office.

The approach of SNC in continuing to attempt to find a way to retain the illegal works carried out by the Tunmores following the decision of Collins J in the judicial review proceedings was a contempt of court and amounted to breach of duty and misfeasance in public office.

SNC are aware that the EN cannot be complied with by the Tunmores, and that if it were to be complied with it would restore the Claimants’ water supply, so by failing to pursue the same this was an abuse of power amounting to misfeasance in public office.

The Claimants accepted that some of the claims made are allegations of criminal offences which this Court has no jurisdiction to deal with, but seek an order of this Court declaring that such criminal acts were to be referred to the Police and/or The Crown Prosecution Service for criminal proceedings to be instituted.

Conclusion on Application by SNC

The Claim Form and Particulars of Claim show no reasonable grounds for the claim having been made. Both the POC and the APoC (in the case of the latter 79 pages plus an Annex of 25 pages) are confused and very difficult to follow. Indeed, Mr Chetwynd himself had difficulty in finding his way around the APoC during his submissions. The causes of action relied upon are not properly identified, and where causes of action are relied upon, such as misfeasance in public office (as assumed by Paragraph 14 above), conspiracy, fraud, or breach of the ECHR, either no or wholly
inadequate factual basis or particulars for such claims are pleaded, despite the length of the statement of case. It is wholly unfair to all Defendants to expect them to try and identify from a confused and prolix statement of case what claim or claims are made against each of them, and to attempt to answer claims where the factual basis and/or sufficient particulars have not been provided.

35. The Claim Form, POC and APoC are an abuse of the Court’s process. First, on the basis of the allegations of misfeasance in public office, conspiracy, fraud and misconduct. These are extremely serious allegations, particularly made against officers of a public authority, and must be properly particularised and supported by appropriate evidence if they are to proceed. Neither of those conditions are satisfied. It is wholly wrong and unfair to make such allegations without particularising the wrongful acts relied upon with full particulars. Such a pleading is an abuse of the Court’s process. There is no prospect that the pleaded case in either the POC or APoC meets the threshold for the test outlined in Three Rivers for a claim of misfeasance in public office.

36. Secondly, the claim for damages against SNC relies entirely upon the same claim made against the Tummore in the 2016 proceedings. That claim failed because the Claimants had failed to demonstrate on the evidence that the actions of the Tummore had caused the losses alleged. It would, therefore, follow that such a claim for those damages on the same basis against another defendant would also fail. That issue is res judicata, because such a claim could have been made in those proceedings, if such a claim had any basis. Apsion v Dilnot (at paragraph 21) applies. In any event, even if such a claim were permitted to be brought separately it would have no prospect of success, for the reasons advanced on behalf of SNC.

37. In any event, in so far as such claims can be identified they have no real prospect of success for all the reasons relied upon by SNC, summarised above, which do not need repetition. Those reasons, on the evidence, seem to be to be unanswerable, and Mr Chetwynd made no attempt to engage with them or dispute them. There is no basis properly pleaded and/or in the evidence that would satisfy the requirements for a claim of misfeasance in public office.

38. With regard to the claims in fraud and conspiracy, common law conspiracy to defraud is an indictable only criminal offence. Similarly, intentionally encouraging or assisting an offence under the Serious Crime Act 2007, and conspiracy to commit fraud under the Fraud Act 2006 as alleged are criminal offences. There is no jurisdiction in this Court to try a claim based on allegations of commission of criminal offences as pleaded.

39. In any event, no particulars or evidence to support such allegations of fraud or conspiracy have been demonstrated. It is apparent that Mr Chetwynd’s approach is to regard professional opinions in relation to technical matters which differ from his own views as false or fraudulent. He also regards the decisions made in this matter by the public bodies concerned to act in a way with which he disagrees, even though such decisions may be well within their statutory discretion, as amounting to fraud or misconduct. The claims of conspiracy are advanced on the same misconceived basis.
40. The appropriate course to challenge decisions of public bodies would be through the mechanism of any statutory appeal process available and/or by way of judicial review, which of course he achieved very successfully in respect to the initial decision of SNC to grant retrospective planning permission to the Tunmores. A private law claim in damages would not be possible in the circumstances of this matter.

41. The claims under the HRA, said to be consequential on the allegations of misfeasance, as a result of which it is said that SNC acted contrary to Article 1 of the First Protocol, Article 6, Article 8 and Article 14 (APoC Paragraphs 29, 39) for the same reasons have no prospect of success. In any event, any claim under HRA is subject to a one year limitation period and is time barred. Any application made now to extend time in respect of events occurring in 2010 and 2011 would have no prospect of success.

42. Accordingly, SNC’s application succeeds and the Claim Form, POC, APoC are struck out as against SNC. I further conclude that the claims against this defendant are totally without merit.

APPLICATION BY EA

43. The involvement of the EA is summarised in the judgment of Collins J in the 2010 proceedings, and in Appendix 3 (entitled ‘Site History’) to the EA Determination Report dated 15th October 2012 (“the DR”) [C3/28c/35].

44. The DR was a report by the EA dated 15th October 2012 under the WRA (as amended) and the 1995 Act in respect of an application for a new transfer licence by Mr Tunmore for his proposal to transfer water from a pond known as Pond 1 (owned by Mr Tunmore) which overflows into Pond A (on adjoining land owned by Mr Chetwynd) or into a ditch. The DR recommended approval of the application.

Summary of EA’s Submissions

45. EA’s application is made on the basis that the Claim Form and POC (or APoC) disclose no reasonable grounds for bringing the claim; alternatively, the claim is an abuse of the Court’s process, and liable to be struck out in any event; further that the Claimants have no real prospect of succeeding on the claim, and summary judgment ought to be entered.

46. The EA defence at Paragraph 8 [D1/C72-84] asserts that insofar as the claim against EA can be discerned, it is contained within paragraphs 37-60 of the POC (now in paragraphs 44-56 of the APoC). EA summarises the allegations against it contained in the APoC as:

i) Conspiracy to defraud and/or provide fraudulent information in connection with the regulation of water resources at Carleton Rode Fen;

ii) Malfeasance, assumed to be a reference to misfeasance in public office;

iii) Bias and discrimination;
iv) Intentionally encouraging or assisting in an offence under Section 44 Serious Crime Act 2007 and conspiracy to commit fraud under Section 1 of the Fraud Act 2006;

v) Criminal damage under Section 1 of the Criminal Damages Act 1997;

vi) Acting in a manner inconsistent with the Claimant’s fundamental rights under the ECHR.

47. In relation to the allegations of offences under the Serious Crime Act 2007, and conspiracy to commit fraud under the Fraud Act 2006, it is submitted that the Court does not have jurisdiction to try claims based on the commission of criminal offences and such claims are an abuse of the Court’s process and should be struck out under CPR Rule 3.4(2)(b).

48. The EA also submits that the Claim Form, POC and APoC do not demonstrate any reasonable grounds for bringing the claim, and submissions made on its behalf are summarised as follows.

49. The APoC at Paragraph 44, asserts a conspiracy between Mrs Willett, an Officer with the EA, and other unnamed officers, the SNC and the Tunnorees to produce a fraudulent surface and ground water management report i.e., the BHA report of April 2009. The facts set out are wholly inadequate to support an allegation of fraud. Even if the EA had advised that 20m³ could be taken from the constructed lakes in each retrospective planning application, the planning permissions granted pursuant to those applications were subsequently quashed in 2010 following the 2010 proceedings. The information provided from the EIA process and the outflows from the Tunnores’ lakes was part of the assessment of the groundwater hydrology conducted by the EA as part of the water transfer licence application.

50. APoC Paragraph 45 asserts that Ms Martin and Mr Hewitt, (Enforcement Officers of the EA), withheld information which they had obtained from the planning and enforcement processes. The EA says that Ms Martin and Mr Hewitt investigated complaints received in 2006 in connection with the construction of Lake 4 on the Tunnores’ land. Mr Hewitt recorded that Mr Tunnore had stated that the lakes were spring fed. That was the information provided before the comprehensive EIA monitoring programme and the determination of the water transfer licence. Either way, the hydrology of the area was fully investigated in support of the application for a water transfer licence.

51. With regard to the allegation at Paragraph 46 of the APoC that the Bunwell Public Water Supply pump test in 1978 was withheld from the planning and enforcement processes, Bywater 1 at Para 15 [D1/C/90], notes that the historic Bunwell Public Supply data added very little by way of technical information to the investigation of the hydrology.

52. The allegations in the APoC at Paras 46, 47, 53 state that Mr Sibley (an Environmental Manager with the EA who had regular contact with Mr Chetwynd) produced fraudulent material by providing an alternative source for the location of the source for the River Tas to deflect attention from the true chalk water sources, from
which it is said abstraction would not have been permitted. The EA’s response to the allegations remains as set out in its Defence, at Paras 12.3 and 12.4 [D1/C/75].

53. Further the allegation at Para 48 APoC is incorrect: Paragraph 10.2.2 of the EA’s Determination Report C3/28c/12 makes no reference to producing an investigation report into the depletion of flow in the River Tay Headwaters as alleged.

54. The allegation in APoC Para 49 that data has been created fraudulently or otherwise in relation to the Royden Fen data is dealt with in detail in Bywater 1 at Paras 12-14 [D1/C/90].

55. APoC Para 50 alleges that the EA supported the ES submitted by Harrisons, alleged to be fraudulent. The EA is satisfied that the information provided by the EIA process and the water transfer licence application provided sufficient information to determine that application. There has been no challenge to the approval of the application by the Claimants.

56. APoC Para 53 again alleges withholding material information concerning the 1978 Bunwell Public Water Supply pump test. The EA has not deliberately withheld ‘material information’ concerning the historic Bunwell Public Supply data. The EA says that the data provided added little to the overall understanding of the groundwater hydrology of the Carleton Rode Fen, other than to confirm that the artesian well in the Claimants’ Pond 1 overflowed intermittently (Bywater 1, Para 15 as above) [D1/C/90].

57. APoC Para 56 makes a number of allegations of breaches of statutory duty. In addition to the EA’s response in its Defence it relies on the following:

i) APoC Para 56(c): There is no subordinate UK legislation that imposes a duty on the EA to protect the Carleton Rode Fen under the Habitats Directive (92/43/EEC).

ii) APoC Para 56(f): Mr Stuart Rickards is a Planning Liaison Officer and the APoC are hopelessly vague and inadequate as to what information regarding the level of abstraction from the ‘site’ is alleged to be incorrect, and that he is said to have ‘knowingly’ provided to SNC. There are no reasonable grounds for bringing the claim based on such insufficient details.

iii) APoC Para 56(1): Mr David Seccombe is a Team Leader in the Groundwater and Contaminated Land Team of the EA. The EA’s response to the supply of the Royden Fen data and evapotranspiration is contained in para 12.5 of the Defence. The Claimants have provided no particulars capable of supporting a claim based on misfeasance.

iv) APoC Para 56(p): The EA has set out its consideration of the application for the water transfer licence in comprehensive detail, as contained in the DR. As set out in Bywater 1, the EA took into account all additional evidence provided and applied its professional judgment (Para 7-8 Defence) [D1/C/89].

v) APoC Para 56(r): The Claimants did not have a ‘protected right’ of abstraction. The overflow from the artesian well into Lake 1 of approximately
20-40 m³ per day was unlicensed. It was therefore an uncontrolled abstraction and not a protected right. The EA has no statutory obligation to protect an uncontrolled abstraction but must have regard to that abstraction when considering other applications. In fact, the conditions applied to the water transfer licence in effect allow for far more water to overflow from the Tunmores’ lake than the artesian well historically provided.

58. The EA also relies on Three Rivers in response to the claim of misfeasance in public office, and submits that there is no evidence to support any of the components of the tort. In relation to the claim of bias and discrimination (which, assuming in the Claimants’ favour could be supportive of a claim for misfeasance in public office), the EA relies on paragraphs 37-46 of its Defence [D1/C/80-81]. In summary, the EA denies that it determined the application for an abstraction licence unlawfully and denies that its decision making was affected by bias against a Claimant. The EA says that at all stages it has acted reasonably in order to achieve a sustainable long term solution for the Carleton Fen area within the applicable regulatory framework.

59. In relation to the claims under the ECHR, the EA says that it is unable to respond properly until the claim is properly pleaded, but says that Article 1 of the First Protocol is not engaged because there has been no interference with the peaceful enjoyment of the Claimants’ land and/or the Claimants have not been deprived of their property through any administrative act of the EA. It is denied that Article 6 or Article 8 are engaged, alternatively, that any direct interference with the Claimants’ Article 8 rights which occurred were pursuant to administrative acts taken in accordance with the law and in pursuit of a legitimate aim, namely, the implementation of a long term sustainable solution for the Fen habitat which was proportionate in all the circumstances and necessary in a democratic society. It is denied that Article 14 is engaged.

60. It is denied that the Claimants are entitled to a Protective Costs Order because the claim is not one designed to confer significant public environmental benefits. The purpose of the claim is to protect the private property interests of the Claimants, and any public benefit is limited and incidental. Thus it is submitted that the claim ought not to attract the procedural costs protection afforded by Article 9(4) of the Aarhus Convention 2001. There are no grounds for the Courts to exercise their case management powers to impose such an Order.

61. Further, the EA says that the acts complained of in relation to it date back to before the 2010 proceedings and up to the issue of the water transfer licence in 2012. Thus, any claim under the ECHR is many years out of time, and there would be no ground, nor is any relied on by the Claimants, for admitting the claims based on ECHR rights to continue beyond the one year time limit.

62. The EA submits that causation cannot be proved in the light of the judgment in the 2016 proceedings for the same reasons as those relied on by SNC.

63. The EA also notes that there was no public challenge to the grant of the water licence in October 2012, nor any reference to the Ombudsman in respect of such licence. When the water transfer licence was being considered the Claimants submitted a
lengthy objection letter which is appended to the DR and each point is answered in
the DR.

64. The EA’s role in relation to this matter was limited to that of statutory consultee for
SNC and in the determination of the water transfer licence.

65. Finally, there is no possibility of the Claimants demonstrating that the EA did not act
in accordance with its statutory functions, so there could never be any causal link
between the actions or failure to act of the EA and the Claimants alleged loss.

Summary of the Claimant’s Submissions

66. The EA identified abstraction of water in Carleton Fen in 2007 but failed to take
action which resulted in a dropping of the water level. The unlawful actions of the
Tunnores resulted in the reduced water levels which affected the Claimant’s lakes.
The identification by Collins J in his judgment in the 2010 proceedings that the
evacuation works carried out by the Tunnores were illegal placed an obligation on
the EA as competent authority to undertake a full EIA and for that to be correct and
complete.

67. The EA continued to support the opinion of Harrison and the Tunnores’ expert Mr
Van Wonderen, of the effect of the work carried out by the Tunnores, which in turn
was based on the allegedly fraudulent scheme produced by the Tunnores’s
consultants BHA. The EA “flip flopped” in its view about the illegal water
abstraction by the Tunnores

68. The Claimants had no right of appeal to the granting of the water transfer licence as
they were third parties and they seek a remedy of restoration of the river to its pre-
development position. The Claimants are claiming damages against the EA for loss
to their business, the same as claimed in the claim against the Tunnores.

Conclusion in respect of EAs Application

69. There is no evidence at all that the EA failed to carry out its statutory obligations
appropriately, and again, no evidence at all of misconduct, fraud, conspiracy etc of
any kind. There is no prospect of the threshold for establishing a claim of
misfeasance in public office. There was no challenge by the Claimants as a third
party in respect of the water transfer licence by judicial review. Mr Chetwynd
appears to base his disagreement with the professional conclusions reached by the EA
or the consultants it relied upon to make allegations of misconduct, conspiracy and
fraud.

70. There are no bases on which the Claimant has identified any actionable breach or
breaches of statutory duty, there is no duty of care identified or breach of the same
identified. The claims under the HRA are bound to fail for the reasons advanced by
the EA, and as I have concluded in respect of the application by SNC. The claims
made relying on criminal statutes must be struck out for the same reasons as those I
have reached in respect of the application by SNC. The claim is further an abuse of
process because on the basis of the judgment in the 2016 proceedings causation could
not be proved and that issue is res judicata. Apsion v Dilnot applies.
71. For the same reasons as those given in respect of my conclusion on SNC’s application, I also conclude that the POC and APoC shows no reasonable grounds for any of the claims made against the EA, and that the claim is an abuse of process.

APPLICATION BY NCC

Background information derived from the statements of case and witness statements

72. NCC is the LLFA for Norfolk as defined by Section 6 (7) of the FWM.

73. By email of 15 May 2013 NCC was contacted by Simon Jackson Solicitors (the Chetwynds’ solicitors in the 2016 proceedings against the Tummores) regarding further activities said to be in the course of being done on the Tummores’ land, namely widening and deepening ditches, but also widening and deepening that part of the River Tas that divides the Tummores’ land from the Claimants’ land. The solicitors complained that the work needed consent under S. 100 of the WRA and under the Land Drainage Bylaws, and was unauthorised. They asked for “a prompt and robust enforcement response” to be undertaken as the sediment would cause pollution to the Claimants’ site and threaten the habitat of wildlife [D1/D/125]. As a result, an officer of NCC, a flood risk technician, met Mr Chetwynd on or about 4 June 2013 and inspected the reported works, taking photographs.

74. NCC determined, in line with the Environment Agency Advice Protocol, that the works did not require consent and no enforcement action would be taken. Mr Chetwynd was so informed and sent relevant information about the role of the Upper Tribunal (Lands Chamber) in resolving neighbour disputes. The SNC and the EA were also informed, the latter to ensure that possible breaches of the Water Framework Directive were investigated.

75. In July 2013 Mr Chetwynd asked NCC whether enforcement action was being taken in respect of the widening and deepening of the River Tas at Carleton Fen carried out in May 2013. NCC replied that the matter had been referred to SNC and the EA [D1/D/130]. By letter dated 20th December 2013, the EA informed the Tummores that it would not take enforcement action in respect of the reported drainage/dredging works to a tributary of the River Tas [D1/D/132-133]. On 7 January 2014, Mr Chetwynd sent an email to NCC to ask what investigation was taken by NCC and requested an explanation as to why no enforcement action was being taken [D1/D/134]. NCC responded by email of 27 January 2014 to explain its powers under the LDA and stated that the reported activities were not something in respect of which NCC had any powers of enforcement. NCC also informed Mr Chetwynd of his right of appeal through NCC’s internal complaints procedure and his right to apply to the Information Commissioner. [D1/D/135-136].

Summary of Submissions by NCC

76. The allegations against NCC are thought to be contained within Paragraphs 70-76 of the APoC. The NCC relies on its Defence and Henderson. It is submitted that the facts pleaded do not disclose reasonable grounds for the claims being made, as identified by reference to such paragraphs, as follows.
Paragraph 71 – it is alleged that NCC as the LLFA took no action in respect of its primary responsibility to consent to works that affect the flow of ordinary watercourses or manage water levels in respect of the allegedly unauthorised widening and deepening works carried out by the Tunmores to the River Tas.

78. NCC say that the claim is misconceived based on its alleged role in relation to the dredging work carried about by the Tunmores in May 2013. NCC has discretionary powers under the LDA to regulate ordinary watercourses across approximately 80% of Norfolk (outside those areas for which there is an IDB), an area which includes Carleton Fen. NCC does not have the full powers available to an IDB. The purpose of the LLFA’s regulatory role in respect of ordinary watercourses is to control certain activities that might have an adverse flooding impact and to ensure that riparian owners carry out their responsibilities. Under S. 23(1c) of the LDA, NCC is required to have regard to any guidance issued by the EA. The policy adopted by NCC is set out in the OWCP and its ‘Flood Management Strategy’. It made investigations, and determined in accordance with the OWCP and EA advice that the works complained of did not require consent and that no enforcement action would be taken. The Claimants were so informed and sent relevant information about the role of the Upper Tribunal (Lands Chamber) in resolving neighbour disputes.

79. NCC informed the SNC and the EA of the position, the latter to ensure that it could investigate possible breaches of the Water Framework Directive. The EA did so investigate and informed the Claimants of the result in their letter of 20 December 2013.

80. Accordingly, the NCC say that it had no power to take any enforcement action in relation to the works and referred the issue to the appropriate authorities. In any event, in the light of the decision in the 2016 proceedings it is denied that the Claimants suffered any loss.

81. Paragraph 72 APoC: - the Claimants rely on Section 44(1) of the Serious Crime Act 2007, but the facts pleaded do not disclose reasonable grounds for accusing the NCC or its Officers of the commission of an offence under that Section or at all;

82. Paragraph 73: - it is alleged that the dredging works were deliberately undertaken by the Tunmores in order to cause further damage either to the ecology of the Fen or to the economic operation of the Fen Lakes Fishery. NCC is unable to plead to that. It is submitted that the Claimants have proceeded on the assumption that there is a causal link which has been proved, but there is no evidence or basis for this, nor for an assertion that NCCs actions allowed the Tunmores “to lower the perch water table”, nor that NCC had any such intent as alleged.

83. Paragraph 74: - the allegation that NCC failed to undertake its statutory duties is without substance. The claim depends on the NCC having the power to enforce against the Tunmores and also having a positive duty to act. Under the LDA the NCC holds certain discretionary powers but it is not an IDB, and does not have the full range of powers available to an IDB. By way of example, its powers include a power to enforce an obligation to repair a watercourse for which it is the LLFA under Section 21 of the LDA, or to give consent for an erection of a culvert in such a watercourse under Section 23 of the LDA, (Paragraph 9 of the Defence) [D1/D97].
The NCC has no power to take enforcement action in relation to the works complained of carried out in May 2013. Accordingly, the NCC having no such power to take enforcement action referred the matter to the EA, the appropriate statutory body to ensure that it could investigate possible breaches of the Water Framework Directive. The EA did so investigate and informed the Claimants of the result in their letter of 20 December 2013.

84. In any event the authorised body, (the EA) has a discretion not to enforce. Even if that was wrong, the appropriate course for a claim against a public body such as NCC would be to apply for judicial review and there is no possibility of a private law action in damages.

85. The Claimants have not identified a single cause of action against NCC which would entitle them to damages. The Claimants have also not pleaded any facts necessary to prove causation. In view of the decision in the 2016 proceedings this is a particular difficulty for the Claimants.

86. The same points are made in relation to the way the claim is pleaded and the allegations of misconduct, criminal acts, fraud and conspiracy as made by the SNC and the EA.

Summary of the Claimant’s Response

87. The Tunmores by their excavation works were passing the flood risk downstream of the River Tas. The NCC were obliged to act under the OWPC [C/4/1], which provide that “[NCC] as [LLFA] is responsible for the consenting of works that affect the flow of ordinary watercourse outside the [IDB] districts.” It is submitted that the EA have no authority to act within an LLFA area.

88. Correspondence inspected by the Claimants in SNC’s enforcement file 2006/0269 demonstrates that NCC officers had no intention of visiting the site or of becoming involved with the allegedly illegal works, contrary to their statutory duty as LLFA. The correspondence is at [C/4/7-8] and D1/D125-134]. Further the OWCP provides that “The applicant [for consent to any work requiring consent] has the responsibility to prove that any proposal would not cause a nuisance or increase flood risk”. It would have been obvious to NCC after communication with SNC that the Tunmores could not provide such confirmation based upon the outstanding requirements of the EIA, the SO and the EN, and the Tunmores own assessment and reasons for the work to increase the speed of flow and avoid flooding. It is submitted that if the Tunmores had requested consent under the OWCP it would have been refused both on ecological grounds but also because there was a risk that waters in the river which were supposed to flood across Carleton Fen, as a designated flood zone, then those flood waters would pass unchecked to the next choke point causing more serious flooding downstream.

89. It is submitted that the NCC failed to take the requisite investigation to identify whether consent to the works should have been obtained by the Tunmores and whether it would be granted.
Conclusion on application by NCC

90. The same points apply with regard to the way in which the Particulars of Claim are drafted and the allegations of misconduct, criminal acts, fraud and conspiracy as I have found in relation to the applications of SNC and EA.

91. In any event claims under criminal statutes cannot be brought as a civil claim.

92. The Claimants have failed to identify how there could be private law claim for damages against NCC. Even if the allegations made by the Claimants are correct as to whether the dredging/drainaging works fell within the OWCP (and I am not in any position to reach a view about that) the only available remedy would be by way of judicial review proceedings in relation to the NCC’s decision. There is in any event no evidence that the NCC acted in anyway unlawfully or outside its powers.

93. In any event, even if a private law claim were available, the Claimant would not succeed on causation because of the decision in the 2016 proceedings.

94. The claim is also an abuse of process for the same reasons I have found in the previous applications.

95. The claims made in the POC and APOC accordingly show no reasonable grounds for being made, are abuse of process and are totally without merit. They have no real prospect of success and the application of NCC to strike out such claims is granted.

APPLICATIONS OF DEFRA AND DCLG

96. The application is supported by Birman 1 [D1/E/144], opposed by C4 and in reply DEFRA and DCLG rely on Birman 2 [D1/E/337]. The claims against these Defendants are set out at Paragraphs 89-116 of the APoC. The claims against DCLG are set out at Paragraphs 90-102 and the claims against DEFRA at Paragraphs 103-116. In summary, the Claimants allege against each of DEFRA and DCLG the following:

   i) that DCLG failed to “call in” the Planning Applications of the Tunnorines pursuant to Section 77 of the 1990 Act, and that DEFRA failed to “call in” the Water Transfer Licence under Section 41 of the WRA. This amounts to “malfeasance” (treated in this judgment as an allegation of misfeasance in public office) and/or a contravention of the Claimants’ human rights;

   ii) that DCLG and DEFRA have committed criminal offences under the Serious Crime Act 2007 and the Criminal Damage Act 1971, and have conspired to commit fraud under the Fraud Act 2006.

Summary of DCLG and DEFRA’s Submissions

97. Paragraph 77(1) of the 1990 Act provides a broad and unfettered discretion for planning applications to be called in by the DCLG. Similarly, Section 41(1) of the WRA provides a broad and unfettered discretion for water abstraction licences to be called in by DEFRA. The evidence is that it is the policy and practice of DCLG and DEFRA only to call in such applications where it is necessary or desirable in the
national interest. It is not the function of DCLG and DEFRA to use “call in” powers to ensure that local authorities have complied with their procedural obligations under Article 6 of ECHR or otherwise, or to exercise a form of supervisory control over local authorities by the use of such powers. DEFRA and DCLG rely on the case of Adlard v Secretary of State [2002] EWCA Civ. 735.

98. Neither Section 77 of the 1990 Act nor Section 41 of the WRA give rise to private law causes of action for damages. Any allegation that the exercise of these Defendants’ discretions under those Sections was unlawful (as a matter of public law), would be a matter for the Administrative Court to consider upon an application for a judicial review. It is submitted that the Claimants’ reliance upon those Sections to found private law claims for damages in the Queen’s Bench Division of the High Court is plainly misconceived.

99. In any event, it is submitted that there was no public law error in the decisions of DCLG or DEFRA. There were no exceptional circumstances which required either applications to be called in in the national interest.

100. Further:-

i) It is the policy of DCLG not to intervene in planning applications before the LPA has had an opportunity to make a decision. At the time Mr Chetwynd made a request to “call in” the planning application, by email dated 15 May 2013 to Eric Pickles (the then Secretary of State), [D1/E/154] the LPA had yet to determine the matter and the enforcement and monitoring process was still ongoing. Mr Chetwynd was informed of this by email dated 6 June 2013 from Mr Edward Chapman, Planning caseworker for DCLG [D1/E/157]. Mr Chapman also provided an explanation as to the circumstances that might justify call in by DCLG, none of which were applicable. Mr Chetwynd sent a further email dated 7 June 2013, [D1/E/160-161] reiterating the request to “call in” the planning applications.

ii) Following an email dated 9 July 2014 to Mr Richard Bacon MP [D1/E/163-164], Mr Brandon Lewis MP responded on behalf of DCLG by letter of 30 July 2014 to Mr Bacon [D1/E/166], reiterating the general policy of DCLG, and also explaining that the allegations made by Mr Chetwynd of malpractice in SNC’s handling of the planning applications was not something that could be considered through the call-in process, and any concerns in that regard should be pursued through the Ombudsman or the courts, as appropriate.

iii) Mr Chetwynd made a further request dated 31 August 2015 for the planning applications to be called in. That was responded to by an email dated 9 September 2015 from the Planning Casework Team of DCLG [D1/E/171] reiterating the points already made, and emphasising that local authorities act independently of central government, and that Ministers have no remit to interfere in their day to day affairs except under a specific provision of statute.

iv) DEFRA had made a decision to grant an abstraction licence to the Tunmore on 15 October 2012. Prior to the issue of a final decision Mr Chetwynd wrote a letter of objection to the grant of an abstraction licence. This letter was considered and appended (as Appendix 7) [D1/E/299-306] to the DR dated 15
October 2012 that recommended approval of the application for a licence. The response to that objection letter is also appended as Appendix 8 [D1/E/307 – 314]. The Claimants did not make any application for judicial review of that final decision.

v) Mr Chetwynd wrote to DEFRA by letter of 7 November 2013 seeking revocation of the licence under Section 55 of the WRA [D1/E/343]. DEFRA responded on 16 December 2013, [D1/E/346] explaining that Section 55 of the WRA did not apply, and therefore, the application for revocation could not be considered under that provision. The Claimants did not apply for judicial review of that decision.

vi) By his email of 9 July 2014 to Mr Bacon MP [D1/E/163] Mr Chetwynd also requested that DEFRA call in the abstraction licence. Mr Dan Rogerson MP responded on behalf of DEFRA to Mr Bacon by letter of August 2015 [D1/E/173] and explained that the call in power was exercised at the discretion of the Secretary of State, and would only be exercised in exceptional circumstances. Mr Rogerson also referred to the lack of any challenge to the abstraction licence when it was granted, and that since it was granted the EA believed that the terms of the licence had been complied with.

101. Accordingly, it is submitted that the Claimants have no real prospect of demonstrating that either DCLG or DEFRA acted unlawfully because the Secretary of State of each Government Department did not have the supervisory duty contended for by the Claimant.

102. In any event, there could be no private law claim for damages in those circumstances.

103. The claims for the alleged criminal acts: fraud, misfeasance, conspiracy etc are unparticularised and are an abuse of process.

104. It is also an abuse of process for the Claimant to seek to evade the strict time limits under CPR 54 for judicial review applications by bringing this claim as a private law damages claim.

105. The Claimants have no real prospect of showing they have suffered any actionable loss given the decision in the 2016 proceedings, and in the light of that decision the claims are an abuse of process for that reason also.

106. The Claimants have not identified on what basis the statutory provisions relied upon gave rise to a private law action. See O’Rourke v- the London Borough of Camden 1998 HL 188 at pages 192 and 194.

107. DCLG and DEFRA rely on the judgment in Three Rivers (see above) in relation to the claims in misfeasance. It should be noted that the actions of SNC in respect of the planning applications were looked at by the Ombudsman on two separate occasions and no serious criticism was levelled at it, so it is impossible to see how any misfeasance or conspiracy claims could be directed at either DEFRA or DCLG. Further the EA decision under the WRA was not challenged at the time by the Claimants.

**Summary of the Claimants’ Response**


> “Calling in” of a planning application refers to the power of the Secretary of State to take the decision making power on a particular planning application out of the hands of the local planning authority for his own determination. This can be done at any time during the planning application process, up to the point at which the local planning authority actually makes the decision.”

and

> “The power to call in planning applications is very general and the Secretary of State can call in the application for any reason. In practice, very few applications are called in every year. They normally relate to planning applications which raise issues of national significance”.

110. The Claimants, therefore, challenge the DCLG’s position that the process for calling in of planning applications cannot be activated until the planning application is determined. It is submitted that the abuse of power by SNC in failing to determine the planning applications since the ES was submitted on 15 February 2012 behoves the DCLG to behave fairly to the Claimants and it has failed to do so. It is submitted that the DCLG have failed to consider the Claimants’ request for call-in of the planning applications on its individual merits in contravention of DCLG stated policy announced on 2 December 2001 [C4 Paragraph 27/14].

111. The Claimants’ request to call-in the abstraction licences is based upon their criticisms of the DR, set out at Paragraphs 30-32 of C4, and the alleged failure of the EA to address the determinations made in respect of its actions in the 2010 proceedings. [C4 Paragraph 37].

112. The Claimants allege that the non-compliance with the 1990 Act and the WRA resulted in the infringement of the Claimants human rights under the ECHR, and the failure by DCLG and DEFRA to act constitutes an abuse of power which amounts to misfeasance in public office and fraud.

113. The judicial review procedure does not award damages so the only redress available to the Claimants is through a private law claim.

**Conclusion in Respect of the Applications of DCLG and DEFRA**

114. It is clear from the 1990 Act and the WRA that the submissions of DCLG and DEFRA are correct.
115. With regard to the Claimants’ assertion that the DCLG is wrong to state that the process for calling in cannot be activated until the planning application has been determined, it is clear from the Briefing Paper on planning applications [D1/E/214 - 231] (which provides legal authorities for the powers and duties of the Secretary of State in respect of the call-in procedure) that the DCLG has a discretion to take this approach. In any event, given my conclusions in respect of the claim against SNC, no grounds have been made out to the standard of “real prospect of success” as to why the DCLG should have called in the planning applications.

116. The only challenge to the decisions of DCLG and DEFRA in response to the requests to call in the planning applications and the abstraction licence would be by way of judicial review. The decision in *O’Rourke* makes this clear – see judgment of Lord Hoffman at page 192-194. There has not been identified any provision in the relevant statutes that creates a duty actionable in tort. There is no legislative intention in either statute to create a remedy in damages. The attempt to claim in tort for damages by bringing a private law claim is therefore an abuse of process – see the judgment of Sedley L.J. in *Clark v University of Lincolnshire and Humberside* at Paragraph 17.

117. The claims under the ECHR are also unfounded, relying entirely on alleged breaches of statutory duty and/or negligence, which fall to be struck out for the reasons set out above. It is clear from the decision in *R (Adlard) v Environment Secretary* that no claim based on an alleged breach of Article 6 can be made in these circumstances – see judgment of Simon Brown LJ at Paragraphs 34 and 38 and judgment of Dyson LJ at Paragraphs 46 - 49. In any event, such claims would be time barred and would have no prospect of being permitted to be brought out of time in the circumstances described.

118. The claims against these Defendants are misconceived and there are no reasonable grounds for them being brought. The claims are abuses of process for all the reasons relied upon by these Defendants and set out in more detail in relation to the other claims. The claims against DEFRA and DCLG are totally without merit.

**The Claimants Application**

(1) **Application to set aside order striking out the claims against BHA, Harrison, Cascade, and NWT**

119. The Claimants’ claim against all these Defendants is set out in the APoC at Paras 77-88 under the heading “The Expert Defendants”. This is expanded upon in what is described as “Annex A – Statement of Facts and Allegations Against the Expert Consultants”, which in fact is a Witness Statement (signed but undated) of Mr Chetwynd, 25 pages long. The Claimants also rely upon C3, 37 pages long, and over 1000 pages of exhibits to that witness statement. All these Defendants (to whom I also refer for ease of reference as “the expert defendants”) were represented by Mr Wycas of Counsel, save for BHA which was not present or represented. The relevant factual information set out below is obtained from the witness statements and statements of case. I have not attempted to summarise the technical detail provided by the Claimants in the APoC and C3, first because this is so prolix and confusingly presented that it is not really feasible, and secondly because it is not relevant to the
basis on which the order striking out these claims were made, or the determination I make in respect of the Claimants’ application to set aside that order.

BHA

120. BHA are civil and environmental engineering consultants who produced a ‘Report on Ground and Surface Water Management’ for the Tunnores in April 2009 (‘the BHA report’) [C3/2a]. This dealt with the issue raised in the letter from the EA dated 1 February 2008 (annexed to the BHA report) of restricting the outfall of water from the Tunnores’ site to below 20 cubic metres, to reduce the risk of flooding. The Claimants claim against BHA is at Para 84(b) of the APoC. It is alleged that BHA together with SNC and EA conspired to present a fraudulent scheme to deceive the Court in the 2010 proceedings.

Harrison

121. Harrison were instructed by the Tunnores to provide the ES for submission to SNC, in accordance with the SO provided by SNC [C3/7]. They were also instructed to provide the scoping report required for the ES and the EIA, which was produced in August 2010 [C3/8].

122. The claim is set out Paragraphs 84 (c) – (d) of the APoC where it is alleged that Harrison used fraudulent information produced by BHA in its report, knowingly and deliberately and/or with reckless indifference to form the basis of the ES in other reports and reviews, and built on that information with further unproven information, that in the light of the available data and information was known to be untrue, then formulated and produced a ground water model based on that false information and data, and essentially moulded that information to provide information in line with the requirements of the Tunnores with the alleged aim to conclude that the impact on the Claimants land and business could be assessed as being very low. In C3 the same allegations are made in respect of the Scoping Report. It is also alleged at subparagraph 84 (d) that Harrison used a fraudulent and incomplete ES as a basis to provide information to support the application for a water transfer licence on behalf of the Tunnores. It is alleged that Harrison included a summary of the hydrology that did not reflect the hydrology or the pre-development conditions, the abstractions taken place or the impacts caused to the site. In other words, the Claimants say that Harrison massaged the information and/or relied on false and misleading information to make the Scheme look better than it was.

Cascade

123. Cascade are independent consultants instructed by SNC in March 2012 to provide specialist input into the enforcement and assessment process. They prepared a scheme for SNC to enable SNC to take direct action under S. 178 of the 1990 Act in default of compliance by the Tunnores with the EN.

124. The Claimants (at Paragraph 84(e) APoC) make allegations that Cascade:

“made false reviews of the Regulation 22 Information [not identified] that considered that all the required EIA information as required had been provided, which was subsequently proven
by their own consideration in the final review not to be true as determined by [SNC’s] actions in 2014, when [SNC] in the absence of the required information instructed Cascade to provide a scheme based on a recommendation that all the information was available”.

It is then stated that:

“Cascade produced a second fraudulent scheme in a further attempt to support [SNC’s] attempt to retain the illegal works through under enforcement.”

In submissions Mr Chetwynd explained that his complaint was, in summary, that the Cascade scheme professed to raise ground water levels but in fact did not do so, i.e., the scheme proceeded on an incorrect basis.

NWT

125. NWT was one of the statutory consultees consulted by SNC in relation to the enforcement process against the Tunmores.

126. At Paragraphs 84(a) of the APoC it is alleged that NWT withheld significant pre-development information from the Planning Enforcement and EIA processes, so that the processes would be conducted without such information or data establishing the pre-development condition of Carlton Fen, and produced a Report in 2007 which withheld that information. It is further alleged that when consulted as a statutory consultee on the developers’ allegedly fraudulent application for a Certificate of Lawful Use NWT stated that they “are not aware of any information that disputes the claim that the works in question took place in 1995”. The Claimants rely on the management plan for countryside stewardship application for Carleton Fen produced by NWT in June 1996 [C3/9a].

Claims against all expert defendants

127. Claims in fraud and claims under the Criminal Damages Act 1971 are also made against all the expert defendants. There is a claim that the expert defendants have failed to comply with obligations under S. 24(2) of the WRA and/or knowingly withheld material information relating to the groundwater hydrology on Carleton Fen. There is a claim that they have produced and/or supported fraudulent expert evidence that has supported and enabled SNC and EA in their aim of retaining the illegal and unauthorised works through under enforcement. A mandatory order is sought requiring all expert defendants to provide the information required by the EIA Scoping Opinion and “A compensation order for damages in relations to allegations of conspiracy to commit fraud, contempt of court, bias, discrimination and/or failures and/or malfeasance committed by the experts....” A costs capping order is sought capping the Claimants’ Liability to pay costs against these defendants at £1,000 (APoC Paragraphs 87 9a)-88).
Summary of Response of Cascade, Harrison and NWT

128. Cascade is a multi-disciplinary environmental consultancy which was instructed to advise SNC (the appropriate LPA) in relation to the planning matters which arose from the excavation by the Tunmores of the new lake.

129. Harrison is a GEO Environmental and GEO Technical Consultancy which was instructed by the Tunmores during the planning process.

130. NWT was a consultee in relation to the planning process entered into by the Tunmores.

131. These Defendants remind the Court of the fact that this is the third attempt by the Claimants to revisit the claims against them, and without any attempt to identify the basis for such claims. First, the claims were stayed by order dated 8 April 2016, and secondly they were struck out by the order dated 11 July 2016. There were two opportunities for the Claimants at those stages to properly identify their claims against these Defendants.

132. On behalf of the expert defendants general submissions were made in respect of all the claims but also the following specific points in relation to decisions against individual Defendants were submitted.

BHA

133. The attention of the court was drawn to the fact that the conspiracy charges against BHA have changed over time. These allegations were originally made only against BHA, but they have now enlarged to encompass all expert Defendants. The claims against BHA were in any event statute barred at the date of issue of the claim, relating to matters which pre-dated the 2010 proceedings.

Harrison

134. The claims of manipulation of data are not understood, but in any event are irrelevant because the Claimants’ own expert, Dr Charles Wilson had all the relevant data when he was instructed in the 2010 proceedings.

Cascade

135. It is not understood how the Cascade scheme in December 2014, relating to allegations that this did not raise the water levels, could said to be the basis of a fraud or conspiracy.

NWT

136. NWT was consulted by SNC. There is no evidence or assertion of any details as to what is alleged against NWT. There is no evidence to support this claim. In any event all these were matters known by the Claimants’ experts before the judicial review proceedings.

137. In relation to the claims against all these Defendants the Claimants have failed to identify any duty owed by any them to the Claimants. There is no pleaded case of
how the alleged duty between the Claimants and any of these Defendants arose. There would be no basis for any such duty. There would be considerable difficulty in asserting and relying on any duty in respect of issues of remoteness, proximity, assumption of responsibility etc. which have not been addressed at all by the Claimants. It would be very unlikely that one party’s adviser owed a duty of care to another party. Even if a duty could be established the Claimants would have to establish that it was a duty to protect the Claimants from pure economic loss. No such case is pleaded by the Claimants.

138. Although the Claimants’ case is put entirely on the basis of fraud, criminal damage, conspiracy etc., the only allegations that are made in the APoC are on the basis that the advice provided by these Defendants was incorrect. This could not possibly found any basis for the allegations made. In any event, the advice and schemes contributed to by all these expert Defendants were in the broadest terms, providing advice to allow the Tunnorese to retain their newly excavated lake, on the basis that the lakes were not damaging to the surrounding environment. This is the same conclusion that was arrived at in the 2016 proceedings. There is no possibility that any of the serious allegations could be sustained. There could be no case that the Defendants caused damage under the Criminal Damages Act 1971. The only case that could be asserted would be that the Tunnorese caused any damage, but it was found in the judgment in the 2016 proceedings that the excavation of the lakes on the Tunnorese’ land did not cause any damage to the Claimants.

139. It is difficult to see the benefit to any of these Defendants of entering into a conspiracy to keep illegally constructed lakes. The claims are inherently implausible, and there is no cogent evidence or any evidence at all to support an allegation of conspiracy or fraud.

140. Further, the precise allegations against each Defendant are not sufficiently particularised, they are vague and unsubstantiated and as such as they fail to comply with the Court Rules and Practice Directions and show no reasonable grounds for a claim having been made.

Conclusion in Respect of the Claim Against the Expert Defendants

141. I concur with the submissions made on behalf of the expert defendants. These submissions apply equally to BHA. As I concluded as long ago as April 2016, there is no basis made out for any claim against any of these parties. There has been no attempt to identify any duty which could have been owed to the Claimants and as these were all experts or agencies instructed by others, it is impossible to see how any of them would have owed any private law duty to the Claimants. None is in fact asserted.

142. The allegations of criminal actions of fraud, conspiracy etc are scurrilous, vexatious and unsupported by any proper pleadings or factual assertions or evidence. It became apparent during the course of Mr Chetwynd’s submissions that he regards all expert opinion that does not concur with his own view as false and therefore, in his view, fraudulent. That appears to be the sole basis on which the allegations of fraud and conspiracy are made.
143. The Claimants’ claims against these Defendants show no reasonable grounds for being made and were correctly struck out. The Claimants’ application to set aside that order is therefore dismissed. I find such claims to be totally without merit, and the application to set aside the order, not having attempted to correct the defects in the claims identified in the previous orders, is also totally without merit.

The Claimants’ application to refer alleged crimes to a criminal prosecutor

144. This application is an abuse of process and vexatious. No credible particulars of any crimes are provided. The Claimants have already referred the matters referred to in these proceedings to the Norfolk Police, who have declined to pursue any criminal charges, [C4/1]. The application is totally without merit.

General

145. This is a very sad and unfortunate case in which numerous sets of proceedings have been pursued in the civil courts, all as a result of the original unlawful development carried out by the Tunnores and the attempts by the SNC and EA to deal with the retrospective applications for planning and for water licences following the decision in the 2010 proceedings. None of what ensued prior to those proceedings was due to any fault of the Claimants, and indeed, they see themselves as being the victims of the unauthorised development carried out by the Tunnores, because they are convinced that this has resulted in damage to the lakes on their property, and a consequential loss to their business. It is apparent that the Claimants are unable to accept the decision made in the 2016 proceedings and rather than pursuing the appeal process to challenge that decision, (or perhaps having pursued it and failed to obtain permission to appeal), they are attempting to seek vindication of their position by these claims against nine Defendants, six of them publicly funded bodies,

146. In summary, all the claims are, or remain, struck out for the following reasons:-

i) They show no reasonable grounds for being brought, the causes of action being misconceived, in many cases are time barred and in any event not properly pleaded or particularised.

ii) The POC and APOC are prolix, confused and entirely unfair to any of the Defendants to attempt to unravel and plead to.

iii) None of the claims made against the public body Defendants (SNC, NCC, DEFRA and DCLG), are capable of being made by private law claims for damages, and any proceedings would have to be by way of judicial review, for which they are all substantially time barred.

iv) Leaving aside those claims where private law claims would not be permissible, none of the claims for damages have any possibility of succeeding, and are an abuse of process, because they all depend, in order to succeed on causation, on demonstrating that the actions of the Tunnores caused loss to the Claimants, and that issue is res judicata, having been determined against the Claimants in the 2016 proceedings.
v) The numerous allegations of misconduct, fraud, conspiracy to defraud and commission of criminal acts, are not properly particularised, unsupported by any factual allegations or evidenced by supporting witness statements and therefore an abuse of process. I regard them as vexatious and scurrilous. I note that, following my indication to Mr Chetwynd at the end of the hearing that I would not refer any matters in the proceedings for investigation by the police or the DPP, and giving my reasons for that, he persisted in requesting me to do so by email following the hearing.

vi) All the claims brought in this action I therefore find to be totally without merit.

147. It is extremely unfortunate that, if it be the case, the Claimants did not seek any legal advice before proceeding with these claims and their subsequent applications. Any money spent on initial legal advice would have been well worth it, given the likely costs consequences that will ensue from the applications before me. I have concluded that the entire litigation is misconceived and unfounded.
Neutral Citation Number: [2016] EWHC 156 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Case No: HQ11X02516

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2016

Before:

His Honour Judge Reddihough
(Sitting as a Judge of the High Court)

Between:

(1) Bryn Michael Chetwynd
(2) Joanna Valerie Chetwynd

- and -

(1) Barry John Tunmore
(2) Caroline Tunmore

Claimants

Defendants

Mr Wayne Beglan (instructed by Simon Jackson Solicitors) for the Claimants

Mr Wayne Clark and Mr Joe Ollech (instructed by Mills & Reeve LLP) for the Defendants

Hearing dates: 2-4, 7-11, 14-15 December 2015

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A Paragraph 6.1 no official shorthand note or tape recording need be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Reddihough
His Honour Judge Reddhough:

1. This is a claim for damages and injunctive relief by the claimants against the defendants arising out of their respective ownership of adjoining areas of land in rural Norfolk. In essence the claimants claim that the defendants have excavated lakes on their land which have adversely affected the land owned by the claimants and in particular the water levels in fishing lakes thereon. The dispute giving rise to the claim has a long and involved history and it is necessary to set out some of the background to it.

2. The claimants jointly own land known as Fen Lakes Fishery (the Fishery), Carleton Rode, Norfolk. The land is an area of approximately 3.5 hectares which has on it six lakes totalling about 1.5 hectares in size. It appears that the lakes have been there since at least the 1970s. This land was purchased by the claimants in December 2004 and their ownership was registered on 15 January 2005. The previous joint owner, Mr Robin Ford, had been operating the Fishery as the Fen Angling Club and through the sale of day tickets to anglers who fished the lakes. The Fishery is situated within Carleton Rode Fen (the Fen), an area of some 12.6 hectares, which has been designated as a Country Wildlife Site. The river Tas flows along the southern boundary of the Fishery.

3. Adjacent to the Fishery and also in the Fen is an area of about 7 hectares of land of which the defendants are the joint owners. They became the owners of that land on 17 January 1995, having purchased it from the estate of Harry Rush, who had also owned the Fishery before he sold it to Mr Ford and his co-owner in 1992. The first defendant, Mr Barry Tunmore, has lived in Carleton Rode since 1974. In 1986 he purchased White Lodge Farm and he and the
second defendant have lived there since their marriage in 1987. White Lodge Farm is a short distance from their land in question in the Fen, but on the other side of Fen Road which runs to the north of that land and the Fishery.

4. Subsequent to the purchase of the defendants’ land in the Fen the first defendant excavated four lakes upon it. For ease of identification in this case the six lakes at the Fishery (each of which has a name) have been designated Ponds A-F (although C and D are joined), and the lakes on the defendants’ land as Lakes 1-4 (although Lakes 2 and 3 form one body of water). The Lakes are to the west of the claimants’ land, with Lake 1 being relatively close to Pond A. There is some doubt about precisely when the lakes on the defendants’ land were excavated but according to the first defendant Lake 1 was completed in 2001, Lake 2 by June 1999, Lake 3 in 2000 and Lake 4, which is on the south side of the River Tas, in 2005/6. Thus all the Lakes except Lake 4 had been completed prior to the claimants’ purchase of the Fishery. The total surface area of the Lakes is approximately 8,200 m².

5. In 1989, when Mr. Robin Ford was already engaged in the running of the Fen Angling Club at the Fishery, which at that time was still owned by Mr. Rush, he made a planning application for the excavation of three fishery lakes and a parking area on the land in the Fen now owned by the defendants. It appears that the application was made with a view to increasing the size of the Angling Club by having the three additional lakes. There were various objections to the planning application and it was refused by the South Norfolk District Council (SNDC) in August 1989, the first reason for the refusal being the proposed development would involve the destruction of a nature conservation site of
county significance through physical works and alteration in the drainage. It would seem that, by reason of this refusal of planning permission, Mr. Ford purchased only the Fishery from Mr. Rush in 1992 but not the land now owned by the defendants. There is an issue as to whether the defendants knew of this planning application and its refusal before and/or after their purchase of their land in the Fen in 1995. Prior to the excavation of the Lakes on their land, the defendants did not make any planning applications for such works.

6. The claimants’ purchase of the Fishery in 2004 was with a view to continuing to run it as a commercial fishery, as Mr. Ford had done. The first claimant had recently retired from the army and had a longstanding interest and involvement in angling.

7. The defendants assert that initially the construction of Lakes 2 and 3 arose from the widening and extension of existing dykes and tributaries on their land. Once the Lakes were completed, they did not intend to utilise the land for a commercial fishery but they stocked the Lakes with fish. Initially they were fished by family and friends, but then local anglers became interested and the first defendant formed a members club for anglers at the Lakes and also made day tickets available. The profits of this angling operation, while it continued up to 2010, appear to have been less than £1,000 per annum.

8. It appears that, subsequent to the excavation of Lake 1 in 2001, the defendants agreed with Mr. Ford that a pipe be placed between Lake 1 and Pond A so that excess water from Lake 1 would feed into Pond A. This pipe was no longer in position when the claimants purchased the Fishery.
9. The local planning authority (SNDC) became aware that the Lakes had been excavated without the required planning permission and in May 2007 resolved to take enforcement action to have the land restored to its original state. The defendants through an agent then made an application for a certificate of lawful use of the land on the basis that the Lakes had existed for more than ten years so that the absence of planning permission was obviated. That application falsely stated that the Lakes had been in existence since 1995. Subsequently, the application for a certificate of lawful use was withdrawn and instead the defendants made two applications in September and October 2007 for retrospective planning permission for Lake 4 and Lakes 1, 2 and 3 respectively. In June 2008, SNDC allowed the applications and granted retrospective planning permission for the Lakes with a number of conditions attached, including a condition that outfall from them should not exceed 20 m³ per day, that being the limit over which a water abstraction licence would be required under the Water Resources Act 1991.

10. The first claimant had noted that from June 2005 the water level in the Ponds at the Fishery dropped and that the situation deteriorated over the following years. The first claimant asserts that this reduction in water levels in the Ponds has been caused by the excavation of the Lakes on the defendants’ land. He considered that the retrospective planning permissions for the Lakes should not have been granted and he made an application for judicial review to quash them. The defendants did not participate in those proceedings. The judgment in the judicial review application was delivered by Collins, J. on 13th May, 2010. He quashed the retrospective planning permissions for the Lakes on the basis that the decisions to grant the permissions were inconsistent with
environmental policies which applied to the Fen and found that there had been a failure to require an environment impact assessment within the relevant regulations. He also found that the construction of the Lakes gave rise to an abstraction of water from the underground strata and that any outfall or overflow of such water from the Lakes amounted to an abstraction of water for the purposes of the Water Resources Act 1991. The defendants accept that the Lakes do give rise to such abstraction.

11. Following the decision in the judicial review proceedings, SNDC asked the defendants to comply with the Environmental Impact Assessment Regulations by preparing an environmental statement. Thereafter, on 29th September, 2010, SNDC issued to the defendants an enforcement notice in respect of the breach of planning control occasioned by the construction of the Lakes without planning permission. The enforcement notice included a requirement for the defendants to submit an environmental assessment in accordance with the Environmental Impact Assessment Regulations, indicating the hydrological and ecological impact of the Lakes; and for them to implement a scheme of works to be approved by SNDC to reduce the total abstraction of ground water from the site to less than 20 m³ per day and to remedy the adverse ecological impacts of the unauthorised construction of the Lakes. The enforcement notice took effect on 29th December, 2010 and compliance was required by 29th June, 2011.

12. Thereafter, there has been a great deal of work and monitoring undertaken by Harrison Environmental Consulting on behalf of the defendants and Cascade Consulting on behalf of SNDC regarding the effect of the Lakes on the Fen
and the work which is required to remedy the ecological impact of the Lakes. A considerable number of reports and assessments has been prepared by these consultants. There has also been the involvement of the Environment Agency, which on 15th October, 2012, granted the defendants an abstraction licence under the Water Resources Act 1991, to transfer water from Lake 1 to Pond A or into a ditch leading to the River Tas. There have been various extensions of time for compliance with the enforcement notice. Different methods of complying with the enforcement notice, including the infilling of one or more of the Lakes, have been discussed between SNDC and the defendants or their representatives. An offer of compensatory land owned by the defendants elsewhere in the Fen as an alternative to compliance with the enforcement notice was rejected by SNDC.

13. By a letter dated 27th November, 2015, a few days before the trial of this claim commenced, SNDC informed the defendants that in order to comply with the enforcement notice, they would be required to infill Lake 1 after a period of a minimum of six months monitoring of Lakes 2 and 3 to determine ground water influences. After such monitoring, SNDC would conclude the overall scheme of work, including the infilling of Lake 1, to be undertaken by the defendants. The defendants have indicated that they will adhere to this requirement and agree also to the infilling of Lakes 2 and 3 if required.

14. As mentioned above, the claimants claim that construction of the Lakes has caused a significant decrease in the water levels in the Ponds at the Fishery, which it is alleged has had a detrimental effect on the Ponds and the viability of a commercial fishery there. In December 2010, in a very cold spell when
ice formed on the Ponds, a large number of fish died and it is asserted by the claimants that this loss, together with fish losses at other times, was caused by the low water levels in the Ponds.

15. Having set out some of the background to this matter, it is now appropriate to summarise the basis of the claimants’ claim. The claimants firstly make a claim under section 48A of the Water Resources Act 1991 (as amended). Under that section, the claimants claim in respect of loss and damage allegedly suffered by them as a result of the defendants’ abstraction of water resulting from the construction of the Lakes. It will be necessary to consider in more detail the provisions of section 48A. Further and in the alternative, the claimants claim that the excavation of the Lakes created a nuisance and/or that the defendants acted negligently in excavating the Lakes as a result of which they have suffered loss and damage. The claimants also claim that the defendants are guilty of an economic tort by deliberately interfering with the claimants’ business of running the Fishery business. The claimants claim a mandatory injunction requiring the defendants to execute such works as may be necessary to restore the ground water levels in the Fishery to the levels prevailing prior to the construction of the Lakes on the defendants’ land. The claimants further claim damages for the loss of fish from the Ponds, for loss of income from the Fishery, for the costs of remediating the Ponds, for expenses incurred and for loss of amenity.

16. In their defence, the defendants deny that the excavation of the Lakes has caused or contributed materially to the loss of any water supply to the Fishery or caused any loss or damage to the complainants, and assert that any such
loss is due to other causes. It is alleged that the claimants refused to accept an offer from the defendants to reinstate the discharge of water via the pipe from Lake 1 to Pond A. The defendants admit that they have abstracted water from the underground strata within the meaning of section 48A of the Water Resources Act 1991, but deny liability under that section. It is denied that the claimants have any claim in negligence or nuisance or in respect of an economic tort. The defendants also claim that because Mr. Ford, the claimants' predecessor in title, acquiesced in the construction of Lakes 1, 2 and 3, an equitable estoppel or easement arises entitling the defendants to use the Lakes in such manner that interferes with the water supply to the Fishery provided they supply water by pipe from Lake 1. It is asserted that in any event an injunction is not appropriate relief.

17. In my view, it is appropriate, before considering the evidence in this case, to rule upon two particular questions of law which arise and which are of fundamental importance to the resolution of issues as to liability and causation regarding this claim.

18. The first of those questions of law is in relation to liability under section 48A of the Water Resources Act 1991, which was inserted into the Act by section 24 of the Water Act 2003. Section 48A provides as follows:

“(1) Subject to sub-section (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
(2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.

(3) Such a claim shall be treated as one in tort for breach of statutory duty.

(4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public or would put public health or safety at risk.

(5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.

(6) Nothing in this section prevents or affects a claim for negligence or breach of contract.

(7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage - (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section); (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59(C)(6) below) disapplying that duty; or (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence, but without prejudice to the application of section 48 above.”
19. As I have already stated, the defendants accept that the construction of the Lakes has given rise to an abstraction of water within section 48A by reason of there being an outfall or overflow of water from the Lakes or any of them. However, it is submitted on behalf of the defendants that the claimants have failed to prove as a matter of fact that the abstraction has caused any material loss or damage. This issue of fact will largely turn on the assessment of the expert evidence. Secondly, the defendants submit that, under section 48A, the defendants can only be liable for loss or damage, caused by the abstraction, which could reasonably have been foreseen by them. It is argued that even if the statutory provision gives rise to strict liability, the proper interpretation of it is that the loss or damage in respect of which a claim may be made is limited to that which is reasonably foreseeable by the defendants.

20. The defendants place reliance by analogy on *Cambridge Water Co. v Eastern Counties Leather PLC* [1994] A.C. 264, where solvent from the defendants’ tannery seeped into the ground and was conveyed in percolating water to the plaintiffs’ domestic borehole 1.3 miles away, causing the water in the borehole to become unfit for human consumption. Whilst strict liability arose under the rule in *Rylands v Fletcher*, it was held that foreseeability of damage of the relevant type was a prerequisite of liability in damages under the rule (see pp. 305H to 306D). Because the plaintiffs could not establish the pollution of their water supply by the solvent was reasonably foreseeable, the action failed.

21. The claimants in the present case submit that section 48A was intended to replace any liability there could be in the existing common law where
foreseeability may have been necessary and that the scope of the liability under the section is not expressed to be limited in any way by reference to foreseeability or otherwise. Thus it is said once the claimants prove any loss or damage was caused by the abstraction, the defendants are strictly liable for it.

22. Counsel have been unable to find any reported case which assists as to the interpretation of section 48A. Although sub-section (3) provides that a claim brought under section 48A shall be treated as one in tort for breach of statutory duty, it is clear in my judgment that the actual breach is not the abstraction of water but the causing of loss or damage by the abstraction. Clerk & Lindsell on Torts (21st Edition) at Paragraph 9-50 states:

“Non-compliance with a statutory duty cannot be actionable unless the injury was of the type which the statute was passed to prevent. If a statute requires something to be done with a view to avoiding one particular type of damage, then, if non-compliance with the statute results in another form of damage, no action will lie, on the basis that the damage which occurred was not within the statute. Each case turns upon the interpretation of the statute, and this factor makes it difficult to formulate any more precise principle. The harm may not be within the ambit of the statute either: (a) because the claimant does not come within the particular category of persons contemplated; or (b) because the type of damage was not that which the statute was intended to guard against.”

23. In my judgment, the proper interpretation of section 48A is that foreseeability of the loss or damage in question is not required. The words in sub-section (1) are clear: “An abstractor shall not by that abstraction cause loss or damage to
another person." There is no limitation or qualification in relation to the loss or damage or its type. If Parliament had intended there to be any limitation or qualification to the loss or damage which could be claimed by reference to foreseeability or otherwise, then it could have been expressly provided for in the section. There is no reason in my judgment to override the clear words of the section and read into it a necessity for foreseeability of loss or damage on the part of the defendants. The abstraction of water may well cause loss or damage and so section 48A puts the risk on the abstractor: if his abstraction causes any loss or damage he takes the consequences and is strictly liable for all loss and damage caused whether he could have foreseen it or not. There are other statutory provisions which give rise to such strict liability - see e.g. the Animals Act 1971, which provides that the keeper of any animal belonging to a dangerous species is liable for "any damage" caused by that animal, subject to specific statutory defences.

24. The second question of law to be considered at this stage relates to causation of loss and damage. The central issue in this case is whether the excavation of the Lakes and abstraction of water on the defendants’ land caused a reduction in water levels in the claimants’ Ponds and consequent loss and damage. As will be seen, it is put on behalf of the defendants that there were a number of potential causes of the reduction in water levels of the Ponds. It is submitted on behalf of the defendants that it is for the claimants to prove on the balance of probabilities that the defendants’ abstraction of water by the excavation of the Lakes was the effective cause of the claimants’ alleged loss or damage. It is said that if there are a number of causes of the reduction in the water levels in the claimants’ Ponds, the claimants only succeed if they prove that the
defendants' abstraction was the effective cause of the damage. The defendants argue that it is for the claimants to prove that other potential causes raised evidentially by the defendants did not cause the crucial water level reductions giving rise to loss or damage. Therefore, say the defendants, the proper approach to establishing causation in this case is the “but for” test.

25. The “but for” test is described as follows at Paragraph 2-09 of Clerk & Lindsell (ibid):

"The first step in establishing causation is to eliminate irrelevant causes, and this is the purpose of the “but for” test. The courts are concerned, not to identify all of the possible causes of a particular incident, but with the effective cause of the resulting damage in order to assign responsibility for that damage. The “but for” test asks: would the damage of which the claimant complains have occurred “but for” the negligence (or other wrongdoing) of the defendant? Or to put it more accurately, can the claimant adduce evidence to show that it is more likely than not, more than 50 per cent probable, that “but for” the defendant’s wrongdoing the relevant damage would not have occurred. In other words, if the damage would have occurred in any event the defendant’s conduct is not a “but for” cause ... It is worth bearing in mind that the “but for” test functions as an exclusionary test, i.e. its purpose is to exclude from consideration irrelevant causes. The fact that the defendant's conduct is found to be a cause applying the “but for” test, is not conclusive as to whether he should be held responsible in law since the function of the causal enquiry in law is to determine which causes have significance for the purpose of attributing legal responsibility. It is sometimes said that the law
seeks the causa causans (effective factor) rather than the causa sine qua non (factor(s) without which damage could not have occurred).”

26. The claimants submit that it is sufficient to establish causation if they prove that the excavation of the Lakes and water abstraction was a significant cause of or made a material contribution to the reduced water levels in the Ponds and therefore to the consequent loss and damage. So, if there were a number of causes or potential causes of the reduction in water levels, the claimants establish causation if the excavation of the Lakes made a material contribution, i.e. more than de minimis, to the reduction. That is a different approach to the “but for” test and does not involve the claimants having to prove that the excavation of the Lakes made a difference to the outcome in terms of the occurrence of the alleged loss or damage, or having to prove that the loss and damage would not have occurred if it were not for the excavation of the Lakes.

27. There are cases where it has been held that, in certain situations, the “but for” approach to causation is not appropriate. This has principally arisen in cases involving claims for industrial disease or in respect of clinical negligence. Thus, in Bonnington Castings v. Wardlaw [1956] A.C. 613, it was held by the House of Lords that the “but for” test should not apply. The claimant in that case had contracted pneumoconiosis from inhaling air which contained silica dust at his workplace. The main source of dust was from pneumatic hammers for which the employers were not in breach of duty (the innocent dust). Some of the dust (the guilty dust) came from swing grinders for which they were responsible by failing to maintain the dust extraction equipment. There was no
evidence as to the proportions of innocent dust and guilty dust inhaled by the claimant. On the evidence, the claimant could not prove “but for” causation, in the sense that it was more probable than not that, had the dust extraction equipment worked efficiently, he would not have contracted the disease. Nevertheless, the House of Lords drew an inference of fact that the guilty dust was a contributory cause, holding the employers liable for the full extent of the loss. The claimant did not have to prove that the guilty dust was the sole or even the most substantial cause if he could show, on the balance of probabilities, the burden of proof remaining with him, that the guilty dust had materially contributed to the disease. Anything which did not fall within the principle de minimis non curat lex would constitute a material contribution.

28. A not dissimilar case was McGhee -v- National Coal Board [1973] 1 W.L.R.1, where the claimant was non-negligently exposed to brick dust by his employers but they were in breach of duty in failing to provide adequate washing facilities so he had to cycle home caked in brick dust. He contracted dermatitis by reason of exposure to brick dust. It was held that the cycling home caked in dust materially added to the risk of him developing dermatitis and so the defendants were liable because their negligence made a material contribution to the dermatitis.

29. Likewise, in Fairchild -v- Glenhaven Funeral Services Limited [2003] 1 A.C. 32, the “but for” causation test was not applied. In that case the claimant had contracted mesothelioma, having been employed by various employers who had all in breach of duty exposed him to asbestos fibres. The evidence established that one fibre actually caused mesothelioma as opposed to all
contributing so to do. Even though as a fact only one of the defendant employers would have caused the injury, the claimant could not, because of the inadequacies of medical science, establish which. The House of Lords held that all of the employers who contributed to the risk of developing mesothelioma were liable.

30. In Bailey -v- The Ministry of Defence [2009] 1 W.L.R. 1052, the claimant was a patient in hospital who sustained brain damage when, in a weakened physical state and so unable to react, aspirated her own vomit and suffered cardiac arrest. Her damage would probably not have occurred if she was not in such a weakened state. There were two causes of her weakened state, pancreatitis (which was not attributable to the defendants’ negligence) and a period of negligent care for which the defendants were responsible. The claimant could not prove “but for” causation because it was not possible to say, on the evidence, that in the absence of the pancreatitis she would nonetheless have been so weakened by the defendants’ negligence that she would have been unable to respond naturally to her vomit and so to have avoided the cardiac arrest and resulting brain damage. It was argued on behalf of the claimant that the reason she aspirated was her extreme weakness which was caused or materially contributed to by the defendants’ negligence. The Court of Appeal held that there were two contributory causes of the claimant’s weakness, the non-negligent cause and the negligent cause, and since each contributed materially to the overall weakness which caused the aspiration, causation was established. It was said that Bonnington Castings -v- Wardlaw was authority for the proposition that, in a case involving cumulative causes, where the inadequacies of medical science mean that the relative potency of
the causes cannot be established, the claimant merely has to establish that the defendants' breach of duty made a material contribution which means something more than de minimis. The case of Wilsher v Essex AHA [1988] A.C. 1074, upon which the defendants relied, was distinguished. That was because Wilsher was a case which did not involve causes cumulatively causing injury but a case where there were distinct causes which operated in a different way and might have caused the injury, but the claimant could not establish which cause either caused or contributed to his injury. At Paragraph 46 in Bailey, Waller, L.J. stated: “I would summarise the position in relation to cumulative cause cases as follows. If the evidence demonstrates on the balance of probabilities that the injury would have occurred as a result of the non tortious cause or causes in any event, the claimant will have failed to establish that the tortious cause contributed. .... If the evidence demonstrates that “but for” the contribution of the tortious cause the injury would probably not have occurred, the claimant will (obviously) have discharged the burden. In a case where medical science cannot establish the probability that “but for” an act of negligence the injury would not have happened but can establish that the contribution of the negligent cause was more than negligible, the “but for” test is modified and the claimant will succeed.”

31. A common feature of these cases where the “but for” test has not been applied appears to be that there was one agent or condition brought about by cumulative or consecutive causes, one of which involved fault on the part of the defendant, which resulted in the disease or injury in question. Even though, because of the inadequacies of medical science or scientific knowledge, it was inherently impossible for the claimant to prove exactly how
his disease or injury was caused, the defendant was liable if the claimant
proved that the defendant’s fault made a material contribution to it or that such
an inference could properly be drawn. Such cases are to be distinguished from
the situation in cases such as *Wilsher* where there were not cumulative causes
of the injury but the claimant merely proved that his injury could have been
causd by a number of different factors but could not prove which caused or
contribution to his injury.

32. In the present case, the claimants are saying in effect that a similar approach
should be adopted to the disease and clinical negligence cases referred to
above, and that even if there were other causes of the reduction in water levels
in the Ponds, provided it can be proved on the balance of probabilities that the
excavation of the Lakes made a material contribution - more than *de minimis* -
to the reduction in levels, the defendants are liable.

33. In my judgment the approach in the disease and clinical negligence cases of
only having to establish a material contribution to the injury cannot properly
be extended to a case such as the present, where the factual situation is very
different. In my judgment the defendants are correct in submitting that the
normal “but for” causation test should be applied. The essence of the
claimants’ case is that a reduction of the water levels in the Ponds caused their
alleged loss and damage. Thus, in my judgment, the claimants must prove on
the balance of probabilities that, but for the excavation of the Lakes, their loss
and damage would not have occurred. If, therefore, for example, other causes
would have resulted in the lowering of the water levels such that the loss and
damage occurred in any event, then the Lakes would have made no difference
to the outcome and causation is not proved. On the other hand, if other potential causes would only have lowered the water levels to a limited or insignificant degree at most and the claimants prove on the balance of probabilities that the Lakes caused additional lowering of levels such that the loss and damage resulted, they will succeed on causation. In short, I hold that the claimants must prove that it is more likely than not that, but for the excavation of the Lakes, the crucial lowering in the water levels of the Ponds and any consequent loss and damage would not have occurred.

34. I now turn to consider the lay and expert evidence in this case, bearing very much in mind the conclusions I have reached on the two questions of law just considered. So far as lay witness evidence is concerned, I have read witness statements from the first claimant, both defendants and Mr. Kevin Greenwood and Mr. David Chadwick on behalf of the defendants. Each of those witnesses gave oral evidence before me and confirmed the contents of their witness statements. It should be noted that the witness statement from the first claimant was extremely lengthy and contained substantial passages setting out his opinions and beliefs about the matters in issue in this claim. Plainly he is not an expert witness and the defendants took exception to large sections of his witness statement which they identified for me. I make it clear that, insofar as the first claimant expressed opinions or beliefs in relation to matters which are more properly in the province of expert witnesses, I have ignored them.

35. The expert evidence in this case has consisted firstly of detailed reports and lengthy oral evidence from consultant hydrologists: Dr. Charles Wilson on behalf of the claimants and Mr. Jan Van Wonderen on behalf of the
defendants. In relation to the damages claim, I have considered reports and heard evidence from fisheries management experts: Mr. Girdler on behalf of the claimants and Mr. Freeman and Mr. Leeks on behalf of the defendants.

36. Much of the relevant content of the witness statements from the first claimant and the defendants relates to the background to this matter which I have already summarised. I propose at this stage to consider such further evidence from the lay witnesses as relates to the issues of liability and causation. In his witness statement, the first claimant describes the purchase of the Fishery for £190,000 in December 2004. He produces the sales particulars which included a description of the Ponds. It gave the average depths of the Ponds which ranged between 4 feet and 5’6”. It stated that the Ponds were predominantly fed via spring water and that there was an artesian well which fed Pond A. The claimants were shown around the Fishery in August 2004 by Mr. Ford’s son. The first claimant noticed that the level of the water in the Ponds was slightly down (approximately 100 mm, in Pond C) but he was assured that this was nothing of concern and normal for the Fen in summer months. This was accepted to be due to seasonal variations in Fen water level. The first claimant was shown the artesian well in the north west corner of Pond A which is close to the boundary with the defendants’ land. The first claimant says at that time the well was producing a good water supply and he was informed that it had never stopped running and in part maintained water levels in the Fishery and he viewed water discharging through the interconnecting pipe between Ponds A and B. He was also shown other springs within the Ponds. He saw the flow passing through the Ponds and in particular through the interconnecting pipe between Ponds B and C.
37. Prior to the purchase, the claimants were also informed that some lakes had been dug on the defendants’ land. It was also explained that they had been excavated without any planning permission. The first claimant says there was no reason at all at the time of the purchase of the Fishery to believe that the Lakes had any impact on the water levels in the Fishery Ponds or that they would do so in the future. The first claimant says he also recalls that the Fen was saturated during their pre-purchase visits. The area between Ponds E and F was very boggy.

38. The first claimant states that at the time of his purchase there was no pipe feeding Pond A from Lake 1 and there were no indications to him that any such pipe had previously been in existence. At some subsequent stage after the purchase of the Fishery, the first claimant did see the end of a pipe leading from Lake 1 and terminating at a ditch which is near to Lake 1 and Pond A.

39. In his statement the first claimant explains how he first began to notice that water levels in the Ponds began to drop in June 2005, and that the situation deteriorated over the following years with water levels continuing to fall year on year. He produced graphs which showed from data collected by him the water levels in the various Ponds between 2007 and 2014.

40. During 2006, in response to the falling water discharge level from the artesian well at Pond A and the water levels in the Ponds, the claimant lowered the transfer pipes between his Ponds A, B and C/D. The first claimant says that the springs which are situated in the various Ponds have periodically ceased to operate since he purchased the Fishery. He asserts that when he bought the Fishery the water levels were at 36.445 metres above ordnance datum (AOD)
in the Fen with the surplus surface water flows in the Ponds being as follows: Pond A overflowed through a pipe to Pond B which in turn flowed through a pipe to Pond C/D from where any surplus flows were discharged via a pipe into the River Tas. There was also surplus water flow provided to Pond B via a pipe from Pond F and from a trench via a pipe to Pond C. He has produced a further graph with the water levels of the Ponds, taken on a daily basis between October 2011 and September 2014. In his statement the first claimant details on a year by year basis the falls in water levels in the Ponds, particularly in the summer months. This does appear to show a trend of the water levels falling lower on a year to year basis. At times heavy rainfall did raise the water levels in the Ponds for a period of time.

41. The first claimant refers to the abstraction licence which was granted to the defendants in October 2012 by the Environment Agency, to which I have already referred. This authorised the defendants to transfer water from Lake 1 to Pond A or into a ditch leading to the River Tas. The first claimant states that he has no intention of accepting any flow of water from Lake 1 pursuant to that licence because of the risk of transfer of disease and parasites to his Ponds. He also considered that the transfer of water from Lake 1 would not compensate for the overall losses of water level in his Ponds.

42. In his oral evidence the first claimant described how he measured the depths of the water in the Ponds. He confirmed that the position of the springs in his Ponds were as shown on a map which was exhibited to his statement. He said that when the springs are flowing the bubbles in the water from them can be seen. He agreed that he has no data as to volumes of water produced by those
springs. He accepted that his monitoring of Pond A as opposed to other Ponds may only have started in 2011. He confirmed that he had also kept records of rainfall for which charts were produced. He said that the water levels of 36.445 metres AOD referred to in his statement had been established from data from gauge boarding in Pond D. He said that is the level when there is a discharge from Pond D to the river. He also said that level is about halfway up the discharge pipe in Pond A.

43. The first claimant was questioned about recharge tests carried out by him whereby water was pumped from the river into Pond C, but he said it was impossible to get up to the discharge point from Pond C.

44. During his cross-examination, the first claimant agreed that up until 2006 he had taken water from the river. He said that the Environment Agency said that he could only take 20 m³ per day. The first claimant considered that a de minimis level which would have no effect on the water level in Pond A. In relation to him refusing to accept water piped from Lake 1 to Pond A, the first claimant said that that would have affected his potential claim under the Water Resources Act and also because he was concerned as to whether the supply would continue in the future. In connection with the point he made about the Water Resources Act, he said it was not compensation that he wanted but restoration to 36.455 AOD of his water levels.

45. In my judgment the first claimant was a careful witness and I see no reason not to accept his evidence about these factual matters and the accuracy of his data.
46. In his witness statement the first defendant confirmed the history of his purchase of the land in the Fen and the excavation of the Lakes. He gave some details about his business interests including commercial property investment. The development of the Lakes was not intended to be a business venture.

47. The first defendant referred to the time when Mr. Robin Ford was involved in the running of the Angling Club at the Fishery, and his subsequent purchase of the Fishery. The first defendant said that sometimes he and his son would fish at the Ponds, the level of which was always up and down and never more than about two or three feet deep. He said that after Mr. Ford had purchased the Fishery in 1992, he bought three or four tons of Siltex to put in the Ponds to disperse the leaf matter and other vegetation at the bottom of them. The first defendant said he knew Mr. Ford very well and they used to drink together four or five nights a week. Despite this, he asserted that he had no knowledge of the planning application which Mr. Ford had made in 1989 in respect of excavating three lakes on what is now the defendants’ land, and that he did not know that such planning application had been refused. He said that when he purchased the land in the Fen in 1995, he did not recall the reference to Mr. Ford’s planning application in the local land charges search.

48. He said that when the defendants’ land on the Fen was purchased it was always very wet and boggy. There was an occasion when a digger became stuck and also another occasion when a deer became stuck in the Fen where Lake 1 now is. He described how he began to clear land and excavate the Lakes. He said that Mr. Ford never made any complaint to him about them.
49. In 1996 the defendants became involved in a countryside stewardship scheme run by the Ministry for Agriculture Fisheries and Food. A management programme was set down for their land in the Fen, including digging out and restoring the existing ditches. The first defendant says that he did not fully understand the implications of joining this scheme and as he did not require funding from MAFF the defendants subsequently withdrew from it. However, MAFF appeared content with the work which the defendants were doing on their land in the Fen. The first defendant claims that because of this he did not realise that he would need any planning permission for the widening and extension of ditches and dykes and the subsequent excavation of the Lakes. Of course, he did become aware that planning permission was required once SNDC brought it to his attention after the Lakes had been excavated.

50. The first defendant gives details of the excavation of the individual Lakes and the dates when he thinks that occurred. He says that when Lake 1 was dug out in about 2001, there was a spring in the land in that area and water bubbled up out of it and filled the Lake. He says Mr. Ford was well aware of all the work being carried out. He says that in a very dry spell in 2001 Mr. Ford came to see him and said he had problems and wanted to pump water from Lake 1 into Pond A. The first defendant said he saw the fish in Pond A were all on top of the water gasping for air. He therefore agreed that a pipe should be installed between Lake 1 and Pond A so that the water from the Lake and the spring in it would feed into the Pond. He said Mr. Ford bought the pipework and installed the pipe. He thought this pipe was removed by Mr. Ford at about the time when he put the Fishery on the market in 2004. The first defendant at that time offered £70,000 for the Fishery, although it was being marketed at around
£200,000. In making that offer the first defendant informed the agent that he was supplying water to the Ponds from his Lakes and that the water level would drop considerably if that supply was cut off. Apparently the response from Mr. Ford was that the Fishery was not dependent on the water supply from Lake 1. The first defendant said he made his offer of £70,000 because he considered that £50,000-£60,000 would be required to dredge the Ponds.

51. The first defendant confirmed that, although he stocked the Lakes with fish, it was never intended as a commercial venture, but he did eventually run it as a members club with day tickets available, but, as I have already mentioned, the profits appear to have been very modest indeed.

52. The first defendant gave his account of how, once it was clear to him that planning permission was required for his Lakes, he made the application for a certificate of lawful use. The first defendant admits in his witness statement that in making that application he wrongly stated that the Lakes had been in place since 1995. He said he very much regrets making those false representations but says that he had suffered a heart attack in 2006 and was still recovering and “really just wanted everything sorted out”. Having withdrawn that application, he then made the applications for retrospective planning permission for the Lakes. He then confirmed the subsequent history of the matter to which I have already referred.

53. He said that following the judicial review proceedings, the first claimant had asked for the pipe from Lake 1 to Pond A to be reinstated on a temporary basis. The first defendant said this was not possible at that time because he did not have a water abstraction licence which was required. Although
subsequently he was granted such licence, the first claimant has never agreed
to take any supply of water from Lake 1.

54. The first defendant made reference to land to the north of the claimants’ land
from 2001 being changed from arable use to growing willow trees for biomass
fuel production. Apparently this was approximately 30 acres of land. The first
defendant further refers to a flooding diversion scheme from nearby Hargate.

55. When he was cross-examined, the first defendant accepted that there were
supporting letters for the application for the certificate of lawful use, including
one from his wife, the second defendant, falsely stating that the Lakes had
been excavated in 1994/5. His agent’s letter to SNDC had said that the authors
of these letters would be prepared to confirm them on oath. The first defendant
agreed that this was stated on his instructions. Although at one stage the first
defendant appeared to be saying in the witness box that he had not done this
deliberately, he did soon concede that he had been prepared to be deliberately
misleading and was sorry about that.

56. He conceded that he knew that the Fen was a wetland environment which
would be sensitive to changes. After some prevarication the first defendant
conceded that he did have a relatively good knowledge in relation to planning
permission because of his commercial property business. However, he
maintained that he never knew at the time of excavating his Lakes that
planning permission was required for that. He agreed that he had never
approached the planning authority for informal advice about his proposals. He
continued to maintain that he never knew of the 1989 planning permission
application by Mr. Ford or its refusal. He said wrongly that he had only first
heard about that a few days before, when plainly he had in fact referred to it in his witness statement in November 2014. Again, the first defendant maintained that he could not recall his solicitor bringing it to his attention when he purchased the land on the Fen in 1995.

57. The first defendant maintained that there had been no question of the defendants or their consultants deliberately delaying in connection with dealing with the enforcement notice. He accepted that the defendants would comply with whatever they are now required to do by SNDC.

58. The second defendant made witness statements dated 14th August and 16th November, 2015. Her first statement dealt with the earlier history of the matter so far as she was concerned, and the second statement with the defendants’ dealing with the enforcement notice and the various proposals by their consultants and SNDC’s consultants. She said that until more recently she had played little part in decisions about the Lakes. She did give her husband some assistance with secretarial matters regarding his businesses. She had little recollection of their purchase of the land in the Fen in 1995. She accepted that she had signed the conveyance but had no recollection of doing so. She said that the land was somewhere to go for walks with their dogs or for picnics. There was no intention to set up a business there. She gave no thought at all, she stated, to the question of whether planning permission was needed for the excavation of the Lakes. When some fees began to be paid for the use of the Lakes by anglers, she kept the accounts relating to that. She has only become more involved in connection with the Lakes following the judicial review proceedings.
59. When she was cross-examined, the second defendant accepted that her letter in support of the application for a certificate of lawful use in 2007 was deliberately untrue to deceive the council. She agreed that she had collated some invoices relating to the use of diggers which falsely purported to show the Lakes had been dug in 1994/5. She knew the Fen was a country wildlife site but claims she had no knowledge of the implications of that. Overall she was rather vague in her recollections about the retrospective planning applications for the Lakes. She accepted that, by the time of the judicial review proceedings, she was aware that the Lakes may be having an adverse impact on the Fishery.

60. Throughout her evidence she firmly maintained that she was not aware of the 1989 planning application by Mr. Ford and its refusal. She said she never saw reference to that in any of the conveyancing documents when their land in the Fen was purchased. She said it never occurred to her that the Lakes might need planning permission and she never questioned what her husband was doing. She agreed that she knew that their land was boggy when they acquired it. She said at the time when the Lakes were excavated she gave no thought to any possible effect of them, although she said that in hindsight she should have known more.

61. On behalf of the defendants, Mr. David Chadwick and Mr. Kevin Greenwood were called to give evidence of their knowledge of the history of the relevant land in the Fen. In his witness statement, Mr. Chadwick said that he is an angler and had always been closely involved with the Fen Angling Club at the Fishery. He knew Mr. Ford very well and they were involved together in the
club. He said that after Mr. Ford bought the Fishery some extension work was carried out on the Ponds. He and Mr. Newitt carried out regular maintenance work at the Ponds for Mr. Ford. He said after the work on the Ponds to extend them, they started to experience problems with the water levels. Because of this they had a pump positioned during the summer to pump water from the river to the Ponds. The pump would be run for three or four hours a day three or four days a week in the summer. In addition to pumping water from the river, a hole was dug out near the Ponds and water would be pumped from that. He said that without the pumping the water levels of the Ponds would not have stayed high enough during summer.

62. Mr. Chadwick became aware of the defendant’s excavation of the Lakes. He was involved in the installation of the pipe between Lake 1 and Pond A. He said that avoided them having to run the pump to the same extent in the summer. Mr. Chadwick says that he was instructed to remove the pipe from Lake 1 to Pond A at the time when Mr. Ford put the Fishery on the market.

63. In cross-examination Mr. Chadwick said he knew about Mr. Ford’s proposal in about 1989 to build three new lakes, but he was unaware that a planning application was made in relation to that or that it was refused. The angling club committee was simply told by Mr. Ford that it was not going to happen. Mr. Chadwick accepted that he had never made any measurements of the water levels in the Ponds.

64. Mr. Greenwood, who is now in his late fifties and is a farmer, stated in his witness statement that he had lived in the area of the Fen all of his life. He remembered when Mr. Rush began digging out the Ponds at the Fishery, he
thought in the late 1960’s. As a teenager Mr. Greenwood used to swim in Pond A and at its deepest point the water would have come up to about his waist. He was aware of the artesian well in Pond A and that cold water from it used to bubble up. He remembered Ponds C and D being dug and the spring being between them. He said that those Ponds were never very deep and only wellington boot depth for about six years after they were built. He said that after Mr. Ford purchased the Fishery, he put in the network of pipes taking water from Pond A to the other Ponds. He said that the water levels in the Ponds have always been variable. He thought that the weather had been much drier in the last 8-10 years than it used to be.

65. Mr. Greenwood had witnessed the excavation of the Lakes and that the area around the dyke on the defendants’ land was always really wet and that when Lake 3 was started a digger sank out of sight.

66. In cross-examination Mr. Greenwood said he knew about Mr. Ford’s planning application for the three lakes in 1989 because his mother was on the parish council.

67. He said in relation to his statement that the level in the Ponds had always been variable that that was based on what he had seen, and that his view about the drier weather over the last 8-10 years was based on his observations as a farmer.

68. I now turn to consider the expert evidence of the hydrologists in this case, bearing in mind the conclusions which I have reached in relation to the interpretation of section 48A of the Water Resources Act 1991, and as to the issue of causation. Dr. Wilson on behalf of the claimants and Mr. Van
Wonderen on behalf of the defendants are each highly qualified and experienced hydrologists with impressive knowledge. The hydrology evidence is central to the issues in this case and particularly that of causation. The hydrology evidence in the form of the reports from Dr. Wilson and Mr. Van Wonderen and their oral evidence is complex, detailed and covers a number of technical matters. I do not propose to recite every detail of their evidence but I bear all of it in mind and also the extremely helpful and detailed written submissions made by Counsel regarding this expert evidence. However, it will be necessary to consider a number of aspects of the findings and opinions of these two experts.

69. In his report dated 18th December, 2014, Dr. Wilson discusses the topography and hydrology in relation to the Fen. He says that the Fen is located in the headwaters of the River Tas where three topographical tributary valleys from the north, west and south coalesce to form the main valley of the river. He said that there are extensive peat deposits in the valley bottom which indicate the likelihood of persistent saturated or seasonally saturated soil conditions. He claimed that the hydrological effect of the coalescing of the three valleys would be to channel surface water and near surface water run-off (which he described as interflow) towards the River Tas and through the Fen. He said historically this could be expected to have led to the build up of persistent saturated ground conditions in the vicinity of the Fen. He said that interflow occurs where low permeability horizons occurred in the soil profile which intercept the vertical movement of unsaturated flow through the soil and produce saturated conditions which allows lateral flow to occur down the valley side slopes into the valley bottom, where it saturates the whole soil
profile so that the water rises to the surface as return flow and moves down valley as topographically controlled surface water flow. He sought to illustrate this in Figures which he prepared. He said that the combination of surface water run-off and interflow run-off from the hillside and surface water run-off inputs coming from the rest of the catchment area upstream would produce saturated or near saturated conditions across the floor of the Tas valley. During the investigations by the consultants on behalf of the defendants and SNDC regarding the enforcement notice, five shallow three metre boreholes WS1 to WS5 had been sunk in various positions in the vicinity of Lake 1 and Pond A. The logs from these boreholes showed the various layers of material below the surface to a depth of three metres. Dr. Wilson referred to shallow permeable soil layers shown in boreholes WS3 and 5. He said that near surface water run-off or interflow would flow through these soil layers towards the local hydraulic sink, normally the River Tas. However, he said that the claimants’ Ponds are located at a narrowing of the Tas valley between two flat basins. He asserted that this physical restriction would result in an increase in the velocity of water movement or a rise in water elevation in the saturated soil layer and the creation of valley bottom springs and waterlogging. He said this would also prolong the duration of near surface saturated conditions in the vicinity of the Lakes and Ponds.

70. Dr. Wilson next considered in his report the suggestion that the Lakes and Ponds and particularly Lake 1 and Pond A were being fed directly or indirectly from vertical flow upwards from the deep chalk aquifer through the strata above it. That this was the case was one of the main opinions of Mr. Van Wonderen and is a central issue between the two experts. Dr. Wilson thought
that a vertical flow from a chalk aquifer was not an unreasonable assumption for the Tas valley as a whole some 5 kilometres downstream where the river has cut through the chalky boulder clay (Lowestoft till) and the historic buried channel (which runs west to east through the Fen) is filled with permeable deposits of sand and gravel. However, he said that there had been a lack of hard evidence to support the proposition of such vertical flow from the chalk aquifer in the Fen itself. The WS boreholes did not give any indication of the depth at which the Chalk was situated or the thickness or sequence of superficial deposits above it. However, Dr. Wilson said boreholes at Bunwell about 1.8 km downstream of the Fen showed substantial thicknesses of boulder clay and other deposits above the chalk which was situated in the buried channel between 19 and 28 metres below ground level. He thought that from this it could be reasonably assumed that the top of the chalk at the Fen was likely to be below 20 metres ordnance datum, which would indicate a thickness of superficial deposits of at least 16 metres in the Fen. Because there were likely to be several low permeability layers interdigitated with higher permeability layers, this would result in one or possibly two or three perched aquifers being present in the superficial deposits underlying the Fen. He also said that test pumping which had been carried out at the Bunwell boreholes from the chalk aquifer indicated little or no hydraulic continuity between the shallow water features and the chalk aquifer at that location.

Dr. Wilson also relied upon the findings there had been at three boreholes drilled as part of the Tas Valley scheme about 600 metres upstream of the Lakes. These also showed that the chalk aquifer was strongly confined by the boulder clay and other deposits above it.
72. From the evidence of the Bunwell and Tas Valley boreholes, Dr. Wilson had concluded, in the absence of deep borehole information in the Fen, that it was more reasonable to expect the superficial deposits in the Fen to be more like 20 metres thick and for the chalk aquifer to be strongly confined. He says that this deduction was tested when the first claimant, in the summer of 2013, had a chalk borehole drilled next to Pond B. This showed that the depth of the buried channel in the Fen was much deeper than anticipated and that the chalk layer began at a depth of 25 metres. Dr. Wilson says that the water level in the chalk borehole rose rapidly after it penetrated into the hard chalk and the water level rose to elevations above ground level. He says that this showed that similar to the position at Bunwell, the chalk aquifer was well confined and the deposits above it acted as an effective cap on the vertical movement of water from it.

73. Dr. Wilson referred to the argument put forward by Mr. Van Wonderen and others, that because there was a direct hydraulic connection between the chalk aquifer and Pond A, the decline in water levels in the Ponds since 2006 is mainly a reflection of a decline in regional chalk aquifer groundwater levels. Dr. Wilson was critical of the use of a record of the monitoring of chalk groundwater levels at a borehole at New Buckenham (3 to 4 kilometres away from the Fen) because it was in a different groundwater catchment area and subject to different hydraulic controls from those that apply in the upper Tas catchment area within which the Fen is situated. He was also critical of the validity of comparing flow from the artesian well at Pond A with the water levels from the borehole at New Buckenham to support the argument that the Lakes and Ponds are receiving vertical flows of water from the chalk aquifer.
He said this approach was dubious because it relied on a careful choice of scales or axes in order to give the best apparent fit between the two data sets and that in any event the correspondence between the artesian well flow and New Buckenham water levels and both deep and shallow water tables was mainly rainfall recharge.

74. Dr. Wilson referred to monitoring data from Harrison Environmental Consultants between 2011 and 2014 at various points, including boreholes WS1 and WS3. There were some errors and anomalies in the data but by reference to his Figure 13, having made appropriate corrections, Dr. Wilson said that, looking at the response of the data logger of water levels to daily rainfall amounts in relation to boreholes WS1 and WS3 show an example of a classic surface water run-off and interflow response to rainfall at the Fen. He said that the response of water levels in the boreholes to rainfall also gives an indication of the nature of the water bearing deposits at those points. In Dr. Wilson's Figure 14, he says it is clear that WS5 exhibits a daily rise and fall in water levels which begins in spring and continues becoming more pronounced through summer until October, and that this is the effect of diurnal evaporation and such diurnal changes are absent from the chalk borehole water levels. He also argued that there is a virtually constant difference in elevation both in winter and summer between water levels measured in the chalk borehole and water levels in borehole WS5. He said this suggests that vertical flow of chalk groundwater into Lake 1 and/or Pond A is unlikely.

75. In further support of his contention that at the chalk borehole near Pond B the chalk aquifer is strongly confined by the superficial deposits, he relies upon a
comparison between barometric pressure changes and short term changes in the chalk borehole groundwater elevations.

76. The point was made by Dr. Wilson that Meteorological Office data regarding rainfall showed overall greater than average or average effective rainfall between 2000 and 2010. He said the conclusion that might be drawn from this is that, during the period of the construction of the Lakes, effective rainfall was above average and by inference the construction of the Lakes was the explanation for the drop in the level of the Ponds.

77. Next, Dr. Wilson dealt with what has been referred to in the case as the Lake 1 test. This occurred between September and October 2011 and in November 2011, when the level of Lake 1 was deliberately lowered and then raised and then lowered again. This was intended to determine any hydraulic connection between Lake 1 and Pond A. There was a rapid response by way of a change of flow in the artesian well feeding Pond A. Dr. Wilson accepted that, if there was a hydraulic connection with Pond A, one would have expected a similar change in water levels in Pond A to be produced but this did not occur. He put this down to the fact that Pond A was shallower and probably sedimented and therefore partly sealed.

78. Various overall conclusions were set out by Dr. Wilson in his report. In his opinion, a strong argument could be made in favour of the proposition that the Lakes had altered the local hydrology of the Fen so that they became a significant cause of loss of water from the perched water table. He thought that the water level measurements taken by the first claimant indicated that the Ponds are finely balanced regarding obtaining a sustainable water supply to
maintain water levels and that they are likely to be reliant on shallow water bodies and rainfall run-off to maintain the levels. He said there was no doubt that the creation of the Lakes will have diverted some natural water flow away from the Ponds with the possible exception of Lake 4. Again, he said this was due to the interception of surface water run-off and shallow interflow moving generally down valley and the reduction in head in perched aquifers. He said that if the main water inflow to the Ponds came from surface water run-off, interflow run-off or flow from a shallow perched aquifer rather than vertical flow upwards from the chalk aquifer, the impact of the Lakes on the Ponds would be expected to be significant. If the inflow to the Ponds did come from vertical leakage from the chalk aquifer then the potential impact would still occur if the Lakes had better and wider hydraulic contact with the upwelling chalk groundwater. Dr. Wilson accepted that it is often difficult to be categorical about the source of water entering shallow excavations such as the Ponds, but considered on the information available a surface water or shallow soil origin seems more likely as the source of water for the Ponds. He considered that it was easily foreseeable by a drainage engineer, hydrologist or hydrogeologist or a farmer familiar with the maintenance of drainage ditches that the excavation of the Lakes was likely to affect the Ponds to some degree. He said that if he had been asked by the first defendant for advice prior to the excavation of the Lakes, he would have advised him to discuss the project with the first claimant and to enter discussions with the Environment Agency.

79. He repeated again that he considered the excavation of the Lakes would have intercepted shallow lateral water flows from the south (Lakes 2 and 3) and west (Lake 1 and possibly also Lakes 2 and 3) which would otherwise have
gone to Pond B. Dr. Wilson said in his view it was not possible to give a
definitive judgment on the specific impact of individual Lakes on the Ponds.
He pointed out that there are no baseline water level or flow data available for
the time before the excavation of the Lakes began. He also considered that the
modelling undertaken by the various consultants had been too narrowly
focused on the immediate vicinity of the Lakes. Significantly, Dr. Wilson's
final conclusion was that the construction of the Lakes will have affected in an
adverse way the Ponds and particularly Ponds A and B. However, he said,
given the question regarding datums, locations measured and elevations in
regard to water level monitoring undertaken at the Fen, and the limited focus
and duration of the monitoring that has been undertaken particularly on the
defendants' land, "it is still not possible in my view to be categorical with
regard to the precise impact on" the Ponds or the exact processes involved.

80. In his oral evidence in chief, Dr. Wilson expanded upon and explained a
number of the findings and views expressed in his report. He said in relation to
the confinement of the chalk aquifer in the Fen that, if there is a thin layer of
boulder clay above the chalk, the chance of seepage upwards is greater but if it
is a thicker layer of boulder clay there is less chance of seepage upwards. He
emphasised that the barometric pressure tests carried out in relation to the
chalk borehole by Pond B showed that the chalk was quite strongly confined.
He made the point that, in his view, only a small proportion of rainfall
penetrates through to the chalk and so there would be a great deal of water
flow laterally in the superficial deposits. He said that in relation to the
hydrology of the Fen, an overall catchment area of 16 km² should be
considered. I will refer in due course to matters put to Dr. Wilson in cross-
examination, after I have referred to the report and evidence in chief of Mr. Van Wonderen.

81. At the beginning of his report dated 12th December, 2014, Mr. Van Wonderen helpfully describes some basic hydrological and hydrogeological concepts. He explains that the rate of groundwater flow is a linear function of the groundwater gradient (groundwater level difference between two points divided by the distance between those two points), and the water transmitting property of the aquifer (the transmissivity). This function is referred to as Darcy's law. Put more simply, it is a function of the slope of the groundwater level and the porous or fissured nature of the aquifer. He said that it is important to understand the water movement in the Tas valley in places where the groundwater is close to the ground surface. The shallow groundwater table condition results in the marshy conditions typical of fen areas. If the groundwater table is close to the ground surface, there is potential for upward capillary flow from the groundwater table to the surface. He explained the geology in the Fen in similar terms to Dr. Wilson and in particular referred to the chalk aquifer being overlain by a variety of glacial and recent deposits which are influenced by a west to east buried valley. He referred to the fact that buried valleys are characterised by heterogeneity at local scale through the complex deposition of materials in a riverine environment due to which there may be preferential paths that allow the groundwater to move rapidly both laterally and vertically. He says that the nature of these preferential flow paths is such that they cannot be considered as defined channels. By pathways he means areas of porous mineral or soil through which water is able to flow with ease.
82. He notes that the British Geological Survey map for the area indicates that at the location of Pond A, the top of the chalk is some 12 metres below ground surface. However, the chalk borehole drilled for the first claimant in 2013, showing that the top of the chalk is some 26 metres below ground surface, implies that the deep part of the buried valley extends further east than indicated on the BGS map.

83. Mr. Van Wonderen refers to the land use on the hill slopes adjacent to the Fen as being predominantly arable. He noted that, in the area to the north of the Ponds, in the previous ten years there had been a change from arable use to biofuel cropping using willow trees in an area of about 12 hectares. He said this can have an impact on ground water flow. He also said that drainage for arable farming can have a similar effect. He referred to the effect of transpiration whereby water is extracted from the root zone by crops and natural vegetation and the evaporation of water from the soil surface. The combination of these two effects is referred to as evapotranspiration. He observed that, on the basis of Meteorological Office data for the Fen area, the difference between rainfall and evapotranspiration can be significantly negative.

84. Mr. Van Wonderen’s view of the hydrological features of the Fen was that minor streams are fed from groundwater that emerges at the western limit of the Fen where the flat fen meets the upland areas. These streams (referred to also as dykes) naturally flowed to the river; they now flow into Lakes 2 and 3 and from there overflow into the river. He considered that outflow from Lake 1 is also to the river. He considered the catchment area for the Fen was some
1.5 km². He described the various subsurface layers of sands and gravels and Lowestoft till above the chalk. He accepted that the upper layer would allow for lateral transfer of groundwater but it would be in small amounts due to the limited thickness of the permeable sand and gravel layers. He referred to an Environment Agency modelling study which included the Fen area, showing that groundwater flow is maintained by recharge to the chalk through the overlying drift deposits. He said that groundwater modelling has indicated that this amounts to some 50-70 mm/year on average. It is constrained by the ability of the Lowestoft till to transmit water downward to the underlying chalk aquifer. He said that for the catchment area in question, the total average recharge would range from some 160-250 m³ per day, so that given the convergence of groundwater flow in the chalk aquifer towards the Fen an equivalent discharge from the chalk to the surface environment has to take place. He said that groundwater discharge from the chalk is through upward flow through the drift deposits that overlie the chalk. He said that the artesian conditions in the Fen demonstrate that this upward movement is possible. This upward flow he said will occur in areas where the Lowestoft till is extensive and contiguous and that more localised concentration of outflow occurs where permeable pathways from the chalk to the surface exist, such as at Lake 1 and the artesian well at Pond A. He says that these outflows would have occurred before the construction of the Lakes and the Ponds.

85. Mr. Van Wonderen said that the upward flow from the chalk aquifer ensures the permanent wet conditions in the Fen which would have been prevalent prior to the construction of the Ponds and Lakes.
86. So far as surface water run-off is concerned, he said that this may occur when rainfall is intense but that such run-off would generally be captured by ditches and dykes and find a direct route to the River Tas. He disagreed with Dr. Wilson that there was significant lateral groundwater flow through the superficial deposits from a west to east direction. Lateral inflow from the hill slope areas to the north he thought was likely to be more significant.

87. He said that there are two significant points of groundwater discharge in the Fen, the first being the artesian well in Pond A and the second the outflow from Lake 1. He considered that the outflow from the artesian well originates mainly from the chalk aquifer and possibly to a much lesser extent from the superficial deposits. The discharge from the well over the period 2007 to 2014 ranged from 2.5 to 39 m³ per day. The outflow from Lake 1 was monitored as being between 70 and 120 m³ per day during 2011 and 2012. The water inflowing to Lake 1 he asserted originated from groundwater and that in his view it is beyond doubt that most of this inflow originates from the chalk aquifer through a preferential path through the deposits that overlie the aquifer. He said that before the construction of Lake 1, water emerged where the north east corner of that Lake is now. This emerging groundwater would flow overland towards the River Tas and was the cause of the very wet and marshy conditions in that area.

88. Mr. Van Wonderen described the Ponds and how the overflow between them would occur. He noted that the Ponds all showed a seasonal variation in water level, with lowest levels during the summer and highest during the winter. He also observed that the water level in the River Tas is significantly lower than
the adjacent Ponds which represents a potential driving force for seepage loss from the Ponds to the river. He also observed the evidence of Mr. Greenwood and Mr. Chadwick about the historic Pond levels.

89. The construction and nature of the defendants’ Lakes were described and it was noted that, since the excavation of Lake 1, water has continuously discharged from it in significant quantities and that when Mr. Ford owned the Fishery this surplus water was discharged by pipe into Pond A which negated the need for pumping of river water into the Pond during dry summer periods. Since the claimants’ ownership of the Fishery, the surplus water from Lake 1 has been conveyed to the River Tus.

90. In his Figure 6, Mr. Van Wonderen indicated his views as to the groundwater flow directions which occurred prior to the construction of the Lakes. He considered that the inflow to the Ponds area is mainly from the north. He said there would not have been a groundwater inflow from the area where Lake 1 is now located towards the Ponds because the gradient was uphill in that direction. So far as the area where Lakes 2 and 3 are now located, previously surface water there would have been carried by the dykes and ditches directly to the river and had no influence on the water levels in the Ponds. His overall view therefore was that the evidence is clear that there are no surface water links between the defendants’ land and the Fishery that could have a bearing on the Ponds. He also considered that the evidence is clear that the groundwater flow in the superficial deposits was such that no connection of any significance between the two properties would have been possible. He said it is evident that the groundwater in the chalk aquifer emerges on both the
defendants' and the claimants' land through both diffuse upward flow through the drift deposits that overlie the chalk and through more localised flow paths.

91. Mr. Van Wonderen then set out what he considers were a number of possible causes of the variation in level in the Ponds, which included climate variability, water levels in the River Tas and seepage from the Ponds to the river, the land use change by way of the growing of willow trees in the area to the north of the Ponds, drainage diversions to limit the flooding risk along Fen Road and the impact of the Lakes. By reference to rainfall data and the dry winters of 2010 to 2012, Mr. Van Wonderen was of the opinion that there is no doubt about the influence of climatic variation on both groundwater discharge from the artesian well at Pond A and groundwater inflow from the superficial deposits to the north and therefore on surface water levels in the Ponds.

92. Secondly, he considered that seepage losses from the Ponds to the River Tas would be significant and increase rapidly with rising Pond levels. Thirdly, the area of about 12 hectares to the north of the Fishery where willow trees were grown from about 2005 would have resulted in reduced groundwater levels, as willow trees consume greater amounts of water than arable crops. This would give rise to a reduction in groundwater flow from the north towards the Ponds. Therefore he thought this potential land use change could not be ignored.

93. Next, he referred to flood diversion works which had been carried out at Hargate some 0.5 km to the north west of the Fen. These works included diversion of surface water that would normally flow in the ditch along Fen Road. Again, he said the impact of this flood diversion could not be ignored as
having a potential impact on the wellbeing of the Ponds and the Fen in general.

94. In considering the impact of Lake 1 on the Ponds, he referred to the outflow rate which had been measured from 70 - 120 m$^3$ per day. Again, he maintained that the majority of the groundwater entering Lake 1 is from the underlying chalk flowing through a permeable yet undefined flow channel. He said that if this flow originated mainly from the superficial aquifer, such aquifer would have to exhibit extraordinary hydraulic properties. The outflow from Lake 1 will be a function of the groundwater level in the underlying chalk, the level in the Lake and the hydraulic conductance of drift deposits underlying the Lake. For a controlled and fixed Lake level the outflow will be directly proportional to the groundwater level in the chalk. Thus flows would be at a minimum during summer periods and would show longer term decline during extended drought periods. Again, he referred to the controlled Lake 1 test which showed a rapid impact on the outflow from the artesian well.

95. He also referred to the comparison which could be made between the chalk groundwater levels from the chalk borehole on the claimants' land and outflows from the artesian well. He said a remarkable correlation is evident and to him it proved beyond doubt that outflow from the artesian well mainly originates from upward flow from the chalk aquifer. Using the correlation between the chalk groundwater levels in the chalk borehole and outflow from the artesian well allowed for backdating of chalk groundwater levels at the chalk borehole location. It thus allowed those levels to be related to the impact of change in Lake 1 water levels on outflow from the artesian well. The
analysis, which was shown in Appendix 4 to Mr. Van Wonderen's report, he says indicates that lowering or raising the water level in Lake 1 results in a quantifiable change in outflow from the artesian well. He said that the significance of this impact can be determined to a reasonable degree of accuracy. He therefore calculated that, by reason of Lake 1, the reduction in outflow from the artesian well would have been some 3.4 to 6 m$^3$ per day. However, he said that during 2011 and 2012, when the water level in Lake 1 was at its lowest, the reduction in outflow from the artesian well could have been as high as 13 m$^3$ per day. Thus a high Lake 1 level will minimise the impact on the artesian well.

96. He accepted that this impact on the artesian well outflow has a direct impact on the water level in Pond A. The lowering of the water level in Pond A would reduce the time during wet periods when the water level in Pond A reaches the overflow level and thus the flow of water from Pond A into Pond B and from there into Ponds C and D. In his opinion, the water level in Pond A would not have risen to the level required for overflow into Pond B during the 2010/11 and 2011/12 drought winters even without the impact of Lake 1 on outflow from the artesian well.

97. As far as Lakes 2 and 3 are concerned, Mr. Van Wonderen said they received most of their inflow from minor water courses that enter those two interconnected Lakes from the west. Outflow from the Lakes is directly to the River Tas. Because there is a groundwater gradient in the superficial aquifer towards the south from the area around Lake 1 to Lake 2, this causes groundwater flow in the same direction. Because the groundwater table is
shallow and has not significantly changed from pre-Lake conditions, and
because groundwater does not move up gradient, he concluded that Lakes 2
and 3 do not influence the water situation in the Ponds. In relation to Lake 4,
he said it has no surface water inflow and outflow and the water table in Lake
4 is a direct extension of the groundwater table in the surrounding superficial
deposits. The water level monitoring data he said clearly indicates that the
River Tas forms a groundwater divide and therefore separates the shallow
groundwater systems on the two banks of the River Tas so that it is physically
impossible for Lake 4 to have any influence on the Ponds. Thus his overall
opinion was that the evidence is clear that Lakes 2 to 4 do not impact on the
wellbeing of any of the Ponds.

98. Mr. Van Wonderen then summarised the foregoing views in the conclusions
section of his report. Again, he said that “Pond A receives without doubt
groundwater from the chalk aquifer in the form of outflow from the artesian
well.” Thus he said the outflow is strongly influenced by variation in the chalk
groundwater levels which were low during the late summers and early
autumns of 2010 and 2011, which would have a direct impact on flow from
the artesian well. He also said that there should be no doubt that the flow from
the artesian well would have been reduced during previous drought periods
such as those in the early and mid 1990s and also in 2005/6.

99. He said that the Ponds located to the east of Pond A received their majority of
water from groundwater inflow from the hill slope areas to the north and
would only receive water from overflow from Pond A during very wet winter
periods when the Pond level rises to some 36.45 metres AOD.
100. Mr. Van Wonderen’s final overall opinions were that the impact of Lake 1 levels on flow from the artesian well into Pond A is the only man-made impact directly related to the construction of Lake 1. There would be an indirect impact on Ponds B, C and D due to reduced time of overflow from Pond A into Pond B. However, the climatic variation is a much stronger influence and other anthropogenic changes to the nearby area could also have exerted influence on the wellbeing of the Ponds. He said that it was beyond doubt in his opinion that Ponds B to F are not directly impacted by the development of the Lakes. Ponds B to D would have greatly benefited from diversion of Lake 1 outflow to Pond A from which water would have flowed into Pond B and subsequently Pond C and D via the existing overflows between the Ponds.

101. Like Dr. Wilson, in his oral evidence in chief, Mr. Van Wonderen expanded upon and explained his findings and conclusions in his report. He was doubtful that there were perched aquifers in the Fen as postulated by Dr. Wilson. He emphasised that the topography at the Fen was important as shown by the LIDAR (Light Detection and Ranging) data and map sheets for the area. He said that the fact that the groundwater table in the Fen is close to the surface is a reflection of the topography. He maintained his contention that surface water is not a source of water for the Ponds. He again emphasised that, because the groundwater remains high even in summer in the Fen, the source of the water for that must be an upflow through the Lowestoft till from the chalk aquifer as the chalk has a higher head than the ground surface. He stressed that his catchment area of 1.5 km² was the groundwater catchment area as opposed to the surface catchment area referred to by Dr. Wilson.
102. He rejected the suggestion that the ditch along Fen Road which is mostly dry is a plausible explanation for the discharge from the artesian well. He thought it was highly significant that, according to the evidence from Mr. Chadwick, when Mr. Ford was running the Fishery, the Pond levels had to be kept up by pumping water from the river.

103. In October 2015, Dr. Wilson and Mr. Van Wonderen prepared a joint statement setting out the matters which they agreed, including that Lake 1 has had and can continue to have an effect on water levels in Pond A and that increasing the water level elevation in Lake 1 results in an increase in groundwater flow from the artesian well which discharges into Pond A. They also agreed that if, as seems likely, Ponds A and B have become shallower because of sedimentation and leaf fall, this would make the Ponds potentially more sensitive to external influences that might affect Pond water levels.

104. When he was cross-examined, Dr. Wilson conceded that he had not inspected the defendants’ Lakes and had only inspected the Fishery and the drains on Fen Road. He agreed that it was only recently that he had prepared and disclosed an estimate of the groundwater flow through the shallow permeable layer at the Fen using the Darcy’s law calculation. He said he had reason to doubt the accuracy of the data used by Mr. Van Wonderen in the preparation of his Figure F showing historic groundwater movement at the Fen. He did concede that the lie of the land from Pond A was downward to the south. He conceded that the springs which had been identified on the claimants’ land were likely to be from flow of water from the north elevation. He maintained that in his view there were three water sources for the Ponds: surface water
run-off, interflow and flow from shallow perched aquifers. He said that the surface water run-off would normally run in the leaf litter level of the soil. He did not necessarily accept an observation in a British Geological Survey paper that land drain and ditch infrastructure was likely to account for the majority of lateral flow from run-off, land drainage and flow in the upper more permeable zone of the till deposits. He had only looked at the Fen Road drains and was not familiar with the land drains on the surrounding land.

105. He did not accept that the infiltration capacity of the surrounding catchment area would always be sufficient to prevent run-off. He maintained that Lakes 2 and 3 would interrupt water flow to the east. He accepted that surface water would not flow up hill but said it was not necessarily correct that surface water going towards Lakes 2 and 3 would not have been received by Pond A. He said that interflow is below surface flow in the upper horizons of the soil and that is distinct from flow through perched aquifers. He said he had not calculated the volume of water that was flowing towards the Ponds from interflow. He said that it was to him pretty obvious that there are perched aquifers in the Fen area. By reference to the WS boreholes, he indicated where there may be perched aquifers at those levels, but also said that they could be at a level lower than the boreholes. At one point he appeared to accept that in practical terms there was negligible lateral flow above the groundwater level. He maintained that any vertical flow at the Fen from the chalk was limited.

106. Dr. Wilson was questioned about his Darcy’s law equation regarding the rate of flow of water through a cross-section of material. The equation involves three elements: the hydraulic gradient, the width and depth of the material
through which there is the flow, and the hydraulic conductivity of the material, i.e. the permeability of it. His calculation had taken a cross-section of an assumed shallow deposit medium of 100 metres with a 1 metre thickness and a hydraulic gradient derived from the Harrison Consultants report. For the hydraulic conductivity, he had taken a factor of 8.64 metres per day. He said this was the appropriate figure for sand and gravel. This resulted in a flow rate of 6 m$^3$ per day with the lower hydraulic gradient figure from Harrison Consultants. If the higher hydraulic gradient was taken, it gave 14.26 m$^3$ per day. However, he said that this in each case would be doubled if the thickness of the material was 2 metres rather than 1.

107. Harrison Consultants had carried out some falling head tests in the WS boreholes which gave hydraulic conductivity figures for the materials there of less than 0.5. Obviously, using those very low hydraulic conductivity figures, as Counsel for the defendants demonstrated by producing such calculations, the flow rate would be considerably less than 0.6 m$^3$ per day. Dr. Wilson considered that these hydraulic conductivity figures from the falling head tests were not reliable and were very low for the materials in question.

108. Whilst Dr. Wilson conceded that not all the water flow from the defendants' land to the claimants' land would go into the Ponds, he did not accept that all the flow from Lakes 2 and 3 would go to the river.

109. When Dr. Wilson was asked how, when Pond A was 1½ metres in depth, there could be a vertical flow to it from sandy layers lower than 3 metres, he said that hypothetically this was possible and the water would travel vertically by
pressure head. He said that it was a realistic possibility that there was a source head higher than Pond A up the river valley.

110. Dr. Wilson accepted that, with the flow rates calculated from the permeability levels from the falling head tests, to explain a 100 m$^3$ per day discharge from Lake 1, one would need some other source of water than flow through the permeable layers. He would not accept that this must be from the chalk aquifer and said he thought it was more likely to be other sources of rainwater run-off. He then said it was possible that lateral flow could give the 100 m$^3$ per day from Lake 1.

111. He did appear to concede that there was a substantial correlation between the artesian well flow and the chalk borehole. He was asked what pressure generated the head in the artesian well of about 20 cm. above the Pond A water level. He postulated that it may be by reason of the elevation of the ditch along Fen Road which was higher than the artesian well so that pressure was generated by the slope from the ditch. He said this could be the case even if the difference in elevation was only the .08 metres suggested to him.

112. When he was questioned about the Lake 1 test, Dr. Wilson accepted that there was no change in the level of Pond A but maintained, as he had mentioned in his report, that this was probably because Pond A was sealed or partly sealed by an impermeable layer or sedimentation.

113. Dr. Wilson conceded that Mr. Van Wonderen’s proposition, that Lakes 2 and 3 do not influence the water situation in the Ponds, was a plausible proposition. He also conceded that Lake 4 is unlikely to have any impact on the Ponds. He agreed that the river is the principal hydraulic “pull” in the
valley. He therefore agreed that there would be a degree of seepage from the Ponds to the river. Dr. Wilson accepted that he was unaware of the 12 hectares where willow trees have been grown to the north and had been unable to obtain any information about the drainage work at Hargate.

114. When he was re-examined, Dr. Wilson retreated a little from any concession he had made in relation to Lakes 2 and 3. He said prior to the excavation of Lakes 2 and 3 some of the water in the saturated valley bottom would have been available to go towards the Ponds.

115. When Mr. Van Wonderen was cross-examined, he agreed that the environmental impact statements from the defendants’ consultants should have looked at the considerations in his report, such as the area of willow trees, and should have covered a larger area including the northern boundary of the catchment area some 500 metres to 1 km away. He agreed that he had not done any calculations as to the influence of land use change or drainage. He agreed that the outflow from Lake 1 of 70-120 m$^3$ per day was significant. He estimated that the outflow when Lake 1 was not there would have been some 30-40 m$^3$ per day. However, he maintained that the only significant source of water to Lake 1 was upward flow from the chalk aquifer. He reiterated what he had said in his report, that the quantity of any inflow through superficial deposits was considerably less than the upflow from the chalk, by which he meant not more than a couple of m$^3$ per day compared with the 70-120 m$^3$ per day from Lake 1. He said that he could not concede that the outflow from the artesian well could arise from superficial materials by lateral flow. He said that his Figure 10 comparing the chalk borehole groundwater levels and the
artesian well outflow was instrumental in his conclusions. He said it showed the discharge from the artesian well correlates exactly with peaks in the chalk borehole. He maintained his argument that there is a preferential pathway from the chalk aquifer to the artesian well and other pathways through the clay layer to allow some further flow from the chalk aquifer. He said that the hydraulic heads in the chalk aquifer are well above the surface level heads at Lake 1 and the artesian well. He said he accepted as the maximum reduction in flow from the artesian well as a result of Lake 1 as 13 m³ per day. He said he was not in a position to say what the impact was of such reduction to Pond A in terms of the wellbeing of the Ponds.

116. Mr. Van Wonderen argued that he was correct to refer to the groundwater catchment area rather than the surface catchment area. He said he confined his attention to potential sources of inflow to the Fen. That is why he looked at the groundwater catchment area. He said the area north of the Ponds was the catchment area relevant to them.

117. He was criticised for not considering, as had Dr. Wilson, the hillside topography and hydrological effect of the coalescing of the three valleys, but he said that was not necessary. He said he had taken regional groundwater models produced by consultants who spent two years preparing it in order to derive the 50-70 mm per year groundwater flow by recharge to the chalk. He conceded that the permeability factor in the model was an a priori assumption.

118. He agreed that he does place a heavy reliance on the topography and it was reasonable to rely upon the data from Harrisons Consulting and LIDAR. He
said that, in his view, the boreholes were accurate regarding the contours to
give or take 5 cm.

119. It was put to Mr. Van Wonderen that, by reason of the thickness of the
confining clay over the chalk, there could not be upward flow of water from
the chalk. He disagreed and said that there can be a preferential pathway
through the confining layer however thick it is. He said there was no evidence
in the literature of there not being preferential pathways by reason of the
thickness of the confining layer.

120. When he was questioned about the relevance of barometric pressure to the
confinement of the chalk, he was not entirely consistent in his answers.
However, he said that the barometric pressure tests would indicate that at least
the chalk was semi-confined. Again, however, he said that the fact that there
was confinement or semi-confinement of the chalk did not exclude a
preferential pathway for the water to flow upward from the chalk aquifer. He
accepted that, where the chalk borehole was sunk, the chalk aquifer was semi-
confined at that point, but there could be preferential pathways elsewhere in
the area.

121. He accepted that there was confinement of the chalk at the Bunwell and Tas
valley boreholes but that did not affect his overall view about preferential
pathways or diffuse upper flow through the clay layers. He was criticised for
not dealing with the confinement of the chalk in his report, but he said it was
unnecessary in the context of his investigation as to the impact of the Lakes on
the Ponds. He said he had taken notice of the regional modelling studies to
determine the movement through the clays and transfer from the chalk layer.
He said the evidence from the Bunwell and Tas boreholes had been taken into account in the groundwater models.

122. In relation to whether there were perched aquifers in the Fen, Mr. Van Wonderen said that they could not be there because of the layer below the clay being fully saturated. He said if there is water in the superficial layer above the clay, it is an aquifer but not a perched aquifer. So he did agree that there are aquifers at upper levels which can flow laterally in the saturated part of that aquifer.

123. In relation to Dr. Wilson’s suggestion that there could be permeable flow in the layers below 3 metres, he said it was speculation but was possible. However, to give rise to the amount of water coming out of Lake 1, there would have to be tens of metres of layers with low permeability. In connection with the Darcy’s law calculation, he said that even if the permeable layer was very wide, the flow would only reach some 10 or 15 m³ but not 100 m³ per day.

124. It can be seen from the detail of the hydrologists’ expert evidence to which I have referred that the assessment of the hydrology of the Fen and the impact of the Lakes, if any, on the Ponds is a complex matter, and that there are substantial differences of opinion between the two experts. It was submitted on behalf of the claimants that the evidence of Dr. Wilson was measured and thoughtful, whereas that of Mr. Van Wonderen had about it the flavour of advocacy and was expressed in trenchant terms. In my judgment, the experts were both impressive in their particular ways. I reject the suggestion that Mr. Van Wonderen embarked on advocacy in his evidence. In my judgment he
was at pains to seek to ensure if possible that the court understood the complex and technical issues which arose and did so in a helpful and emphatic manner. Overall, by and large, I found the findings and opinions of Mr. Van Wonderen more persuasive and more supported by objective evidence than Dr. Wilson’s.

125. Therefore, in relation to the central issue between the two experts, I find that the main flow of water to Lake 1 and the artesian well at Pond A is by way of upward flow through preferential pathways from the chalk aquifer and possibly some diffuse vertical flow from that aquifer. I consider that the Lake 1 test provides strong evidence in support of that conclusion. I accept that, at the chalk borehole by Pond B, and in the boreholes at Bunwell and the Tas valley, there is clear evidence that the chalk at those points is strongly confined. However, in my judgment, by reason of the nature of the materials in the buried valley in the Fen, there can be preferential pathways to allow a flow upwards from the chalk aquifer at different points such as at the position of Lake 1 and the artesian well at Pond A. I consider it unlikely that, as was suggested by Dr. Wilson, a source of water for Lake 1 and the artesian well is water being driven vertically from sandy layers lower than three metres, which would require a head to force it upwards which was higher than Pond A up the river valley. I find equally unpersuasive the theory which Dr. Wilson raised in his evidence, that the pressure to generate the head in the artesian well related to the elevation of the ditch on Fen Road. It seems to me that at times, particularly in the summer, there would have been little or no water in that ditch, particularly following the Hargate flood diversion works. Dr. Wilson was not really in a position to indicate accurately the hydraulic gradient between the ditch and the artesian well, which he says gave rise to the head at
the artesian well. I do not accept that lateral flow through the superficial deposits could give rise to the head at the artesian well or the volumes of water being discharged from Lake 1 or the artesian well.

126. In terms of the sources of water for the Ponds, I accept that one source would be surface or near surface water run-off (interflow) and lateral groundwater flow. However, in my judgment, such source is a limited source. There is little evidence of surface water run-off and insofar as there was such run-off, much of it would be removed by drainage within the locality. Equally, in my judgment, near surface flow or interflow would be limited and Dr. Wilson appeared to accept in cross-examination that lateral flow above the groundwater level would be negligible in practical terms.

127. So far as lateral groundwater flow through the shallow deposits is concerned, I also find that such flow would be limited. This is highlighted, in my judgment, by the Darcy’s law equations which were considered in the course of Dr. Wilson’s oral evidence. Even on Dr. Wilson’s calculation of a 1 metre thickness of material with a high hydraulic conductivity factor of 8.64 metres per day, the result was a flow rate of only 6 m³ to 14 m³ per day. This is to be compared with the 70-120 m³ per day being discharged from Lake 1. Dr. Wilson suggested that the flow would be doubled if the permeable depth of the layer was 2 metres rather than 1 metre. However, there is little evidence that such 2 metre depth existed. He used a thickness (or width) of the layer of 100 metres in his calculation, but there was the suggestion it might be as much as 200 metres. However, in terms of flow to Lake 1, it has to be borne in mind in any event that the boundary of Lake 1 was only about 50 metres. Of course, if
the hydraulic conductivity factors produced by the falling head tests in the WS
boreholes were used for the Darcy's law flow equation, the flow rates would
be very low.

128. I also accept the views of Mr. Van Wonderen that the gradients in the area of
Pond A are such that the hydraulic pull is generally away from Pond A. I
accept that the topographical data used by Mr. Van Wonderen in connection
with this question was appropriate.

129. I have already indicated that I accept that, at the chalk borehole and other
locations, there was confinement of the chalk and I accept that that was
confirmed by the barometric pressure tests referred to by Dr. Wilson. Mr. Van
Wonderen was criticised by the claimants for not having addressed the issue of
the confinement of the chalk in his report. It was also said that he gave
inconsistent answers about the degree of confinement in his oral evidence.
However, in my judgment, as I have already found, the fact that there was
confinement or semi confinement of the chalk at one point does not mean that
there cannot be preferential pathways from it at other points, as stated by Mr.
Van Wonderen. The latter was also criticised for using the groundwater
modelling which indicated that the groundwater flow was some 50-70 mm. per
year on average. However, in my judgment, it was reasonable to use this
figure. I further consider that it was appropriate for him to use the 1.5 km²
groundwater catchment area to which he referred as opposed to a larger
surface catchment area.

130. I also accept the evidence of Mr. Van Wonderen regarding regional drying
trends and the periods of reduced rainfall or drought between 2009 and 2012.
The changes in the discharge levels from the artesian well do seem consistent with seasonal variations, despite Dr. Wilson’s evidence about overall effective rainfall during the period from 2001 to 2012. It must follow from my finding that the chalk aquifer is the main source of the water for Lake 1 and the artesian well at Pond A, that climatic variation is a predominant reason for variability or lowering of the water levels in the Ponds. I also accept the evidence from Mr. Van Wonderen that the Ponds to the east of Pond A receive their majority of water from groundwater inflow from the hill slope areas to the north. They only receive water from overflow from Pond A in wet periods when the Pond level rises to some 36.45 metres AOD. I therefore accept that the growing of the willow trees in the area to the north of the Fishery, and also the Hargate flood diversion works, is more likely than not to have resulted in a reduction of the flow of water from the north to the Fishery, although it is impossible on the evidence available to estimate the extent thereof. I further accept the evidence of Mr. Van Wonderen that there would be a degree of seepage from the Ponds to the river which would contribute to lower water levels in the Ponds. One then has to consider, in the light of all of these findings, the extent of any impact upon the Ponds of the construction of the Lakes. In my judgment, for the reasons explained by Mr. Van Wonderen and contrary to what was suggested by Dr. Wilson, I find that Lakes 2 and 3 had little if any impact upon the Ponds. It is clear in my view that Lake 4 had no impact at all, and indeed Dr. Wilson accepted that it was improbable that it had any impact on the Ponds. One is then left with the degree to which the construction of Lake 1 has affected the Ponds and particularly Pond A. Mr. Van Wonderen accepted that Lake 1 has had an impact on the outflow from
the artesian well, which then has a direct impact on the water level in Pond A. However, I accept his calculation that the reduction in flow from the artesian wall would normally only be of the order of 3.4 - 6 m³ per day and at the most about 13 m³ per day. On this basis, it must be the case, as Mr. Van Wonderen said, that in drought periods such as 2010/11 and 2011/12, the water level in Pond A would not have risen to the level required for overflow into Pond B even without the impact of Lake 1.

131. What then is the result of these findings in relation to the issue of causation? I have held that the “but for” causation test must be applied, that is that the claimants must prove on the balance of probabilities that, but for the excavation of the Lakes, their loss and damage would not have occurred. In my judgment, by reason of the variety of causes for the variability or lowering of water in the Ponds, and that the main source for Pond A is the chalk aquifer, (so that climatic variation is a main cause of the lowering of water levels in the ponds) the claimants have failed to prove on a balance of probabilities that, but for the excavation of the Lakes, the water levels in their Ponds would not have reduced to an extent where loss and damage occurred. Whilst, as I have said, Lake 1 had a very limited impact, it has not been proved that without that impact the lowering of the water levels in the Ponds to the degree where loss and damage occurred would not have happened anyway. The historical evidence from Mr. Chadwick and Mr. Greenwood, which I accept, is also of some significance when considering the water levels in the Ponds. That evidence indicates that, before the claimants purchased the Fishery, there were times when the water levels in the Ponds reduced to the extent that water had to be pumped into them from the river. Furthermore, in relation to the issue of
causation, it should be remembered, as I have already observed, that in his report Dr. Wilson concluded that it was at least probable that there had been an adverse impact on the Ponds from the Lakes, but the data available was insufficient to allow him to be precise about the exact degree of impact. That, in my judgment, comes very close indeed to saying that the “but for” test of causation cannot be satisfied by the claimants, as indeed I have found. Even if I had been persuaded that it was sufficient to establish causation if the claimants proved the excavation of the Lakes made a material contribution to the reduced water levels and the claimants’ loss and damage, it is very doubtful in my judgment if the impact of Lake 1 as calculated by Mr. Van Wonderen could be said to be a material contribution, particularly as the first claimant accepted that, in terms of his Ponds, a supply of even 20 m³ per day would be de minimis.

132. It must follow that, because the claimants have failed to prove causation, their claim under section 48A of the Water Resources Act 1991, must fail. It must follow for the same reason that any claim in negligence or nuisance would fail. However, I would have found in any event that the claim in negligence or nuisance could not be sustained by reason of the decisions in *Langbrook Properties Limited v. Surrey County Council* [1970] 1 W.L.R. 161 and *Stephens v. Anglian Water Authority* [1987] 1 W.L.R. 1381, where it was held a landowner has a right to abstract subterranean water flowing in undefined channels beneath his land regardless of the consequences to his neighbours. No doubt, by reason of these decisions, the claim in negligence or nuisance was not pursued strongly on behalf of the claimants.
133. The defendants' conduct in relation to the excavation of the Lakes does them little credit. I found them both to be most unimpressive witnesses. Clearly they lied when making the application for the certificate of lawful use in saying that the Lakes had been constructed by 1995. I find that they must have been aware of the refusal of the planning permission for three lakes on what became their land regarding the application made by Mr. Ford in 1989. I find that they must have known that planning permission would be required for the excavation of the Lakes and particularly because of the first defendant's previous experience with planning applications. If, contrary to my finding that foreseeability of damage was not necessary in a claim under section 48A, I would have found that it was foreseeable on the part of the defendants that some damage might be caused to the claimants' land by the excavation of the Lakes. Of course, such foreseeability does not assist the claimants in this case when they have been unable to establish causation. Equally, the fact that the defendants have acted dishonestly, failed to apply for planning permission when they should have done, and were unimpressive witnesses, cannot be a basis for finding in favour of the claimants, particularly in relation to the central issue of causation. If liability had been established, then contrary to the assertions on behalf of the defendants, I would have found that the second defendant was equally liable with the first defendant, as at all times she was a joint owner of the land and was participating to some extent in the decisions being made in relation to it. By reason of their conduct in connection with the Lakes, the defendants are being put to no doubt considerable expense and trouble by reason of the enforcement proceedings against them. It may be that the enforcement action in due course will have some ameliorative effect on the
Ponds, but this cannot be known for the same reasons that the claimants are unable to establish causation.

134. Although the claimants’ claim has failed, for the sake of completeness I will briefly indicate the findings I would have made on other issues and as to loss and damage had the claim succeeded. I would have rejected any claim by the claimants for economic tort, as there was no basis for saying that the defendants had deliberately excavated the Lakes to cause loss to the claimants, and in the end this claim was not pursued. Equally, I would have rejected the defendants’ defence that there was some equitable estoppel or easement upon which the defendants could rely against the claimants by reference to the conduct of Mr. Ford vis-à-vis the defendants. Again, this argument was not pursued by the defendants.

135. Had liability been established, I would at this stage have set out the important factors contained in the first claimant’s evidence regarding his management of the Fishery and the claims for loss and damage. I would also have summarised the effect of the evidence from the three fishery management experts, between whom, in any event, there was a considerable measure of agreement. However, in giving some indication of the further findings I would have made, I simply indicate that I have had regard to all of that evidence.

136. The defendants asserted that, if they were in breach of duty to the claimants which gave rise to damage, the damages recoverable should be reduced by reason of contributory negligence on the part of the claimants. It was said that the first claimant’s management of the Fishery was at fault in a number of respects. It was said he had not dredged or removed silt from any of the Ponds
and the most he did was to rake leaves out of them from time to time. It was said he did not have any form of mechanical aeration available and did not properly monitor the oxygen levels in the Ponds. It was also suggested that the Ponds were overstocked with fish. It is said that he should have done more by way of cutting back vegetation and trees. Whilst the first claimant’s management of the Fishery may not have been perfect, I would not have been persuaded that any of the matters relied upon by the defendants would have amounted to contributory negligence.

137. The first head of damages claimed by the claimants was in respect of fish loss. It was said that there had been a substantial loss through the death of fish in the severe winter conditions in December 2010/January 2011. It is alleged by the claimants that the low water levels in the Ponds, together with the low dissolved oxygen levels occasioned by the Ponds icing over, was the cause of these deaths. There was evidence from Mr. Freeman, the defendants’ fisheries management expert, that at that time other fisheries with normal water levels had suffered the loss of fish because of the icy conditions. By a narrow margin, bearing in mind the expert evidence of the claimants’ fisheries management expert Mr. Girdler, who I found to be most impressive, I would have found that it was more likely than not that, but for the low water levels, the fish losses would not have occurred in those icy conditions.

138. In my judgment, the claimants’ figures for fish deaths is questionable. Due to the loss of data on his computer, the first claimant was only able to produce details of fish losses totalling a little short of 1,400 lbs. His claim is that some 2,500 lb. of fish died in Ponds C and D, and a little less in Pond B. Originally
he was claiming a total loss of fish in the 2010 winter at 5,000 lb. at £10 per pound. The experts put the average cost of a fish at around £5-£6 per pound. The first claimant also claimed that, in the overall period from 2006 to 2014, a further approximately 2,750 lb. of fish died by reason of the low water levels.

139. I would have been prepared to find that the claimants were entitled to damages for fish losses, but at a significantly lower level than claimed. On a broad brush basis, I would have allowed for the loss of 3,000 lb. of fish at £6 (including VAT) for the loss in the winter of 2010, which would give £18,000. For other loss of fish due to low water levels in the overall period from 2006 to 2010, I would have allowed for 1,000 lb. of fish at £6, giving a figure of £6,000. In relation to the latter figure, I very much bear in mind that there would have been a number of other reasons for fish losses, including predation, as well as the low water levels.

140. The next head of damages claimed by the claimants was in respect of loss of income. This claim was wrongly pleaded on the basis of a claim for loss of turnover rather than loss of profits. It is the claimants’ case that, by 2011, they would have increased the turnover of the Fishery to £25,000 per annum. This would have been arrived at after stepped increases from £15,000 per annum in 2007. Thus it was estimated that the total turnover up to 2014 would have been £175,000. The actual income (i.e. turnover) for those years was £42,107. Thus the claim on the basis of loss of turnover to 2014 was £132,892. On the basis that it would take from now a further five years to restore the Fishery to its proper state and to a turnover of £25,000, there was a claim for future losses of £61,500.
141. Mr. Girdler, who has great experience of fisheries of this nature, said that in his opinion the Fishery was well capable of attaining a turnover of £25,000 per annum. When pressed by me to attempt to give a reasonable figure for the expenses of running the Fishery to be deducted from the £25,000 turnover, he said that he would expect expenses to be in the region of £10,000 per annum. On that basis, there would be a profit of some £15,000 per annum, i.e. 60% of the turnover. I am somewhat doubtful as to whether the Fishery could have achieved a turnover of £25,000. However, I would have been prepared to accept that the low water levels in the Ponds had given rise to a loss of income for the claimants.

142. Doing my best, again on a somewhat broad brush basis, I would have found as follows. For the three years from 2007 to 2009, I would have allowed a loss of profit of 60% of a turnover of £12,000 per annum, giving a total of £21,600. For the years from 2010 to 2014 I would have allowed 60% of £18,000 turnover, giving 5 x £10,800 per annum with a total of £54,000. That would give a total of £75,600 for the years up to 2014. From this I would have deducted 40% of the actual turnover during those years of £42,107, giving a deduction of £16,843. Thus the award for loss of profit to date would be £58,759.

143. For loss of income on the basis that it will take three to five years before the Ponds and their banks will be restored to a proper condition, on the assumption that revetment is not carried out, I would allow an average net loss of profit of £8,000 per annum for five years, giving £40,000.
144. The next claim by the claimants was in respect of the costs of immediate revetment of the Ponds, that is restoring the banks of the Ponds to a proper sound and restraining state by reason of their deterioration due to erosion and sinking because of the low water levels. These revetment works would be very substantial indeed and I accept as stated by Mr. Girdler that the cost would be some £224,000. However, he accepted that, if full water levels are restored to the Ponds, the banks would gradually become saturated and within three to five years would be in a sound state again. The costs of revetment are as much as or in excess of the overall value of the Fishery. In my judgment, it would be out of all proportion to award £224,000 for the immediate revetment works when, over a period of three to five years, the banks would be restored in any event if the Ponds were full. Thus, on the basis of the principles set out by the House of Lords in *Ruxley Electronics v Forsyth* [1996] A.C. 344, I would only have awarded the current loss of value in the Fishery rather than the revetment costs. I accept from the evidence of Mr. Freeman on behalf of the defendants that that current diminution in value is in the sum of £30,000, and that is the award I would have made to the claimants.

145. Next, the claimants claim various expenses. I would have allowed £450 for the purchase of a pump and, say, £300 in respect of the cost of petrol to operate it to aerate the water at the time of the severe winter conditions in 2010, but not to include any amount for the recharge tests conducted in 2012. I would also have allowed the cost of sinking the chalk borehole in the sum of £10,477. The claimants claimed for 49 hours per week for a six week period, plus an additional 25 hours, for recovering and disposing of the dead fish in the winter of 2010/11. The claim was at the rate of £15 per hour, making a total of
£4,785. In my judgment, this was an excessive claim and at most I would have allowed the sum of £3,000 in respect of this. Additionally, the first claimant claimed that he had spent at least 1,500 hours of time monitoring the effects of the water loss, liaising with the authorities, reviewing and assessing reports and data supplied by the authorities, and assessing the losses suffered by the business. Again, he claimed at the rate of £15 per hour for this. In my view, this was another excessive claim and at most I would have allowed 750 hours at £10 per hour, giving £7,500.

146. Finally, the claimants claimed general damages for interference with their use and enjoyment of the Fishery by reason of the low Pond levels. In my judgment, a very modest amount of no more than £750 for each claimant would have been appropriate under this head of damage.

147. The defendants argued that in any event there should be a reduction from any damages awarded by reason of the claimants’ failure properly to mitigate their losses. This was on the basis that the claimants had unreasonably refused to accept a piped transfer of water from Lake 1 into Pond A. The first claimant’s reason for this refusal was that it would have prejudiced his potential claim under the Water Resources Act and there would have been no guarantee of such continued supply of water in the future. More recently, supported by the opinion of Mr. Girdler, he said there were biosecurity reasons for not accepting the piped transfer, because of the risk of disease from Lake 1 passing to fish in the Ponds. On balance, I would have held that the claimants’ stance about this was not unreasonable and so would have held that they had not failed properly to mitigate their losses.
148. The final issue would have been, if the claimants had succeeded in their claim, whether the court was prepared to make a mandatory injunction against the defendants, requiring them to infill one or more of the Lakes. In my judgment, it would not have been appropriate to grant such relief at this stage. There was the clear possibility, if such an injunction was made, of conflict with the steps being taken by SNDC regarding the enforcement notice. In my judgment, had the claimants succeeded on liability, the appropriate course would have been to adjourn the application for a mandatory injunction pending the outcome of the enforcement proceedings.

149. Unfortunately for the claimants, by reason of my finding on the issue of causation, they have failed in their claim and are not entitled to any of the damages which would have been awarded had they been successful. It follows that there must be judgment in this case for the defendants.

150. I must finally say that I am extremely grateful to Counsel for the claimants and the defendants for their written and oral submissions which were of a very high standard and of invaluable assistance to me.
Dear Stuart

As discussed, please see the following comments provided by Jan Van Wonderen regarding the attached draft committee report:

With regards the “Other Representations” on page 9 onwards (if it is possible to include any response to these representations):

- The conceptualisation presented in the ES has been based on all historical data and information. It is therefore up to date and not necessarily in accordance with earlier conceptualisation, which was based on more limited data and information.
- The word fraudulent is inappropriate and reference should be made to the 2017 High Court ruling.
- The ES is clear about use of the infill material and that its suitability and on-site availability will be checked prior to the start of the infilling.
- The natural emergence of groundwater, once the pond is infilled, does not count as an abstraction and thus negates the enforcement notice requirement to reduce abstraction below 20 cu m/day. This was confirmed by the EA.
- The exact stratigraphy of the pond area can never be known. However, data from shallow boreholes around the pond do provide sufficient detail to draw conclusions on the stratigraphy within the pond area.
- The use of weirs in the River Tas, was considered not suitable by Harrison, Cascade and the EA. The ES also considers the impacts of a weir on conditions within ponds 2 and 3 and the likelihood of flooding in the area between pond 1 and the river. There is reference to the weir option in paragraph 6.89 to 6.91.
- The information provided has been based on detailed assessment of all available data and the expert report prepared by Mr Van Wonderen for the High Court case makes this very clear.
- Mr Van Wonderen never stated that the river is responsible for the drying out of the fen.

With regards Section 6:

- In paragraph 6.31 there is reference to various reports in relation to the Civil Court proceeding. It is assumed that this refers to the reports prepared by Dr Wilson for the High Court case described in Appendix 6 (presided by Judge Reddihough).
- In paragraph 6.54 reference is made to ‘porosity tests’. This should read ‘permeability tests’
- The survey referred to in paragraph 6.83 has been completed and a report is due in early August 2017 (as discussed – M&R will chase for this prior to the committee meeting)
- The reference to de-silting of pond A (mentioned by Dr Wilson) in paragraph 6.103 should be considered with great care. In the opinion of Mr Van Wonderen, de-silting of pond A could enhance the seepage losses to the River Tas and therefore not fulfil the objective of enhancing flow into the pond. If de-silting were to be implemented by Mr Chetwynd, then it should be clear that any adverse impacts on pond A would be his sole responsibility.
- In paragraph 6.122, should ‘2(a)’ be ‘2(b)’?
- With reference to paragraph 6.123, the requirements for carrying out ecological and site survey and obtaining of necessary licences will be assessed and progressed following final approval of the ES.

Kind regards
Saskia Molekamp  
Senior Associate  
for Mills & Reeve LLP

Click here for our latest legal insights on Brexit

Tel: (+44)(0)1223 223216 (Ext 2316)
Twitter: @MillsandReeve
Saskia.Molekamp@Mills-Reeve.com
www.mills-reeve.com
www.plan-it-law.com

Botanic House, 100 Hills Road
Cambridge CB2 1PQ
DX 122891 CAMBRIDGE 4

We are delighted to announce we have merged with London law firm Maxwell Winward.  Find out more here.

Please consider the environment - do you really need to print this email?

Mills & Reeve LLP

Fourteen years running as one of The Sunday Times’ 100 Best Companies To Work For: 2004 - 2017

This email is confidential and may be privileged. If you are not the intended recipient please accept our apologies. Please do not disclose, copy, or distribute information in this email nor take any action in reliance on its contents: to do so is strictly prohibited and may be unlawful. Please inform us that this message has gone astray before deleting it. Thank you for your co-operation.

Mills & Reeve LLP is a limited liability partnership registered in England and Wales with registered number OC326165 and VAT number GB 104 8345 88. Its registered office is at Monument Place, 24 Monument Street, London, EC3R 8AJ, which is the London office of Mills & Reeve LLP. A list of members (with details of each member’s professional qualification) may be inspected at any of the LLP’s offices or on our website. The term ‘partner’ is used to refer to a member of Mills & Reeve LLP. Mills & Reeve LLP is authorised and regulated by the Solicitors Regulation Authority and is subject to the SRA Code of Conduct 2011, which can be viewed at: http://www.sra.org.uk/solicitors/handbook/code/content.page.

Further information about Mills & Reeve LLP including the location of its offices can be found on our website at: www.mills-reeve.com.

This email has been checked for viruses by the screening system used by Mills & Reeve LLP. However, Mills & Reeve LLP cannot guarantee that this email and any attachments are virus free. To maintain service standards, emails sent to or by individuals at Mills & Reeve LLP may be read by others at the firm. Service cannot be effected on Mills & Reeve LLP by email without our express prior agreement.
Dear Pontin,

Thanks you for your email and attachments which I have considered.
I have previously submitted comments on the submitted documentation provided on behalf of the developer and those comments remain unchanged.

The necessary EIA information required subsequent to the High Court judgment in 2010; as determined necessary by the lengthy scoping consideration and detailed in the issued Scoping Opinion to make any decision have not been provided by the developer; and what information has been provided and relied upon is not available in the presented report. The provide documentation does not meet the requirements of Schedule 4 of the EIA Regulations and does not technically or non technically identify the impacts of the works; resulting in the position whereby the Council are equally not in a position to make any decision on the submitted proposals; because the information has after seven years still not been provided, even though there is now clear evidence and information to clearly identify the significant negative impacts of the works.

In addition, completion of the tests identified by the Environment Agency as requested by ourselves, which the Developer and Council have refused to undertake, would remove any of the uncertainties presently identified by the Environment Agency.

I have made my views, supported by evidence, regarding the presented stance quite clear.

Yours faithfully
B Chetwynd.

From: Stuart Pontin <SPontin@S-NORFOLK.GOV.UK>
Sent: 21 July 2017 11:00:55
To: bryncchetwynd@hotmail.com
Subject: Carleton Fen

Dear Mr Chetwynd,

Please find attached a draft committee report which it is proposed to present to the Development Management Committee on 16 August 2017.

The Council has decided to allow you 14 days to consider and comment on the draft. I would therefore be grateful for any comments by 4 August 2017 at the latest. It is anticipated that the report (subject to any necessary modifications) will be published during the week commencing 7 August 2017.

We have also decided to allow public speaking in relation to this report. I have attached details relating to public speaking at Committee for your information.

Regards
Stuart Pontin
Business Improvement Manager
<table>
<thead>
<tr>
<th>Date</th>
<th>Summary</th>
<th>Document Reference</th>
<th>Ref re VWLW Ltd ES</th>
<th>Sections of 3rd party report referred to in ES</th>
<th>Sections of 3rd party report referred to re Ecology Mitigation / monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>Norfolk Wildlife Trust Habitat Survey Report</td>
<td>NWT1 ES Ref 2 Appendix 3 of ES</td>
<td>describes in outline the ecological status of the fen on the Tunmores’ property. This forms a rough indication of ecological conditions that may be representative of the pre-pond construction period. A re-survey was undertaken of the combined area owned by the Tunmores and Mr Chetwynd. The description of the land owned by the Tunmores is similar to those described in the 1983 document</td>
<td>Reg 22 Table 4.1 Used to inform the ES of the ecological conditions of the Carleton Fen area during the pre-pond period (Section 5.4 of the ES).</td>
<td>Nov 16 ES pg43 fig 8</td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
<td>Ref re VWLW Ltd ES</td>
<td>Sections of 3&lt;sup&gt;rd&lt;/sup&gt; party report referred to in ES</td>
<td>Sections of 3&lt;sup&gt;rd&lt;/sup&gt; party report referred to re Hydrology Mitigation / monitoring</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------</td>
<td>----------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1998</td>
<td>Norfolk Wildlife Trust Habitat Survey Report</td>
<td>NWT2</td>
<td>Appendix 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 2007</td>
<td>Wild Frontier Ecology Ltd – Ecological Assessment</td>
<td>WFE1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nov 2007</td>
<td>Wild Frontier Ecology Ltd – Assessment of proposed car park vegetation</td>
<td>WFE2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nov 2007</td>
<td>Wild Frontier Ecology Ltd – Management Plan</td>
<td>WFE3</td>
<td>ES Ref 3</td>
<td>Section 5.3 of report</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Reg 22 Table 4.1</td>
<td>Appendix 5 of the Final Regulation 22 Response by Harrison Environmental Consulting (Sections 3 to 5 in Ref 4), entitled Framework Management and Monitoring Plan, contains a comprehensive overview of ecological monitoring and management and draws on information from the Wild Frontier Ecology 2007 report (Appendix 4.1 of Ref 11). It has served as an adequate approach for this ES to monitoring and management in the fen area on the left bank of the River Tas</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nov 16 ES pg54 6.3.5 ref to Appendix 4.1 and 4.2 of EMMP</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nov 16 ES pg54 6.3.6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nov 16 ES – section 6.3 pg 54 6.3.5 ref to Appendix 4.1 and 4.2 of EMMP and Wild Frontier Ecology Reports</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
<td>Ref re VWLW Ltd ES</td>
<td>Sections of 3rd party report referred to in ES</td>
<td>Sections of 3rd party report referred to re Hydrology Mitigation / monitoring</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>December 2007</td>
<td>Eco Check Consultancy Ltd – Surface and Groundwater Management Study</td>
<td>ECC1 (A11)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>Wild Frontier Ecology Ltd - Ecological enhancement proposals for pond 4- 2008</td>
<td>WFE4</td>
<td></td>
<td></td>
<td>Nov 16 ES – section 6.3 pg 54 6.3.5 ref to Appendix 4.1 and 4.2 of EMMP and Wild Frontier Ecology Reports</td>
</tr>
<tr>
<td>Jan 2009</td>
<td>C E Rickards report</td>
<td>Rickards1 (A10)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feb 2009</td>
<td>Eco Check Consultancy Ltd – Ecological enhancement and management plan</td>
<td>ECC2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>April 2009</td>
<td>Bingham Hall – Report on Ground and Surface Water Management</td>
<td>Bingham1 (A9)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan 2010</td>
<td>Eco Check Consultancy Ltd – Ecological enhancement and management plan – annual review</td>
<td>ECC3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oct 2010</td>
<td>Wild Frontier Ecology – Phase 1 Habitat Survey – Appendix H of February 2012 EIA (Ref 1)</td>
<td>WFE5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18/1/2011</td>
<td>Harrison Environmental Consulting – Fieldwork method statement for Environmental Impact Assessment</td>
<td>Harrison's 2 (56)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
<td>Ref re VWLW Ltd ES</td>
<td>Sections of 3rd party report referred to in ES</td>
<td>Sections of 3rd party report referred to re Hydrology Mitigation / monitoring</td>
</tr>
<tr>
<td>----------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------</td>
<td>-----------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>15/2/2012</td>
<td>Harrison Environmental Consulting – Environmental Impact Assessment</td>
<td>Harrison 5 (190)</td>
<td>ES Ref 1 Appendix 3 of ES</td>
<td>information about geology, climate, hydrology, ecology and flooding. The report also describes the use of groundwater and surface water models used for assessment of hydrological impact and flooding.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reg 22 Table 4.1</td>
<td>VS Ref 1 Appendix 3 of ES</td>
<td>development of the hydrological understanding in Ref 8 and summarised in Section 4.5 of the ES. Contributed to the understanding of the ecology during the period of pond existence. contributed to the formulation of the option appraisal overview in the ES (paragraphs 2.2.7 to 2.2.15).</td>
<td></td>
</tr>
<tr>
<td>29/6/2012</td>
<td>Cascade - Environmental Statement Review</td>
<td>Cascade 1 (275)</td>
<td>VS Ref 1 Appendix 3 of ES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
<td>Ref re WVLW Ltd ES</td>
<td>Sections of 3rd party report referred to in ES</td>
<td>Sections of 3rd party report referred to re Hydrology Mitigation / monitoring</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>--------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>28/8/2012</td>
<td>Harrison Environmental Consulting – Submission of Further information in response to Regulation 22 information Request and Non technical summary – August 2012</td>
<td>Harrisons 6</td>
<td>(320)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28/8/2012</td>
<td>Submission of Further information in response to Regulation 22 information Request - August 2012</td>
<td>Harrisons 7</td>
<td>(320)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12/10/2012</td>
<td>Harrison Environmental Consulting - Additional information submitted</td>
<td>Harrisons 8</td>
<td>(351)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26/10/2012</td>
<td>Cascade - Regulation 22 Review</td>
<td>Cascade 2</td>
<td>(378)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26/10/2012</td>
<td>Environment Agency - Transfer licence</td>
<td>EA1 (379)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28/11/2012</td>
<td>Harrison Environmental Consulting - Further information</td>
<td>Harrisons 9</td>
<td>(409)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/2/2013</td>
<td>Mr Chetwynd - Representations received from Mr Chetwynd’s Solicitors (Simon Jackson) &amp; report from Dr Wilson</td>
<td>Chetwynd 1</td>
<td>(467)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22/2/2013</td>
<td>Cascade Reg 22 EIA Review</td>
<td>Cascade 3</td>
<td>(486)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21/8/2013</td>
<td>Mr Chetwynd - E mail from Mr Chetwynd’s solicitor, Simon Jackson re results of bore hole</td>
<td>Chetwynd 2</td>
<td>(647)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14/8/2013</td>
<td>Mr Chetwynd - Dr Wilson report for Mr Chetwynd following drilling of borehole</td>
<td>Chetwynd 3</td>
<td>(673)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5/9/2013</td>
<td>Cascade - Cascade - Carleton Fen Reg 22 v3 Review - September 2013</td>
<td>Cascade 5</td>
<td>(668)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5/9/2013</td>
<td>Cascade - Carleton Fen Recommendations for Mitigation - September 2013</td>
<td>Cascade 6</td>
<td>(668)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/1/2014</td>
<td>Mr Chetwynd – Borehole Excavation diary and notes for well sunk at Fen Lakes Fishery</td>
<td>Chetwynd 4</td>
<td>(777)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
<td>Ref re WWLW Ltd ES</td>
<td>Sections of 3\textsuperscript{rd} party report referred to in ES</td>
<td>Sections of 3\textsuperscript{rd} party report referred to re Hydrology Mitigation / monitoring</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>20/1/2014</td>
<td>Harrison Environmental Consulting - Regulation 22 further information</td>
<td>Harrison 10 (788)</td>
<td>Ref 4 Appendix 3</td>
<td>Detailed options appraisal on six potential mitigation options Nov 16 ES pg54 6.3.6 ref to sections 3 to 5 of Ref 4, and appendix 5 - ecological monitoring and management</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Appendix 4 Reg 22 Table 4.1</td>
<td>Nov 16 ES pg54 6.3.6 ref to sections 3 to 5 of Ref 4, and appendix 5 - ecological monitoring and management Wild Frontier Ecology assessment 2012. Table 1 in the 2012 report indicates hydrological requirements for different NVC communities</td>
<td></td>
</tr>
<tr>
<td>14/2/2014</td>
<td>Cascade - Carleton Fen ES Review - regulation 22 - Submission 3 - March 2014</td>
<td>Cascade 7 (825)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27/6/2014</td>
<td>Mr Chetwynd – Reports, data comprising:</td>
<td>Chetwynd 5 (937)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• CSS Folder, (Countryside Stewardship Scheme application- baseline information)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Mapping Folder, (Series of maps and compilations of mapping data)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1947 aerial photography</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Borehole v conceptual model (Diary of sinking of chalk borehole on Fen Lakes Fishery and comparison with ES assumptions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Carleton Fen restoration works (Required restoration works necessary to seal shallow aquifer)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Carleton Fen undertaken works (Known works undertaken on fen and river)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ditches around development site (Photographs)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Double pipe discharge from Pond 2&amp;3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- EA email (re: restoration scheme)
- Ecological Appraisal (EA water quality assessment, including requirement for specialist fen expert)
- Explanation (Brief explanation of hydrology)
- Fen data (Daily data and provided data with some of the graphs used to explain the hydrological process on the fen)
- Fen Handbook (Government sponsored publication)
- French drains (Diagram of proposed French drain system to augment any water supply to adjoining fen and lakes to comply with enforcement)
- Historic reference (1949) (Local historic record of artesian well)
- MORECs rainfall data
- NRA visit note (1995) (Note included in business paperwork handed over on purchase of fishery)
- Pond 4 outflow pipe 2007 (Photograph December 2007)
- Pond 4 outflow pipe 2009 (Photograph May 2009)
- River development (Photographs)
- River above development (Photograph)
- Simplistic view (Indicating requirement for restoration)
- Soil Survey (Evidence of edge of channel and no northern flow)
- The Natural Recharge Process of Carleton Fen (Document explaining the hydrological process and consideration of data omitted by the ES)
- Weather data (site data collected since 2006)

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>28/10/2014</td>
<td>Cascade - Hydrogeology and model review - October 2014</td>
<td>Cascade 9</td>
</tr>
<tr>
<td>12/12/2014</td>
<td>Jan van Wonderen - Expert report on groundwater – submitted 9/2/16 following meeting of 4/2/16, + as reference 8 and appendix 8 of ES submitted 7 November 2016</td>
<td>JWW1</td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
</tr>
<tr>
<td>----------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>18/12/2014</td>
<td>Mr Chetwynd - Dr Wilson - Professional opinion of Dr CM Wilson on the impact of the construction of lakes at Carleton Fen by Mr B Tunmore between 1999 and 2006 on existing fishing ponds owned by Mr B Chetwynd Fen Lakes fishery – Civil Case report of— submitted ref 7 with VWLW Ltd ES Nov 2016</td>
<td>Chetwynd 6</td>
</tr>
<tr>
<td>5/3/2015</td>
<td>Cascade - Carleton Fen Outline EMMP Feb 2015 v3.0 final collated</td>
<td>Cascade 11 (1209)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Reference</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>5/3/2015</td>
<td>Cascade - Carleton Fen Mitigation Options Assessment Feb 2015 v3.0 final collated</td>
<td>Cascade 12 (1209) Ref 10 Appendix 3 Reg 22 Table 4.1 describes eight possible mitigation options with some of the screening of options based on the ESI groundwater model. The report indicates the infilling of Pond 1 as a preferred option. This document has been used in relation to the following aspects of the ES: Legislation and Planning Policies in relation to hydrology and ecology (refer to Sections 4.2 and 5.2 of the ES)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nov 16 ES pg 45 5.4.7 and Feb 17 Reg 22 pg 20 7.6 Nov 16 ES pg 45 ref to applied ecology 2014 survey summarised in cascade mitigation assessment report section 7.4 (ref 10 )</td>
</tr>
<tr>
<td>Date</td>
<td>Topic</td>
<td>Document Code</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>May 2015</td>
<td>Cascade – ESI - River Tas catchment water balance</td>
<td>Cascade 13 (1436)</td>
</tr>
<tr>
<td>7/7/2015</td>
<td>Harrison Environmental Consulting – Technical update</td>
<td>Harrisons 11 (1394)</td>
</tr>
<tr>
<td>Date</td>
<td>Summary</td>
<td>Document Reference</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>4/9/2015</td>
<td>Cascade - Carleton Fen Dam Options Review Final 3rd September 2015 inc Appendix</td>
<td>Cascade 15 (1428 / 1431)</td>
</tr>
<tr>
<td>30/10/2015</td>
<td>VWLW Ltd Additional works and monitoring at Carleton Fen</td>
<td>JWW 3 (1460)</td>
</tr>
<tr>
<td>4/4/2016</td>
<td>VWLW Ltd - Appraisal of model and mitigation option</td>
<td>JWW 4 (1582)</td>
</tr>
</tbody>
</table>
| Reg 22 Table 4.1 | mitigation option appraisal, particularly with respect to lateral groundwater movement from Pond 1 to Pond A. The report also expresses concerns about the mitigation option preferred by Cascade Consulting (Environment and Planning) Ltd and provides opinion regarding the extent of future monitoring.

This report provides a critical review of the modelling undertaken by ESI and the mitigation option selected by Cascade Consulting (Environment and Planning) Ltd. The review provided focus on the selected option described in the ES, which is believed to satisfy all requirements of the Enforcement Notice. |
<table>
<thead>
<tr>
<th>Date</th>
<th>Summary</th>
<th>Document Reference</th>
<th>Sections of 3rd party report referred to in ES</th>
<th>Sections of 3rd party report referred to re Hydrology Mitigation / monitoring</th>
<th>Sections of 3rd party report referred to re Ecology Mitigation / monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/4/2016</td>
<td>VWLW Ltd - Alternative Options and Options Comparison</td>
<td>JWB 5 (1582)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/11/2016</td>
<td>VWLW Ltd - Environmental Statement for Scheme of Works to Comply with Enforcement Notice Reference</td>
<td>JWB 6 (1731)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/2/2017</td>
<td>VWLW Ltd - Further Information in Response to Regulation 22 Request</td>
<td>JWB 7 (1803)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Hydrology mitigation / effects and monitoring
Nov 16 ES – pg d table S1 and p36 table 6
Nov 16 ES – pg 49.6.2.4 – 6.2.12
Nov 16 ES – pg 51 fig 10, pg 52 fig 11, pg 53 table 12

Ecology mitigation / effects and monitoring
Nov 16 ES – pg e table s2 and pg47 table 11
Nov 16 ES – section 6.3 pg 54.6.3.5 ref to Appendix 4.1 and 4.2 of EMMP AND Wild Frontier Ecology Reports
Nov 16 ES pg 54.6.3.6 ref to appendix 5 of Harrison reg 22 section 3 to 5 [ref 4] contains comprehensive ecological monitoring and management plan based on wild frontier 2007 report – appendix 4.1 of ref 11
Nov 16 ES pg 54.6.3.7 ref to table 13 and fig 12 and Feb 17 Reg 22 pg 11 table 13
Glossary of terms

Aquifer – permeable rock capable of yielding and transmitting water.

Artesian – condition where water pressure causes water to rise above local ground level.

Buried valley - ancient river valley form with its base now at some depth and now infilled with unconsolidated, usually mixed, materials. Depending on the nature of the infilled material the channels can act as a barrier to groundwater flow with a consequent effect on the routing of groundwater discharge. On the edge of such channels, the fissuring withing the chalk is often significantly enhanced resulting in very strong and localised groundwater discharge through the layers above and to the surface.

Confined aquifer – an aquifer which is overlain by a confining bed of significantly lower hydraulic conductivity which retards the vertical movement of water.

Discharge zones - where water exits as diffuse upward groundwater flow and / or concentrated lateral groundwater flow.

Drawdown test – controlled reduction of water level in the aquifer through pumping or draining at a specific rate. A test is usually carried out to determine the hydraulic properties of the aquifer or to directly observe the effects of abstraction.

Groundwater – sub surface water located in the permanently saturated horizon of the underlying geological formation, consisting largely of surface water that has seeped down: the source of water in springs and wells and maintains flow in the rivers during the summer.

Groundwater inflow – the location and rate of discharge of groundwater from the aquifer to a surface waterbody or borehole /well.

Groundwater level – refers to level of water measured in the formation at a point penetrated by a groundwater level monitoring borehole (known as a piezometer), or an estimated of level calculated using a groundwater model.

Hydrogeology – branch of Hydrology concerned with behaviour and movement of water occurring underground.

Hydraulic continuity – A measure of the degree of resistance to unimpeded flow between water bodies (aquifer, river etc) or geological strata

Lateral flow - movement of water under gravitational forces parallel to the slope of the land

Piezometers - groundwater level monitoring borehole

Stratigraphy - the arrangement of rocks in layers or strata

Superficial deposits – Shallow geological layers, of recent riverine or glacial origin. Located in the valley they overlay the Lowestoft Till formation. They typically comprise vertically and laterally variable deposits of ill-sorted fine to course sands, clays and clayey peat. With thicknesses of a few metres they may be locally very variable.
Major Applications

2  Appl. No  :  2017/0001/F
Parish    :  WICKLEWOOD

Applicants Name  :  Mr R Long
Site Address     :  Land North Of High Common Morley St Botolph Norfolk
Proposal        :  Full Application - proposed anaerobic digestion renewable energy unit, landscaping vehicular access and associated works

Recommendation  :  Refusal
  1  Inadequate highway access
  2  Impact on landscape
  3  Harm to setting of heritage assets
  4  Insufficient information to ensure there is no impact on ground water quality

1.  Planning Policies

1.1 National Planning Policy Framework
NPPF 01: Building a strong competitive economy
NPPF 03: Supporting a prosperous rural economy
NPPF 07: Requiring good design
NPPF 10: Meeting the challenge of climate change, flooding and coastal change
NPPF 11: Conserving and enhancing the natural environment
NPPF 12: Conserving and enhancing the historic environment

1.2 Joint Core Strategy
Policy 1: Addressing climate change and protecting environmental assets
Policy 2: Promoting good design
Policy 3: Energy and water
Policy 5: The Economy
Policy 17: Small rural communities and the countryside

1.3 South Norfolk Local Plan
Development Management Policies
DM1.4: Environmental Quality and local distinctiveness
DM2.1: Employment and business development
DM3.11: Road safety and the free flow of traffic
DM3.12: Provision of vehicle parking
DM3.13: Amenity, noise, quality of life
DM3.14: Pollution, health and safety
DM4.1: Renewable Energy
DM4.2: Sustainable drainage and water management
DM4.5: Landscape Character Areas and River Valleys
DM4.8: Protection of Trees and Hedgerows
DM4.9: Incorporating landscape into design
DM4.10: Heritage Assets

1.4 Supplementary Planning Document
South Norfolk Place-Making Guide 2012
Statutory duties relating to Listed Buildings and setting of Listed Buildings:

S66(1) Listed Buildings Act 1990 provides: “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall 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.”

2. Planning History

2.1 No relevant planning history

3. Consultations

3.1 Town & Parish Councils

Comments on further information

Deopham & Hackford Parish Council

Reiterate our strong objection

- Highways Department have summed up our concerns about the suitability of the local roads and the applicant’s response to those issues does not make us feel they are taking them seriously
- Drawings only cover Morley Lane, there is no acknowledgement that other local roads cannot cope with 30T trucks
- Applicant starts that it would not be viable to invest in smaller vehicles as they have a fleet of 30T trucks, this begs the question of why 14T fast tractor and trailer combinations were used by the applicant last summer and autumn for the Crownthorpe digester
- New information maintains that the feedstock will still come from the east via the B1172 and Morley Lane, however he has farmers growing for him to the west and we have no confidence they will stick to the B1172 route

Morley Parish Council

Reiterate previous objection

- The Highways Department have broadly summed up residents’ concerns around the suitability of the local road network for the volume and type of vehicles that would need to be deployed for a development of this kind in their response dated 8th May 2017. Further submissions on behalf of the applicant are not seen by the Parish Council or residents as making any material difference to this initial assessment.
- Regardless of the unsuitability of Morley Lane as a transport route, the other local roads from the North, West and South through Morley itself are even more unsuitable for these kinds of vehicles, especially in high volumes.
- The volume of large vehicles will also cause noise nuisance and air pollution in the surrounding area.
- The proposed site is situated on a groundwater source – (inner zone) and is therefore at significant risk from pollutants, regardless of plant design.
The presence of many forms of protected wildlife has been established, including great crested newt, badger, deer, birds of prey (buzzards and peregrine falcons) and bats. The development and operation of an industrial scale plant would have a detrimental effect on these animals and irreversibly change the rural nature of the area.

The Campaign for the Protection of Rural England (CPRE) and Historic England have both objected to the application and believe that Grade II* listed buildings in the area will be negatively impacted by this development. These buildings are Wicklewood Hall and Morley St Botolph Church.

Overall, the Parish Council and its residents can see no benefit for the village with regard to this application.

Comments on original plans

Deopham & Hackford Parish Council

Object
- whilst development is not within the parish, the movement of crops to the site will affect the parish
- the application states that incoming traffic will be from the east, but the land farmed for the crops to supply it are to the west
- we know from experience that vehicles using the Wymondham digester drive too fast on narrow lanes at all times of day and night
- agree with Morley PC that conditions involving traffic movements cannot be enforced

Morley Parish Council

Object
- heavy vehicles moving through the heart of this community, past houses and schools will cause noise and air pollution
- increase in traffic raises safety concerns in an area where traffic volumes and speed are already an issue of considerable concern; it is an area where there are few stretches of footway to make pedestrians (particularly parents and children) safe from traffic
- the roads in this area are unsuitable for heavy vehicles
- assurances that there would be "no traffic through Morley St Botolph" are insufficiently explained: experiences tells us that heavy goods drivers, especially if they have poor local knowledge, follow their satnavs, which are normally intended for use in cars. They take the shortest routes, which would take them through this community. How will this be signed and, more importantly, policed?
- It is unclear how this community stand to gain to compensate for the inconvenience and possible dangers this application represents
Wicklewood Parish Council

Object
- the local road network is totally inadequate to cope
- conditions should be placed on traffic movements but how will these be enforced?
- the analysis of traffic movements appears to be spread evenly over a 12 month period but the harvesting of crops is seasonal
- the proposal will remove land from food production
- the appearance of the building in the open countryside will be detrimental to the visual rural environment
- there is no pedestrian footpaths in some of these villages thereby placing pedestrians of all ages at significant risk
- the impact on residential areas will be significant in terms of pollution: noise, smell, light and traffic
- the proposed site is very close to Grade I and II listed buildings where placing industrial development is unacceptable
- not aware of the consultation exercise conducted by the applicant
- more residents should be informed
- questionable assertions such as that sugar beet would be taken to Newark and not factories in Norfolk and Suffolk

Wymondham Town Council

Object
- vehicle movements on narrow roads
- environmental effect on watercourses and surface run-off
- visual effect on nearby listed buildings and churches
- odour and noise pollution

Great Melton Parish Council

Object
- Area is unsuitable for this industrial and will create an unacceptable level of commercial traffic in a rural area

3.2 District Councillor

Cllr Michael Edney

To Development Management Committee if recommended for approval

Strongest possible objection to this large scale industrial installation that is proposed on a greenfield site in a very rural location

Predominantly single track road with no footpaths and does not have capacity to serve an industrial complex

It will significantly damage the amenity of residents in Wicklewood and Morley due to light, noise and smell

It will significantly harm the setting of two Grade II* listed buildings and the Grade I listed Wymondham Abbey
Other Members
Cllr Yvonne Bendle

**Comments on further information**

Remain opposed to this application for the same reasons as my original objection

**Comments on original plans**

There are three digesters in and around Hingham and Deopham which are causing many problems for residents regarding traffic movements on unsuitable roads, especially during the growing season.

I am against further development of this type which is likely to result on further rat-running on single track roads which are often subject to water logging and sometimes flooded

To be determined by Committee unless officers are minded to refuse it.

Cllr Jack Hornby

Due to the high levels of public interest and concern this application should be determined by Committee

3.3 County Councillor
Cllr Dewsbury

Have received many complaints associated with vehicles accessing the site less than two miles from the proposed development

Once permission is given there appears to be very little control or regulation

Why is another digester needed so close to the other one?

Do Government subsidies mean it is more profitable to grow fuel for this than other crops?

Neighbours concerned about light and noise pollution and the smell generated

Concern about pedestrian safety

3.4 Anglian Water Services Ltd

No comments received

3.5 SNC Senior Conservation and Design Officer

**Comments on further information**

Landscaping will reduce the visual impact of the development, but there will still be harm by developing an area of open countryside which contributes to the wider views of Wymondham Abbey and the isolated nature of Wicklewood Hall.

More details are required on the extent of planting.
Comments on original plans

Disagree with the heritage impact assessment’s conclusion in 6.05 that “the site itself is not an integral component of the rural quality of the setting of the heritage assets identified as such that the impact on the significance derived from the rural, agricultural quality of their setting will be limited.” The impact on the setting of heritage assets will affect to a degree how they are experienced, appreciated and understood, and consequently impact upon their significance, resulting in a degree of harm. As stated above, and within the content of heritage statement, each of the heritage assets has a wider setting of open rural countryside that contributes to its significance. Large scale development of modern structures on previously undeveloped open countryside will have an impact on the setting of the three higher grade listed buildings, although to a varying degree as identified above. This harm will be less than substantial because it does not directly affect the physical fabric of the buildings or ‘designed’ views, but the impact should nevertheless be apportioned ‘great’ weight in the planning balance (NPPF paras 132 and 134). The mitigating design features as proposed including excavations and tree planting for screening are not considered to overcome the degree of harm or lessen it to a sufficient extent to preserve the setting of the heritage assets (Section 66 of P(LB&CA) Act 1990. and DM4.10.)

3.6 Environment Agency  Comments on further information

Maintain holding objection
- Additional information provides relevant detail but does not answer all our previous queries and therefore still require clarification over geology to ensure protection of the underlying principal chalk aquifer and confirmation that the leachate tank will be sealed by a suitable impermeable material
- Satisfied that the size of the silage clamp seems appropriate
- Advice and guidance provided in terms in of information required for an environmental permit

Comments on original plans

Object due to insufficient information
- the proposal is located within Source Protection Zone 1. The proposed facilities therefore need to be considered in more detail and if the risk to groundwater can be mitigated satisfactorily to grant a bespoke permit. If we consider permitted is possible, it is likely that a detailed hydrogeological risk assessment and / or further measures will be need to manage risks to groundwater
- the proposal is located within 250 metres of receptors that are sensitive to nuisance odours. We will therefore need to consider whether odours can be adequately managed through the use of closed system and / or appropriate ventilation
- the proposal will store and treat waste solids and liquids within 10 metres of a watercourse. It will therefore need to be considered whether surface water run off can be satisfactorily managed to avoid contamination of the watercourse. The ditch runs into Dyke Beck and onto the River Tiffey. This excludes the option of the facility having a standard rules permit.
3.7 NCC Ecologist

Comments on further information

Conditional support
- Significant ecological mitigation measures should be provided through a Biodiversity Management Plan

Comments on original plans

Further information required
- report submitted with the application recommends that further surveys are carried out for Great Crested Newts and water voles
- the presence or absence of protected species, and the extent to which they could be affected by a proposed development, should be established before planning permission is granted
- furthermore, we agree with comments made by the Norfolk Wildlife Trust that the adjacent Bath Plantation and the species which may use it should be considered more fully in the ecological impacts

3.8 Historic England

Comments on further information

The further heritage information confirms that the proposed development would have a harmful impact on the significance of Wicklewood Hall in terms of NPPF paragraph 134 as set out in our earlier advice

Comments on original plans

This application proposes the development of an anaerobic digestion renewable energy unit on land in the setting of the Grade II* listed Wicklewood Hall. We consider this could result in harm to the significance of the listed building in terms of the National Planning Policy Framework. The Council should assess this impact and consider any public benefit that might result from the proposals when weighing the harm to the historic building.

In addition, the development could detract from the setting of Wymondham Abbey’ wider setting and this should be considered by the Council.

3.9 SNC Community Services - Environmental Quality Team

Comments on further information

No further comments received.

Comments on original plans

Unable to support the application
- Proposed anaerobic digestion unit will require a permit from the Environment Agency. The permit will include operational noise, dust and odour and as such we would not comment on these aspects
- Conditions would be required for a light assessment and a construction management plan
• There is no information regarding noise impact from additional vehicles travelling on the local road network. Such noise could not be considered a Statutory Nuisance however there is the potential for this aspect to have an impact on residential amenity in the area which we strongly recommend should be characterised and assessed prior to determination.

3.10 SNC Landscape Architect

Comments on further information

Revised scheme includes planting as part of the mitigation which can provide some visual mitigation, although the full effects of this will take many years to achieve.

Comments on original plans

Do not consider that the proposed development demonstrates that it is accords with the published Landscape Character Assessments and as such is contrary to Policy DM 4.5 of the South Norfolk Local Plan.

3.11 NCC Lead Local Flood Authority

No comments to make.

3.12 NCC Highways

Comments on further information

Refuse

It is acknowledged that in this highly agricultural area, some movement of crops in large vehicles is ‘normal’ and is expected by other road users. Nevertheless, the traffic movements generated by this proposal would be problematic on a section of the highway network that is not designed for frequent and heavy vehicle movements.

Highway improvements are of limited value and do not resolve the overriding lack of capacity on Morley Lane.

A section 106 routeing agreement will be difficult to enforce in that many of the vehicles that will be accessing the development are agricultural related vehicles.

The application should therefore be refused as the highway network serving the site is considered to inadequate to serve the development proposed, by reason of its restricted width.

Comments on original plans

Further information required

It is requested that a more accurate picture be provided with a transport assessment that shows the likely actual vehicle movement analysis for the feedstuff input and the digestate output, including Tonnages and Tonnes per vehicle. Our experience is that the majority of feedstuffs are delivered with a tractor and trailer combination straight from the growing farm. Whilst some backloading of the solid digestate is possible, we suspect that in the main this will involve different vehicles.
3.13 NCC Historic Environment Services  Comments on further information
No further response received
Comments on original plans
Conditional support

3.14 Norfolk Wildlife Trust  Comments on further information
No further response received
Comments on original plans

Further surveys required
- further surveys recommend in Ecological Appraisal to be carried out
- in view of the closeness of the site to an area of broad-leaved woodland and the anecdotal information with regard to nesting birds of prey it is important that impacts on this area of woodland are taken into account. Although this woodland is referred to the Ecological Appraisal there are no recommendations in the report to mitigate for potential impacts on species that may be using the woodland.

3.15 CPRE Norfolk  Comments on further information
Object
Continue to object for reasons previously stated

Additional information challenges our previous comments about the impact on St Botolph’s Church. However we maintain that LVIA should consider the church given the open nature of the landscape and this should include a viewpoint from the church tower.

Routes used by HGVs not clear given reference to B1077, which would require the use of small lanes and travelling through the village. The use of these lanes by pedestrians and cyclists is particularly relevant due to the lack of footpaths on the area.

No reference to light pollution in additional information.

The intrusion of such alien proposed structures would seriously affect the wider landscape character of this quiet rural area and would impact on existing open views.

Strongly refute suggestion that the development would be offset by the mitigation of planting some hedgerows and other measures. These new buildings would be alien structures in a rural landscape.

The landscape is not ‘degraded’ but evolving.
Comments on original plans

Object

The development would have particular impact on Wicklewood Hall and St Botolph’s Church. As these are both Grade II* listed they fall within the top 5.5% of nationally listed buildings. Para 128 of the NPPF requires applicants to submit sufficient information to establish the impact of any development on the significance of heritage assets. The information provided in the heritage statement is misleading which does not give a true reflection on the impact of their setting.

No clear argument is given as to why HGVs would avoid Morley St Botolph, thereby bringing noise, a reduction in air quality and risk to harm to local residents and users of the school. Misleading information that sugar beet would be processed at Newark rather than Cantley

Ecological survey makes it clear that further surveys are required

In conclusion, any public benefit this plant would bring are heavily outweighed by the detrimental impacts of the development.

3.16 Other Representations

Comments on further information

69 letters of objection
- reiterate strong objections
- do not address previous concerns
- comments on highways, heritage, landscape impact, health impacts from pollution and ecology reflecting previous representations
- still don’t know where digestate will be stored
- not “outside the village” as stated
- beautiful landscape is not ‘degraded’ as referred to in the application
- there can’t be many people alive who remember the landscape before the hedgerows were removed
- planting of ‘green corridors’ will obliterate views of the Tiffey Valley as well as making roads more dangerous by blocking views of oncoming traffic together with bikes, joggers and pedestrians
- visibility focuses on the domes but what about other industrial structures on the site? Also, am aware from the applicant’s other digester that the clamps can be filled very high with feedstock waiting to be used
- weighbridge cabin which will be in view of Morley Lane should be a small pitched roof block and render building not a temporary structure
- since previous letter become aware that a new housing development has been granted consent opposite the access which the development would adversely impact on
- not a sustainable solution for reasons previously identified
- applicant has not been sufficiently challenged to find an alternative site
- what is to be gained from the development? Are the two jobs worth it?
• no where in information are vehicular movements for removing soil to be removed for excavations taken into account
• proposed routes to and from the site are confusing and unrealistic
• the fact that they refer to passing bays indicate the roads are not suitable for HGVs
• vehicle tracking indicates what happens when a lorry meets a small car heading in the opposite direction, what happens when the vehicle is anything bigger than a small car?
• large amount of soil will need to be removed that is not accounted for in the applicant’s figures
• supporting information states a benefit from reduction in imported fertiliser but this will be cancelled out by need to import sugar if sugar beet is being used for plants like this
• because biomass plants produce methane they are often required to be set in more land than is required for other types of energy production though that does not seem to have been considered here
• there is a large planned residential development at the end of Morley Lane which will add to traffic on the B1172
• HGVs waiting to turn right onto B1172 will delay traffic using Morley Lane
• do not pretend to understand the Supplementary Noise Assessment but do know that we live in a very quiet part of the countryside where any foreign noise is very noticeable
• still no tree survey for Bath Plantation

Comments on original plans

2 letters of support
• Spoken to the applicant and have received reassurances that significant screening will be provided
• Consequences of burning fossil fuels have been well documented and pose a much greater threat
• Provided conditions are adhered to in regard to lighting, traffic, planting and no further expansion

339 letters of objection
• impact on views across farmland
• views from High Oak where there are beautiful, unspoilt long range views
• contrary to Policy DM4.5 of South Norfolk Local Plan due to impact on landscape character
• building will be unsightly
• industrial structure completely out of character with agricultural landscape
• out of proportion and overbearing
• landscaping to mitigate development will take years to mature
• this area is supposed to be kept as part of the green lungs of Wymondham, not appropriate therefore to have an anaerobic digester placed in it
• impact on Grade II* listed Wicklewood Hall and St Botolph’s Church
• more than 10 listed buildings in the immediate area
• seriously detracts from views of the abbey
• -historical evidence of roadway running across site
• no detailed information about how it will connect to the National Grid
• surely alternative locations closer to the A11 or A47
• Morley Lane is an extremely busy road which is barely wide enough for two cars to pass and has no designated passing places
• it is a fast road with the speed limit rarely adhered to
• the road is not gritted in winter
• this would result in heavy traffic through the village
• traffic impact assessment is poorly researched and lacks credibility
• evidence from other AD plants such as at Oulton and Buxton show that traffic levels will be much higher than stated
• absurd to assume there would be no empty vehicle movements
• why would sugar beet be transported to Newark and not factories in Norfolk?
• roads cannot cope with existing AD plant at Crownthorpe
• road used by people accessing Wymondham College and the village school whose safety will be compromised
• no footpaths or street lights
• dangerous for cyclists and pedestrians, as well as horse riders
• various accounts of accidents
• traffic noise impacting on properties
• both access points are unsuitable
• how would routing agreement be enforced?
• concern over noise disturbance
• noise impact assessment does not cover all aspects of noise likely to be experienced
• not always the case that you can hear the A11
• currently a peaceful and tranquil area with very low background noise levels
• concern over operational hours causing disturbance in the evenings
• increased exhaust emissions from traffic visiting the site
• smells from materials used and waste produced
• prevailing wind will result in odour pollution across Wymondham
• increase in risk of flies and vermin
• biogas is extremely flammable, explosive, toxic and corrosive
• blast radius ranges from 300 metres to 5km with 1.5km more likely
• cases of other plants where accidents have occurred quoted
• risk of contamination
• no assurances that it will not cause ill-health
• pollution of water table as in groundwater protection area
• potential for light pollution
• could have an impact on local businesses by putting off customers
• add to the risk of surface water flooding on High Common
• potential for emissions to surface water to impact on the ecology of Dykebeck
• disturbance to wildlife including local resident deer herd and colony of buzzards which nest in the woods next to the site
• habitat for newts and bats and others
• without Government grants such plants would not be economically viable
• against the use of public subsidies to support such a plant in the wrong location
• planned reductions in feed-in tariffs may make this plant redundant
• takes out land for growing crops for food
• growing maize as fuel degrades soil
• nobody locally other than the applicant will benefit
• inefficient method of generating power
• can it not be built at Snetteron next to the recent power station?
• would make more sense to have it next to the plant at Crownthorpe
• may devalue nearby properties
• disappointed we weren’t contacted directly by South Norfolk Council

1 letter neither objecting nor supporting querying the long term benefits of such schemes

4 Assessment

4.1 The development is to comprise of an anaerobic digestion plant with landscaping vehicular access and associated works. The land is currently in arable production forming part of a much larger field. The surrounding landscape is very open as a consequence although there is a small area of woodland known as Bath Plantation immediately to the east of the proposed development.

4.2 Access to the site would be from a new access off High Common to the south of the proposed siting of the plant. High Common becomes known as Morley Lane to the east of the access and connects to the B1172 south of Wymondham.

Principle of development

4.3 In line with the Climate Change Act 2008 the National Planning Policy Framework (NPPF) sets a presumption in favour of sustainable development. Paragraph 17 of the NPPF identifies the Core Planning Principles which include supporting the transition to a low carbon future in a changing climate including encouraging the use of renewable resources as well as the need to recognise the intrinsic character and beauty of the countryside.

4.4 Paragraphs 93-98 of the NPPF (within section 10 of the NPPF) set out the Government's planning policy on renewable energy. Paragraph 93 makes it clear that it plays a key role in the delivery of renewable and low carbon energy which is central to the economic, social and environmental dimensions of sustainable development.

4.5 Paragraphs 97 and 98 of the NPPF are supportive of renewable energy subject to the impacts being acceptable and this is further clarified in the Planning Practice Guidance (PPG) which also notes that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities.

4.6 Policy DM4.1 of the Local Plan for South Norfolk takes a positive approach to renewable energy projects, but requires that consideration is given to the effect on the character and appearance of the landscape, on designated and undesignated heritage assets and the amenities and living conditions of nearby residents by way of noise, outlook, and overbearing effect or unacceptable risk to health or amenity by way of other pollutants such as dust or odour. Permission will be granted where there are no significant adverse effects or where any adverse effects are outweighed by the benefits.

4.7 There is therefore a generally supportive policy position in regards to renewable energy provision. Given therefore that the development is acceptable in principle, the following issues are considered to be key considerations in regard to this proposal:

• impact on the local highway network
• impact on the surrounding area including local residents from odour or noise
• impact on the local landscape
• impact on identified heritage assets
Impact on the local highway network

4.8 Considerable concern has been expressed about the ability of the local road network to accommodate vehicles servicing the proposed development. Morley Lane / High Common is a country road of sufficient width for two cars to pass. However, whilst it is possible for smaller vehicles to pass a HGV if driven with care, this necessitates the driving over the edge of the verge in the majority of locations. The carriageway is not wide enough for two large vehicles to pass each other except by overrunning and consequent erosion of the banks and grass verges. Other roads in the area are single track lanes with a mixture of formal and informal passing places.

4.9 It is recognised that farming activities may already generate a number of vehicle movements on this part of the highway network through crop / manure transportation to and from adjacent fields. As an agricultural site, the movement of crops and residual waste can currently take place to and from adjacent fields outside of control of the planning system.

4.10 Norfolk County Council's Highways Officer therefore accepts that there are already some farm vehicles on the local road network. However, they note that the intention with this application is to import crops from elsewhere and to concentrate these vehicle movements on Morley Lane. They advise that this aspect is therefore a key issue when considering the suitability of the site in terms of likely impact on the safe functioning of the public highway.

4.11 The Highways Officer have raised a number of concerns about the impact of these traffic movements, compared to existing movements by agricultural vehicles. Vehicle movements could be consistent on a daily basis for 365 days per year. Alternatively if movements are mainly restricted to harvest periods, they are likely to be very frequent and concentrated on this particular stretch of road over a period of several months each year during the harvest period. During that time movements would continue at high frequency over a very long working day, extending from early morning until late evening and into periods of dusk and darkness.

4.12 The applicant has attempted to address this through the provision of some additional passing spaces along Morley Lane and a suggested Section 106 agreement for the routeing of vehicles.

4.13 The widening improvements consists of haunching of the carriageway by widening by around 0.5 metres at six points between the proposed site access and the junction with the B1172. The Highways Officer has commented that whilst this will be of some benefit, it will only be limited and does not resolve the overriding lack of capacity on Morley Lane. The narrow width of the passing places may also encourage further overrunning of the verges at these points. The survey of Morley Lane also shows conclusively that it is not possible for two commercial vehicles to pass each other.

4.14 The Highways Officer also questions the enforceability of a Section 106 agreement due to continuing concerns about the nature of the vehicles likely to be used and the varying geographic nature of where the crops may be sourced.

4.15 The Highway Officer remains of the view that the proposed siting of the AD plant would markedly intensity the potential for conflict on the highway network in this vicinity, the potential for damage to the road surface and a noticeable increase in the overrunning of the verges. It is therefore the view of the Highway Officer that operational traffic from this proposed development would result in material harm to highway safety and convenience and therefore conflict with Policy DM3.11.
4.16 The Highway Officer had also noted the proposed visibility splays of 215 metres in either direction are not achievable due to hedging to front of the adjacent land and also to the front of Rose Cottage. However as the proposed access is just outside the 40mph speed limit it was advised that visibility splays of 160 metres (for traffic speeds of 50mph) could be acceptable, providing that it can be confirmed that the extent of vision is achievable. As the time of writing this report this has still yet to be demonstrated.

Residential amenity / pollution

4.17 The proposed unit will require a permit from the Environment Agency under the Environmental Permitting Regulations 2010. The permit will require that Best Available Techniques are taken to minimise all emissions to air, land and water from the installation. This includes noise, dust and odour. The Environment Agency objected to this application on the basis of the information originally submitted as insufficient information was provided to demonstrate that the facility could meet the requirements of a permit. If the installation cannot meet the requirements, a permit will not be issued. The comments of the Environment Agency on the latest information submitted were not available at the time of writing the report and will be updated at Committee.

4.18 However, not all impacts on the amenity of nearby properties and the local environment are covered by the Environmental Permitting Regulations. Once such possible source of pollution is from artificial light. A lighting assessment would be needed to be carried out to ensure that artificial light does not result in disturbance in an area where there is no street lighting or other existing lighting. Our Environmental Quality Team have advised this can be addressed by condition. There is also potential for noise and dust impacts from the construction phase of the proposal. For a development of this scale a construction management plan would be expected to address these impacts. This can also be addressed by condition.

4.19 The Environmental Quality Team also raise concern about the noise impact from additional vehicles travelling on the local road network to and from the site. Such noise could not be considered a Statutory Nuisance however there is the potential for this aspect to have an impact on residential amenity in the area and therefore they have strongly recommended this should be characterised and assessed prior to determination. Further information has been prepared by the applicant to address this which at the time of writing the report is being considered by the Environmental Quality Team and their comments will be reported to the meeting. If this has been satisfactorily addressed and the Environment Agency advise that the information will be sufficient to meet the requirements of a permit there would not be grounds to refuse the application and it would be considered to comply with Policies DM3.13 and DM3.14. In the event that these were not met then the application would be contrary to these policies.

Landscape impact

4.20 A Landscape and Visual Appraisal has been submitted with the application. This identifies that the site is at the transition of two landscape character areas: B2 Tiffey Tributary Farmland and E3 Hingham - Mattishall Plateau Farmland. The key characteristics of landscape area B2 include "Framed and long-range views into adjoining Yare / Tiffey Rural River Valleys and towards important landmarks including Wymondham Abbey". It notes that development should protect such views and ensure they are not adversely affected by development proposals. Landscape area E3 covers similar issues but its wording is less specific, but identifies the important views to churches that provide a sense of place.
4.21 The submitted Landscape and Visual Appraisal considers several viewpoints that are representative of how the proposed development will be experienced. The Council’s Landscape Architect agrees that for many it is clear that the visual effect will not be significant. However, there are some, especially those views that feature Wymondham Abbey, where this is not the case. Six of the 16 representative viewpoints (including the two that feature Wymondham Abbey) identify a major significance of visual effect.

4.22 The Landscape Architect considers that the Appraisal correctly explains that the adverse effects are "due to the large open degraded field structure, views over the plan site, and lack of hedgerow and other screening". The scheme has now been amended to include some proposals for planting mitigation. The Landscape Architect had advised that it appears that planting could have some beneficial effect and therefore provide some mitigation against the impact of the development in the landscape. However, this mitigation is not comprehensive and the full effects would take many years to achieve. As such, there would be a significant visual impact for some years which would create a harm that is contrary to Policy DM4.5.

4.23 The Landscape Architect has also noted that elements of the development are adjacent to Bath Plantation, which include excavations and earthworks including a surface water lagoon. Whilst no full assessment of the arboricultural assessment has been submitted, the Landscape Architect has no reason to disagree with the comments of the applicant’s Landscape Consultant that an adverse impact is unlikely as they are separated from the site by a well-managed ditch up to 2 metres deep.

Impact on heritage assets

4.24 The development has the potential to affect a number of heritage assets. Within 350 metres to the east of the site is a Grade II* listed building Wicklewood Hall whilst the Grade II* listed St Botolph’s Church lies a little over a kilometre to the west of the site. There are also a number of Grade II listed buildings to the south along High Common and to the north-east. Furthermore, the site is 2.5 km to the west of the Grade I listed Wymondham Abbey with long distance views of the abbey crossing the site.

4.25 In regard to the Grade II listed buildings, it is accepted that due to their location, their character and the contribution of setting to their significance that they will not be directly impacted upon to a significant degree, and can be viewed as buildings that contribute to the wider rural landscape character within which the new development will be viewed.

4.26 Concerns have been raised by Historic England and the CPRE about the impact on St Botolph’s Church. The church would be visible in the wider landscape to the west of the development, although it will not feature in direct views of the setting of the church. The Senior Conservation and Design Officer has commented that the key aspect is that this is previously undeveloped land and although some distance away, a new large scale development of untraditional and modern structures constructed with modern materials will draw attention within the wider landscape panorama, and the development could compete with and detract from the church as the existing dominant building within the wider landscape to the west of the site. This will result in some impact and harm on the setting of the church, although as development will be some distance away and not interfere with direct views, the impact can be considered relatively low.
4.27 In regard to Wicklewood Hall, the Senior Conservation and Design Officer has commented that the new development is different in character and scale to the existing traditional converted barns of Wicklewood Hall, but within close proximity. It can be assumed from its description as a ‘plantation’ that the nearby woodland Bath Plantation is in some way connected to the Hall considering its proximity. The plantation will help to partially obscure the new buildings in views from the hall, although less so in winter as the wooded area does allow views that permeate through it. The extent of the proposed development site will also be wider than the existing wood enroaching upon previously open fields. The additional planting now proposed has the potential to effectively screen views of the development from the rear of the Hall, however this will be at the loss of the open aspect from the Hall which will reduce the sense of isolation of a farmhouse in open countryside, which is a key element of its significance. In terms of views from the west, the Hall is already screened by the existing plantation. From the east and from Low Road, the house and the development will appear in close proximity to each other with the Hall therefore not appearing isolated. Whilst the landscape mitigation may over time reduce this relationship, this would as noted above take many years to take effect.

4.28 Finally, in regard to Wymondham Abbey, the larger west tower of the Abbey has a very strong and visible presence above the tree lines in views from the area, which is recognised in the Landscape and Visual Appraisal. This development by its nature will involve development within an area of previously undeveloped open countryside which contributes to these wider views. Any development of the nature prescribed will have a degree of harmful impact, however with the additional hedge and tree planting the harm can be significantly reduced so that it is at the lower end of less than substantial. The Senior Conservation and Design Officer has advised that more details are required on the extent of planting to ensure that it is as effective.

4.29 The Senior Conservation and Design Officer therefore concludes that the proposed development will have an impact on the setting of three higher grade listed buildings, although to a varying degree as identified above. This harm will be less than substantial when considered against paragraph 132 and 134 of the NPPF because it does not directly affect the physical fabric of the buildings or ‘designed’ views. This harm has the potential to be mitigated against by planting. The mitigating design features as proposed including excavations and tree planting for screening are not considered sufficient for the reasons noted above to overcome the degree of harm or lessen to a significant extent to preserve the setting of the heritage assets. It is therefore considered that the proposal is contrary to Policy DM4.10 as the public benefits of the development do not outweigh the harm.

4.30 In consideration of the Council’s duties under Section 66(1) of the Listed Buildings Act 1990 the Council has given special attention to the desirability of preserving listed buildings or their settings and any features of special architectural or historic interest which it possesses. It is considered for the reasons set out above that there is a degree of harm to the setting of three listed buildings. The assessment above reflects consideration on the impact of the setting of these buildings.

Ecology

4.31 The site does not fall within or adjacent to any protected site, with the nearest protected site being a County Wildlife Site known as Groundsel Wood approximately 1.25 kilometres to the north. Nonetheless, there is potential for impact on habitat and biodiversity and indeed a number of respondents have noted that various species, including protected species such as birds of prey and great crested newts, are present in the area.
4.32 The application is supported by an Ecological Appraisal which covers the main impacts of the proposed plant on the ecology on-site. It recommends that further surveys are carried out for Great Crested Newts and water voles. Norfolk County Council’s Ecologist has noted that these should be carried out prior to any approval being granted. In addition to the species identified in the Ecological Appraisal, Norfolk Wildlife Trust have raised concern about the proximity of the site to the Bath Plantation woodland where many of the anecdotal evidence referred to above of protected species relates to.

4.33 Further surveys for Great Crested Newts and water voles have now been submitted which found Great Crested Newts in two ponds close to the site. Overall, Norfolk County Council’s Ecologist is satisfied that with mitigation, the effect of the proposals on this species can be mitigated against.

4.34 In the event that approval were to be granted, Norfolk County Council’s Ecologist would like to see the Construction Environmental Management Plan recommended in the submitted report be extended to a Biodiversity Management Plan as it is considered that the proposals could do more to mitigate any impacts of this plant and also enhance the site for biodiversity. The site is very rural and as such there should be significant ecological enhancements to mitigate against such a substantial development in this location. The Biodiversity Management Plan should include all the recommendations made in the submitted report, but should also concentrate on ecological connectivity to the site and the adjacent woodland. This should include native hedgerows being planted the length of the proposed access track to the plant and alongside the ditch to the north of the site as part of the mitigation.

4.35 Subject to these mitigation measures it is considered that the development accords with Policy 1 of the Joint Core Strategy and section 11 of the National Planning Policy Framework.

Drainage

4.36 The land on which the plant is proposed is entirely within flood risk zone 1 which is an area of low risk of fluvial flooding. However, part of the access is within fluvial flood risk zones 2 and 3 and also is identified as having a high risk of surface water flooding. This is addressed in the submitted Flood Risk Assessment which recommends developing a flood warning and evacuation plan and the provision of an alternative route on foot to Low Road.

4.37 The Flood Risk Assessment also provides a surface water drainage strategy. This provides an attenuation pond from which all the hardstanding areas, clamp cover and bunded areas will discharge into. From the attenuation pond, surface water will discharge to the ditch at a restricted rate through flow control. Leachate collected within the concrete silage clamp will discharge into a separate drainage system and be contained within a leachate tank prior to being fed to the digester tank to be used within the process. In the event of leachate spillage a shut off valve will divert surface water to the leachate tank to prevent pollution to the surface water system.

4.38 The Council’s Water Management Officer has no adverse comments to make in regard to the drainage system proposed, nor have the Environment Agency objected to this element of the proposal and therefore it is considered that proposal accords with Policy DM4.2.
Impact on Groundwater Protection Zone

4.39 The Environment Agency have commented that the site is located above Secondary (undifferentiated) and Principal Aquifers, Source Protection Zone (SPZ1) with associated nearby potable groundwater abstractions, a Water Framework Directive (WFD) groundwater body, is in a WFD drinking water protected area and is relatively near to a water course and as such the site is considered to be of high sensitivity. Further information addressing this point was submitted, however the Environment Agency have outstanding concerns relating to information about the geology to ensure the protection of the underlying principal chalk aquifer and in requiring confirmation that the leachate tank monitoring wells will be sealed by a suitable impermeable material.

4.40 Criteria (b) of Policy DM3.14 requires that development should ensure that there will be no unacceptable impact on ground water quality. Given the outstanding concerns of the Environment Agency noted above the proposals as currently submitted conflict with this policy, and the application is recommended to be refused on the ground of insufficient information to adequately assess impact on ground water quality.

Other Issues

4.41 A number of comments have been made about the merits of this form of renewable energy. However it is not for the planning system to question the viability or effectiveness of a form of renewable energy in principle.

4.42 Norfolk County Council’s Historic Environment Service has commented that in light of the findings of the archaeological desk-based assessment and the potential for the development to affect heritage assets with archaeological interest, a condition should be attached requiring archaeological interest in the event that planning permission were to be granted for this development.

4.43 The application is liable for Community Infrastructure Levy (CIL) for any floorpsace that people can enter into.

4.44 Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration but in the instance of this application the other material planning considerations detailed above are of greater significance.

5 Conclusion and reasons for refusal

5.1 It is considered that there are significant adverse effects of the development, due to the inadequacy of the local highway network, the impact on the landscape and the harm to heritage assets, in particular the setting of the Grade I listed Wymondham Abbey and the Grade II* listed Wicklewood Hall, which outweigh the benefits of the provision of the benefits of renewable energy from the development and therefore the development does not accord with Policy DM4.1 of the South Norfolk Local Plan.

5.2 The application is therefore recommended for refusal on the following four grounds:

1) The highway network serving the site is considered to be inadequate to serve the development proposed, by reason of its restricted width. The proposal, if permitted, would be likely to give rise to conditions detrimental to highway safety contrary to Policy DM3.11 of the South Norfolk Local Plan 2015.
2) The landscaping information provided does not demonstrate that the development can be accommodated without having a significant adverse impact on the landscape by virtue of the visibility of the development when viewed from the north and west of the site, particularly given the landscaping that is proposed would take many years for the mitigation measures proposed to take effect. The application is therefore considered to be contrary to Policy DM4.5 of the South Norfolk Local Plan 2015.

3) The development would lead to a less than substantial harm to the setting of the Grade I listed Wymondham Abbey and the Grade II* listed Wicklewood Hall, by virtue of the open nature of the landscape and the visibility of the development in the context of the listed buildings which would not be adequately mitigated with the landscaping proposed. Given the significance of these assets it is not considered that the public benefits of the development outweigh this harm in the absence of satisfactory mitigation measures. The application is therefore considered to be contrary to Policy DM4.5 and DM4.10 of the South Norfolk Local Plan 2015 and paragraph 134 of the National Planning Policy Framework 2012.

4) Insufficient information has been provided in regard to the underlying geology of the site and the specification of the leachate tank to ensure that the development will not have an adverse impact on groundwater quality, therefore conflicting with criteria (b) of Policy DM3.14 of the South Norfolk Local Plan 2015.

Contact Officer, Telephone Number           Tim Barker 01508 533848
and E-mail:                                tbarker@s-norfolk.gov.uk
Other Applications

3  Appl. No : 2017/1187/O  
Parish : HEDENHAM

Applicants Name : Mr Alam B M Shah Alam  
Site Address : The Mermaid Balti House Norwich Road Hedenham NR35 2LB  
Proposal : Replacement of derelict barn in car park with new 2 storey building with holiday lets class C1

Recommendation : Refusal  
1  Location of tourist accommodation contrary to policy DM2.12  
2  Demolition of heritage asset resulting in substantial harm  
3  Insufficient information to assess impact on Conservation Area  
4  Insufficient information to assess impact on setting of listed building  
5  Insufficient ecology information

.1 Planning Policies

1.1 National Planning Policy Framework  
NPPF 01 : Building a strong competitive economy  
NPPF 03 : Supporting a prosperous rural economy  
NPPF 06 : Delivering a wide choice of high quality home  
NPPF 07 : Requiring good design  
NPPF 11 : Conserving and enhancing the natural environment  
NPPF 12 : Conserving and enhancing the historic environment

1.2 Joint Core Strategy  
Policy 1 : Addressing climate change and protecting environmental assets  
Policy 2 : Promoting good design  
Policy 3 : Energy and water  
Policy 17 : Small rural communities and the countryside

1.3 South Norfolk Local Plan  
Development Management Policies  
DM1.1 : Ensuring Development Management contributes to achieving sustainable development in South Norfolk  
DM1.3 : The sustainable location of new development  
DM2.12 : Tourist accommodation  
DM3.8 : Design Principles applying to all development  
DM3.11 : Road safety and the free flow of traffic  
DM3.13 : Amenity, noise, quality of life  
DM4.2 : Sustainable drainage and water management  
DM4.5 : Landscape Character Areas and River Valleys  
DM4.10 : Heritage Assets

Statutory duties relating to Listed Buildings, setting of Listed Buildings and Conservation Areas:

S66(1) Listed Buildings and Conservation Act 1990 provides: “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall 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.”
S72 Listed Buildings and Conservation Act 1990 provides: “In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of [the Planning Acts], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

2. Planning History

2.1 2013/0487  Change of use from public house to restaurant with takeaway and delivery service  Approved

3. Consultations

3.1 Parish Council  Refuse
  - The barn is within the curtilage of the Mermaid Balti House a grade II listed structure
  - Barn considerable age and historic importance
  - Policies to convert these barns so that they are not lost.
  - When did SNC agree to its demolition
  - Complementary to Mermaid primary building on the site
  - Council has protected Victorian Farm buildings from demolition
  - This barn is much older
  - Confusion over whether the proposal relates to the renovation / development of the Mermaid
  - Unclear over the proposed use
  - Drawing shows 2 double bedrooms in each unit plus a sofa bed could be used
  - Not clear the height of the building will it be in scale with the Grade II building.
  - Question there is only one door between the kitchen and toilet area.
  - Existing septic tank for the Mermaid is located the other side of the road and pipe under road requires repair. When in use cause odour issues. Only stopped when restaurant closed.
  - If approval given need new system to deal with existing and proposed foul water within the site and also surface water which currently adds to the problem on Norwich Road and Church Road.
  - The red line is just around the car park and not the Mermaid, issues of separating buildings.
  - Demand for washing machines and further foul water
  - Creating boundaries would create access problems for the Mermaid and result in creating a new access in a dangerous location
  - Development should be considered as an annexe only and not sold off separately. A Corridor should connect the Mermaid to facilitate bed and breakfast use
  - Noted development is not looked favourably in Hedenham because of inadequate infrastructure and facilities
  - Restaurant is currently closed and advertising hoarding advertising tenant on any leasehold terms
  - Company which ran the premises has wound up.
  - No statement of intent to resume trading, which the proposed development is meant to be in conjunction with
  - No historical desire to provide hotel style accommodation
  - Materials are important for the setting of the listed buildings
  - Concern about proposed design
• Development of the site would be welcomed by Parish, would like to see the redevelopment of the site as a whole for a viable business or sympathetic residential solution.
• Note possible typographical error for word buildings any further development on site would exacerbate issues.

3.2 District Councillor To be reported if appropriate

3.3 County Councillor Object
(Cllr M Stone)
• Support Parish Council
• Inconsistencies with the application
• Not sure who owns the site believe it may be third party
• Suggest separate operation from Mermaid Balti restaurant, drawings implies the use of the car park leaving none for the restaurant
• Restaurant failed to survive and has been closed 6 months
• Not sure if it will reopen, income from two holiday lets will not give enough income to make it more viable.
• Highways not objected suggest a site visit increased traffic on a dangerous road with poor visibility
• Wooden barn is falling down
• Changes would be eyesore
• Recommend that it is determined by committee

3.4 NCC Highways No objection

3.5 Historic England Do not wish to comment

3.6 SNC Community Services - Environmental Quality Team Support with condition
• Proposed holiday lets are adjacent to a restaurant and close to main road which could negatively impact on their residential amenity
• To reduce impact on occupants from restaurant/takeaway and road recommend the holiday lets are tied to the restaurant, and are restricted to nonpermanent residential accommodation.
• Recommend condition on contamination during construction

3.7 SNC Water Management Officer Support with condition
• No details of foul drainage have been submitted
• There is no foul sewer available to serve the site
• The method of non mains disposal should be the most appropriate to minimise the risk to the water environment
• Request confirmation from the applicant as to the suitability, sizing and serviceability of any existing system to accommodate any increased load generated by the proposal
• it is proposed that surface water drainage would be dealt with via soakaway
• Infiltration not always a viable option in this area

3.8 SNC Conservation and Design Officer Object
• The site is within Hedenham Conservation Area which is dominated by Hedenham Hall and Ditchingham Hall and their respective parklands
• The hamlet is situated around the church to the NE.
• Proposed development has potential to impact upon grade I listed Hedenham Hall
• The barn is timber framed with a brick plinth, although currently somewhat neglected, being timber framed is capable of repair and restoration.
• The barn adjacent to the Mermaid would have been a feature on the street as people passed on the Bungay to Norwich road for the past two centuries. It is likely to date from the late 18th or early 19th century.
• The barn contributes positively to the character and appearance of the conservation area and consequently can be considered an important element of the conservation area as a designated heritage asset.
• Demolition of the barn would result in its total loss.
• Since the building is capable of being restored no evidence has been provided to the contrary, it should be retained and converted.
• PPG advice “An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building (paragraph 132 of the NPPF). If the building is important or integral to the character or appearance of the conservation area then its demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 133 of the NPPF. However, the justification for its demolition will still be proportionate to the relative significance of the building and its contribution to the significance of the conservation area as a whole.”
• The illustrative new building proposed is wholly different, being domestic in appearance and utilitarian in character and appearance. It will neither preserve or enhance the conservation area.
• Oppose in principle to the demolition of the barn as it makes a positive contribution to the significance of the conservation area as a heritage asset. Its demolition would amount to total loss. The indicative new building does not demonstrate that the replacement building would either preserve or enhance the CA.

3.9 Other Representations

Three letters of objection

• Welcome the preservation of the barn and recognise it would look different.
• Feel that proposal will be unacceptable change to the building character.
• Concerned about foul drains. Balti House foul water runs to a septic tank on Ditchingham Estate land which when in operation is over flowing.
• Advised drains are broken, this needs to be resolved as part of this application.
• Road noisy lorries thunder past from 4am nonsense to build accommodation adjacent to it.
• Not convinced this would be a viable business.
• Would supports the pubs survival if the suggestions were more pragmatic.
• Concern about increased use of dangerous junction Church Road and Norwich Road.
• Concern that units would be used for other purposes other than holiday lets, given record of Mermaid pub.
• Concern about public safety due to recent events at Mermaid.
4 Assessment

4.1 The application relates to the Mermaid Balti restaurant (formerly the Mermaid public house) which is located on B1132 in Hedenham. The restaurant has been closed for about 6 months. There is a barn in the car park which is likely to date from the late 18th, possibly early 19th century. The site is within the Conservation Area and Hedenham Hall, which is a grade I listed building, is located to the north East. The Mermaid Balti itself is however, not listed. Hedenham does not have a development limit as defined by the South Norfolk Site Specific Allocations.

4.2 The application is an outline application with all matters reserved, to demolish the existing timber framed outbuilding and erect a two storey building to provide two units of holiday accommodation. The elevation and floor plans submitted with the application are only indicative, but show a two bedroom flat with small kitchen, bathroom and lounge on each floor. The application description was originally for bed and breakfast accommodation, but the agent has agreed to a change the description because the plans did not reflect the proposal.

4.3 The agent has maintained that the proposed use is C1 which covers hotels or guest houses. Given the indicated facilities including independent units of accommodation with their own kitchen and lounge and two bedrooms, which are detached from the restaurant, it is considered the as shown the proposed units are C1 dwellings which are proposed to have an occupation restriction on them.

Principle of the proposed development

4.4 The site falls outside of the development boundary where development will only be permitted in certain circumstances under policy DM 1.3 of the Development Management Policies. When considering the proposal, as it is outside of development boundaries the proposal must either comply with other development management policies, or demonstrate overriding benefits. An assessment of this is made in this report.

4.5 Policy DM2.12 of the Development Management Policies sets out the criteria for considering new build tourist accommodation. It states new build permanent holiday accommodation will be required to be located within development boundaries or on site well related to settlements with development boundaries, unless specific justification is provided, and at a scale appropriate to the settlement. In the countryside proposals for new tourist accommodation will be permitted in accordance with policies for the enhancement of rural tourist a recreation destinations or the conversion of rural buildings.

4.6 Hedenham does not have a development boundary and there are not any existing tourist destinations within the vicinity of the site which would justify new build holiday lets. No specific justification has been put forward as part of the application for the holiday accommodation. As a result, there is an objection in principle to new build holiday accommodation on the site.

4.7 As a result the proposed development has to be considered under policy DM1.3 although there may be some minor economic benefits to the local economy in terms of providing additional tourist accommodation, given the remote location where visitors would be dependent on the private car to access local facilities and services the harm to heritage assets services this is not considered an overriding benefit which DM1.3 requires.
Heritage Assets

4.8 The building which it is proposed to demolish is timber framed with a brick plinth dating from the late eighteenth or early nineteen century and although it has been neglected could be capable of repair and restoration. The barn contributes positively to the character and appearance of the conservation area, as an ancillary outbuilding to the former public house which is an important feature in the streetscene as you pass through the hamlet. The Conservation Officer considers that it is an important element of the conservation area as a designated heritage asset. Demolition of the barn would result in its total loss. Since the building is capable of being restored and no evidence has been provided to the contrary, the Conservation Officer considers that it should be retained and potentially converted. The advice in the Planning Policy Guidance is “An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building. If the building is important or integral to the character or appearance of the conservation area then its demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 132 of the National Planning Policy Framework. Which require the local planning Authorities is refused permission for developments which would cause substantial harm to a heritage asset unless it is demonstrated that that the harm or loss is necessary to achieve substantial public benefits that outweigh the harm or that all the following criteria comply

- The nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- Conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use

4.9 It is not considered proposed development would bring overriding benefits which would justify the loss of the building and as result it is contrary to paragraph 133 in the NPPF. S72(Listed Buildings and Conservation Areas Act 1990 and policy DM4.10 of the Development Management Policies.

4.10 All matter of this outline application are reserved so the proposed drawings are only indicative and as a result the impact on the Conservation Area cannot be fully assessed and it is not possible to conclude whether the development would preserve or enhance the character of the Conservation Area required by S72 of the Listed Buildings Act 1990 which provides: “In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of [the Planning Acts], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

4.11 Although only indicative the proposed design has a very different appearance to the existing barn, being domestic in appearance and has a utilitarian character and appearance, which will neither preserve or enhance the character of the Conservation Area.

4.12 Hedenham Hall which is a grade I listed building is located on the opposite side of the road to the north east of the site. Hedenham Hall is an important building in the Conservation Area. The proposed development would be seen in some views of The Hall coming from the Norwich direction, the building indicatively proposed would have the potential to cause less than substantial harm to the setting of the grade I listed building, without would not be outweighed by the public benefit of the provision of the holiday lets. The proposal is therefore considered to be contrary to paragraph 134 in the NPPF.
4.13 S66(1) Listed Buildings Act 1990 provides: “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall 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.”

4.14 As an outline application with all matters reserved there is insufficient information submitted to fully assess the proposal and ensure that it would meet the statutory test as set out in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The development would also conflict with Policy DM 4.10 in the Development Management Policies which requires that proposals sustain and, where possible, enhance the significant of heritage assets. Given concern about the principle of the development additional information has not been requested on the layout, scale and appearance of the development.

Residential amenity

4.15 The Environmental Quality Officer and local residents have raised concerns regarding the quality of living environments given the close proximity of the main road and restaurant / takeaway. The proposal is for holiday accommodation, so people would only occupy the properties for a short period of time so this basis it is considered that the level of amenity is acceptable as required by policy DM3.13 Development Management policies.

Highways

4.16 Concern has been raised about increased traffic on a busy road with poor visibility. It is not considered that the proposal would result in a significant amount of additional traffic from what would be generated if the restaurant was open and as a result would not be contrary to policy DM3.11 of the Development Management policies. The Highway Officer has raised no objection.

4.17 Separating the barn from the restaurant and the implication for car parking and access has been raised as a concern. The application does not make it clear what the intention is, but it is important the restaurant retains its car parking and access given the restaurant is within the red line it could be conditioned that the two uses were not separated.

Drainage

4.18 Concern has been raised regarding the adequacy of the existing foul drainage system for the restaurant. It is unclear how it is intended to deal with foul drainage from the proposed development but this could be conditioned.

4.19 It is proposed that the surface water drainage could be dealt with via soakaway, the Water Management Officer has raised concern that infiltration drainage might not be a viable option in this location. This could however also be resolved by the means of a condition.

Ecology

4.20 The building has potential as a suitable habitat for bats. The presence or absence of protected species, and the extent to which they could be affected by a proposed development, should be established before planning permission is granted, since otherwise all material considerations might not have been considered in making the decision (Circular 06/2005). An ecological report needs to be carried out in order to establish the impact of the development on protected species, as a result there is insufficient information to establish the impact on protected species. This needs to be determined before permission is granted as stated above.
Other issues

4.21 Concern is noted that the units could be used for other purpose but we can only consider the proposal which before us.

4.22 There are no planning reasons why two holiday lets would cause any significant risk to public safety.

4.23 Developments which enhances the viability of public houses or other similar businesses in rural locations are supported where they can be under local plan policies. The holiday units would have the potential to support the restaurant use on the site as visitors may well purchase food in the restaurant. But given the restaurant is currently closed the proposed development is unlikely to have an overriding impact on the viability of a restaurant business which would outweigh concerns highlighted above.

4.24 There is also a note on the block plan referring to new manager’s accommodation, although the description of the application is for holiday accommodation and not as a manager’s accommodation. For the purposes of clarity there is already a flat above the restaurant that could be used as staff accommodation, as a result there would be no justification in this location outside the development limit within the rural policy area where there is a 39.6 years housing land supply for new dwellings.

4.25 Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration but in the instance of this application the other material planning considerations detailed above are of greater significance.

4.26 This application is liable for Community Infrastructure Levy (CIL) as it relates to new use class C3 dwellings floorspace.

5 Conclusion and reasons for refusal

5.1 In conclusion given the location remote from any development limits the provision of new build tourist accommodation is not supported. The demolition of the barn would result in substantial harm to a designated heritage asset (conservation area) and being an outline application there is insufficient information to fully assess the impact of the character and appearance of the conservation area and the setting of the grade I Hedenham Hall. In additional there is insufficient information to ensure that any protected species are not adversely affected by the proposed development. Given the identified harm, the minor benefit of the provision of two holidays is not considered to be an overriding benefit required by policy DM1.3 of the Development Management Policies. The application is therefore recommended for refusal for the following reasons:

1) The demolition of a non-listed building which makes a positive contribution to the character and appearance of the Conservation Area would result in substantial harm to a designated heritage asset and the proposed development would not result in substantial public benefits to outweigh this harm or pass the four tests in paragraph 133 of the National Planning Policy Framework. As the result the proposal would be contrary to paragraph 133 of the National Planning Policy Framework 2012 and policy DM4.10 of the South Norfolk Local Plan Development Management Polices Document 2015.
2) The proposed development is for permanent holiday accommodation located remote from any development boundary and without specific justification contrary to policy DM2.12 in the South Norfolk Local Plan Development Management Policies Document, in a remote location where visitors would likely to be dependent on the private car to access local facilities and services, and it will lead to harm to heritage assets as identified in the above reason for refusal. Therefore the benefit of two additional holiday lets is not considered to be an overriding benefit as required to enable development to be acceptable under policy DM1.3 of the Development Management Policies 2015.

3) Insufficient information has been submitted to fully assess the impact of the proposed development on the character and appearance of the Conservation Area in relation to the statutory duty under S72 of the Listed Buildings and Conservation Areas Act 1990 and policy DM4.10 of the South Norfolk Local Plan Development Management Polices Document 2015. For the avoidance of doubt, the indicative elevations for the appearance of the proposed development are not considered to preserve or enhance the character or appearance of the Conservation Area.

4) Insufficient information has been submitted to fully assess the impact of the proposed development on the setting of the grade I listed Hedenham Hall in relation to the statutory duty under S66 of the Listed Buildings and Conservation Areas Act 1990 and policy DM4.10 of the South Norfolk Local Plan Development Management Polices Document 2015. For the avoidance of doubt, the indicative elevations for the appearance of the proposed development are not considered to respect the special architectural or historic interest of the setting of the listed building.

5) Insufficient information has been submitted to establish the presence or absence of protected species on the site, and the extent to which they could be affected by a proposed development contrary to the advice in Circular 06/2005.

Contact Officer, Telephone Number Helen Bowman, 01508 533833
and E-mail: hbowman@s-norfolk.gov.uk
Appl. No: 2017/1268/O  
Parish: TASBURGH

Applicants Name: Mr C Davison  
Site Address: Land south of Saxlingham Lane, Tasburgh, Norfolk  
Proposal: Single dwelling

Recommendation: Approval with Conditions
1. Time limit outline – (reduced as 5 year land supply)  
2. In accordance with submitted drawings  
3. Outline requiring reserved matters  
4. Materials  
5. Retention of existing boundary treatment  
6. Foul drainage  
7. Surface water drainage  
8. Contamination  
9. Visibility splays  
10. Gates set back  
11. Turning area  
12. Levels  
13. Phase 1 Habitat Assessment  
14. Clearing of the site time limit  
15. Water efficiency

1 Planning Policies

1.1 National Planning Policy Framework

NPPF 06: Delivering a wide choice of high quality homes  
NPPF 07: Requiring good design  
NPPF 10: Meeting the challenge of climate change, flooding and coastal change  
NPPF 11: Conserving and enhancing the natural environment  
NPPF 12: Conserving and enhancing the historic environment

1.2 Joint Core Strategy

Policy 1: Addressing climate change and protecting environmental assets  
Policy 2: Promoting good design  
Policy 3: Energy and water  
Policy 4: Housing delivery  
Policy 9: Strategy for growth in the Norwich Policy Area  
Policy 15: Service Villages

1.3 South Norfolk Local Plan

Development Management Policies

DM1.1: Ensuring development management contributes to achieving sustainable development in South Norfolk  
DM1.3: The sustainable location of new development  
DM1.4: Environmental Quality and local distinctiveness  
DM3.8: Design Principles applying to all development  
DM3.11: Road safety and the free flow of traffic  
DM3.12: Provision of vehicle parking  
DM3.13: Amenity, noise, quality of life  
DM3.14: Pollution, health and safety  
DM4.2: Sustainable drainage and water management  
DM4.3: Facilities for the collection of recycling and waste
DM4.5: Landscape Character Areas and River Valleys
DM4.8: Protection of Trees and Hedgerows
DM4.9: Incorporating landscape into design
DM4.10: Heritage assets

1.4 Supplementary Planning Document
South Norfolk Place Making Guide 2012
Parking Standards for Norfolk (2007)

Statutory duties relating to Listed Buildings, setting of Listed Buildings and Conservation Areas:

S66(1) Listed Buildings Act 1990 provides: “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall 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.”

2. Planning History

2.1 1999/0821 Levelling a hard standing area and erection of Dutch barn Refused

2.2 2000/0867 Hard standing and Dutch Barn Refused 27/11/2000

2.3 CDE.226/95 Enforcement Notice requiring removal of materials and items stored on the land 30/09/1996

3. Consultations

3.1 Town / Parish Council Approval subject to
\- One dwelling only
\- Clear site before development
\- Reduce trees to reasonable height

3.2 District Councillor Delegated if approving. Committee if refusing. There is support for this proposed application for a bungalow on this large site from neighbours and others in the NPA. The main concern is trees at the roadside to be cut back and the site cleared.

3.3 SNC Water Management Officer Recommends mains foul drainage and approval of surface water drainage details

3.4 SNC Community Services - Environmental Quality Team Recommends precautionary condition about potential contamination

3.5 NCC Highways No highway objections. Access is poor in both directions, but note the applicant controls the land on both sides so can improve visibility. Therefore, recommends the following conditions:
\- Visibility splays
\- Gates set back
\- Turning Area
3.6 Other Representations

11 letters of support
- Proximity to family to provide care.
- Would provide property affordable to applicant.
- Site is well screened.

Comments
- Note tall Leylandii would block light to new dwelling.
- Should be single storey.
- Items stored on site should be removed.
- Should be time limit for completion.

3.7 Ecology

In the absence of ecology information it is recommended the following conditions are imposed.
- Phase 1 habitat assessment
- Clearing of the site time limit

4 Assessment

4.1 This is an outline application with some matters reserved except for access. The application site is located outside the Development Boundary for Lower Tasburgh accessed from a narrow country road, Saxlingham Lane. Tasburgh is however located within the Norwich Policy Area (NPA). The red-lined application site (as revised) is well defined and screened by tall vegetation. The site currently contains a large quantity and variety of miscellaneous items and materials, although this storage is in breach of an Enforcement Notice issued in 1996. The site borders open countryside to the south and east, but there are residential properties to the north and west, several of which are listed buildings.

4.2 This application has been amended since the original submission to include the wider site area within the application site.

4.3 The main matters to consider in determining this application are:
- Principle of residential development
- Impact on the setting of listed buildings
- Impact on countryside/landscape
- Impact on residential amenity
- Highways and access
- Assessment of sustainable development

Principle of residential development

4.4 Planning law requires that applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in determining planning decisions.

4.5 The site is outside the development limit where development will only be approved in certain circumstances outlined in part 2 criterion c) and d) of policy DM 1.3 of the local plan. Criterion c) allows for development where other specific development management policies allow for development outside of development boundaries. In this case, it is not considered that the scheme is acceptable under any other such policy.

4.6 Criterion d) makes provision for a development to be acceptable if there are overriding benefits in terms of economic, social and environmental dimensions as addressed in Policy DM1.1.
4.7 The Council is currently unable to demonstrate a 5-year housing land supply within the Norwich Policy Area, where this site is located. The current 5 year supply figure is 4.7 years of a 5 year supply for the Norwich Policy Area (based on the 2015-2016 AMR). When considering the proposed development in the context of the Council’s shortfall in housing land supply, paragraphs 14 and 49 of the NPPF are also invoked. These require a presumption in favour of sustainable development unless the impacts of doing so would significantly and demonstrably outweigh the benefits. The following sections assess the potential impact of the development before concluding whether the development is sustainable or if any harm outweighs the benefits.

Impact on the setting of listed buildings

4.8 The surrounding existing listed buildings that are positioned north and west of the site are significantly spaced away from the site. In addition, the application site is on elevated land and significantly screened from the highway and other properties. The proposal complies with Local Plan Policy DM4.10.

4.9 The proposal is not considered to cause any detrimental impacts on the surrounding existing listed buildings, when assessed in light of S66(1) Listed Buildings Act 1990. The proposal is not considered to affect the setting of the surrounding listed buildings.

Impact on countryside/landscape

4.10 The proposed development will cause an encroachment into the open countryside as the site is outside the defined settlement boundary. However, in this case the site is well screened and defined by existing mature boundary treatments, which provides the site with its own individual parameters and context. The site is also within close proximity to existing clustered development and within close proximity to the existing settlement of Tasburgh. I am satisfied due to the context of the site and its surroundings the proposal would not significantly impact on the character and landscape of the countryside. The proposal complies with Local Plan Policy DM4.5, DM4.8 and DM4.9.

Impact on residential amenity

4.11 This is a detailed matter and would be comprehensively assessed at reserved matters stage. However, in assessing the site and its surrounding context I am satisfied a dwelling could be achieved on the site without having unacceptable impact on the amenity of future or existing occupiers. The proposal complies with Local Plan Policy DM3.13.

Highways and access

4.12 The site would be accessed from Saxlingham Lane, which is a narrow highway. The proposed access drive from the highway to the area of the site where the dwelling is proposed meanders through the trees up to the site.

4.13 The highways officer has witnessed and noted the poor access to the site, but is satisfied the applicant controls the land on both sides of the entrance and therefore has the means to improve the visibility, which would be conditioned. The proposal complies with Local Plan Policy DM3.11 and DM3.12.
Assessment of sustainable development

4.14 In the context of the NPPF, sustainable development has three dimensions, economic, social and environmental. It goes on to state that these are not to be undertaken in isolation, because they are mutually dependent. The NPPF also sets out 13 themes for delivering sustainable development but considers its meaning of Sustainable Development to be taken as the NPPF as a whole. The following is an assessment of whether the scheme can be considered to represent sustainable development.

Economic Role

4.15 The NPPF highlights the economic role as "contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure."

4.16 The scheme would result in some short-term economic benefit as part of any construction work and in the longer terms by local spending from the future occupiers. It is therefore considered that the scheme would bring forward a level of economic benefit.

Social Role

4.17 The NPPF confirms the social role as “supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations: and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being.”

4.18 The principle social benefit of the scheme is that it provides housing within a location where a 5-year housing land supply cannot be demonstrated, although this is a limited benefit as only relates to one dwelling.

4.19 The site is within close proximity to services and facilities in the service village and with close proximity to services, facilities and access to employment that can be found in Norwich. Whilst this application is in outline form only (with only access for consideration as a detail) the site is considered of a suitable size to ensure that a quality development can be achieved to enhance the built environment without detriment to existing residents.

Environmental Role

4.20 The NPPF confirms the environmental role as "contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."

4.21 The development would result in an encroachment into open countryside. However, it is acknowledged that it is likely that, to address a housing land shortfall, development within the open countryside may be necessary in some cases. Any harm to landscape character as assessed earlier in this report is considered minimal and modest due to the context of the site and its context to the highway and surrounding existing properties. Therefore, any environmental harm is considered minimal in landscape terms and relevant ecology conditions would be imposed with the permission to ensure any potential protected ecological species on site are appropriately dealt with.
Community Infrastructure Levy

4.22 This application is liable for Community Infrastructure Levy (CIL) and would be sought at reserved matters stage. Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration, but in the instance of this application the other material planning considerations detailed above are of greater significance.

5 Conclusion

5.1 It is evident that the proposal complies with the requirements of all relevant JCS and/or DM policies identified above, including DM1.3 as it presents overriding benefits as identified in 2 d) of the policy. It is also considered that the proposal would satisfy the three roles identified above and it is clear that there would not be significant and demonstrable harm that outweighs the clear benefits of the scheme and as such the proposal is considered acceptable in the context of the second part of paragraph 14 of the NPPF. For these reasons the application is recommended for approval.

5.2 In conclusion, the proposal satisfies the policies within this report and relevant conditions have been added to this recommendation to make the proposal acceptable.

Case Officer, Telephone number Elizabeth Thomas 01508 533793
and E-mail: ethomas@s-norfolk.gov.uk
5  **Appl. No** :  2017/1650/F  
**Parish** :  DICKLEBURGH AND RUSHALL  

Applicants Name :  Mr & Mrs N Atkins  
Site Address :  Orchard Farm Norwich Road Dickleburgh Norfolk  
Proposal :  Erection of two new build dwellings to replace dwellings given the consent by application ref: 2016/1440 (Change of use of redundant agricultural buildings to form a pair of semi-detached dwelling houses with associated alterations)  

Recommendation :  Refusal  
1    Contrary to policy DM1.3

1.  **Planning Policies**

1.1  National Planning Policy Framework  
NPPF 06 : Delivering a wide choice of high quality home  
NPPF 07 : Requiring good design  

1.2  Joint Core Strategy  
Policy 1 : Addressing climate change and protecting environmental assets  
Policy 2 : Promoting good design  
Policy 3 : Energy and water  
Policy 4 : Housing delivery  
Policy 17 : Small rural communities and the countryside

1.3  South Norfolk Local Plan  
Development Management Policies  
DM1.1 : Ensuring Development Management contributes to achieving sustainable development in South Norfolk  
DM1.3 : The sustainable location of new development  
DM2.10 : Conversion and re-use of buildings in the Countryside for non-agricultural use  
DM3.8 : Design Principles applying to all development  
DM3.11 : Road safety and the free flow of traffic  
DM3.13 : Amenity, noise, quality of life  
DM4.2 : Sustainable drainage and water management  
DM4.5 : Landscape Character Areas and River Valleys  
DM4.10 : Heritage Assets

1.4  Supplementary Planning Document  
South Norfolk Place Making Guide

**Statutory duties relating to Listed Buildings, setting of Listed Buildings and Conservation Areas:**

S66(1) Listed Buildings Act 1990 provides: “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall 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.”

214
2. **Planning History**

<table>
<thead>
<tr>
<th>Date</th>
<th>Application Description</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017/0763</td>
<td>Variation of condition 2 of permission 2016/1440 (Change of use of redundant agricultural buildings to form a pair of semi-detached dwelling houses with associated alterations) - Alteration to the proposed parking area for the proposed dwellings</td>
<td>Withdrawn</td>
</tr>
<tr>
<td>2017/0466</td>
<td>Discharge of conditions 3 and 4 of planning permission 2016/1440 - materials (3) window and door details (4)</td>
<td>Approved</td>
</tr>
<tr>
<td>2016/1440</td>
<td>Change of use of redundant agricultural buildings to form a pair of semi-detached dwelling houses with associated alterations.</td>
<td>Approved</td>
</tr>
<tr>
<td>2016/0168</td>
<td>Notification for Prior Approval for a proposed change of use and associated building works of an agricultural building to 2 no dwellinghouses (QA and QB)</td>
<td>Refused</td>
</tr>
<tr>
<td>2013/0548</td>
<td>Change of use of redundant agricultural barn to form a single detached dwelling house with associated alterations.</td>
<td>Approved</td>
</tr>
<tr>
<td>2013/0547</td>
<td>Change of use of redundant agricultural barn to form a single detached dwelling house with associated alterations.</td>
<td>Approved</td>
</tr>
</tbody>
</table>

3. **Consultations**

<table>
<thead>
<tr>
<th>Group</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parish Council</td>
<td>No comments received</td>
</tr>
</tbody>
</table>
| District Councillor | Amended comments  
- To be determined by committee bearing in mind the previous planning consent on this plot I would like it taken into consideration.  
Original comments  
- To be determined by committee  
- A good use of replacing redundant agricultural buildings |
| NCC Highways | Support with conditions                                                                                         |
| NCC Ecologist | No comments received                                                                                           |
| SNC Water Management Officer | Support with conditions  
- Application advises that foul drainage will discharge into a sewage treatment plant, but the plan indicates a septic tank  
- No foul sewer in the area  
- Method of non-mains disposal should be most appropriate to manage the risk to the water environment  
- Application suggest surface water going to watercourse.  
- It is important that the most sustainable method of surface water drainage is used in line with the NPPF and building regulations |
• The surface water drainage hierarchy should be followed with all available options being considered and the most sustainable techniques used wherever appropriate.
• Recommend surface water is conditioned

3.6 SNC Community Services - Environmental Quality Team
To be reported

3.7 Other Representations
None received

4 Assessment

4.1 The application relates to a piece of land to the South of Orchard Farm which is a grade II listed building on Norwich Road in Dickleburgh. There is a barn located to the north east which has was converted under planning permission and listed building applications 2013/0547 and 2013/0548. The site is located outside any development limit defined by the South Norfolk Site Specific Allocations.

4.2 There were some timber framed buildings on the site, which were granted planning permission to be converted to two dwellings earlier in the year (application number 2016/1440), the conditions have been discharged for this application. Building Regulations approval has also been given for the buildings to be converted but included a new floor and strengthening works.

4.3 On commencing the work, the applicant found that the building was a poorer state than anticipated and made the decision to remove the structure incrementally to ensure that a building could be erected which was constructed to a suitable standard meeting building regulations. There is currently no structure left on site.

4.4 The agent has stated that a structural report was not required unlike with the 2013 application and there was no as condition requiring the retention of the frame unlike with the 2013 application. As result the structural issues were not considered earlier.

4.5 In submitting an application there is a responsibility on the applicant to ensure that it is possible to carry out the proposed development. The requirement to submit structural reports with barn conversion was relaxed when the NPPF was published and made no specific reference to the structure of the building. Officers are however, now requiring structural reports again to avoid similar situations occurring. The specific condition regarding the timber frame was requested by the Conservation Officer at the time, because of the historic importance of the timber frame.

4.6 This application for two new building dwellings to be built to the same design as footprint as previously approved, the application also includes an amendment to provide the car parking to the side rather than the front of the dwellings.

4.7 As there are no longer any buildings on site to convert so the proposal can’t be assessed as a conversion under policy DM2.10 of the Development Management Policies and has to be assessed as two new build dwellings.

4.8 The site lies in the Rural Policy area which in respect of housing supply has a 39.6 years supply, as such the Council’s policies for the supply of housing can be considered up to date and applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
4.9 The site falls outside of the development boundary where development will only be permitted under policy DM 1.3 if there are specific Development Management policies that allow for it or there are overriding benefits. In this case there are no other policies which would allow for it. The following report considers whether there are overriding benefits to justify the development.

4.10 The application site is located on the Norwich Road in Dickleburgh to the North of the main village and remote for services and facilities in the village although there is a pedestrian footpath along the main road to the main village.

4.11 The site is within the B4: Waveney Tributary Farmland character area defined by the South Norfolk Landscape Assessment 2001 updated in 2012. The South Norfolk Place Making Guide identifies the one of the key design principles of this area is to ensure the rural character is conserved with the pattern of small villages and settlements set within the agricultural landscape. The proposed dwellings would result in an encroachment into the countryside as the building have now been demolished but would not result in any significant harm to the landscape character of the area as required by policy DM4.5 of the Development Management Policies.

4.12 There is no objection to the design of the proposed dwellings which has previously been approved.

4.13 S72 Listed Buildings Act 1990 provides: “In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of [the Planning Acts], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.” In terms of the setting of the listed farmhouse, the conversion would have resulted in an enhancement to the setting of the listed buildings by improving the appearance of the building, now the that buildings are no longer there the benefit attributed to enhancing the setting has been removed. However it is not considered they would harm the setting of the listed building.

4.14 It is considered that the proposed dwellings would have a good standard of amenity and not adversely affect the amenity of the adjacent properties to a significant degree, as required by policy DM3.13 of the Development Management Policies.

4.15 It is proposed to access the dwellings off the existing access, which the Highway Officer raises no objection to. It is proposed to have car parking located to the east of the properties rather to the front as originally approved. In terms of layout it would be preferable in use terms to have the car parking closer to the entrance to the dwellings, however, on balance in its proposed location it is not considered sufficiently harmful to raise an objection. As a result, it is considered the proposed development complies with policy DM3.11 of the Development Management Policies.

4.16 The application has conflicting information on plans and application form regarding foul water drainage. There is no mains sewer in the vicinity of the site and as a result a package treatment is the most appropriate means of foul water disposal, and could be addressed through condition.

4.17 The approved application referred to surface water drainage as being dealt with via soakaway, whereas this application refers to the surface eater discharging into a water course which is a less sustainable option. Again there is scope and ability to address this issue through condition.

4.18 No ecological information has been submitted with this application, but the buildings are now removed and so no further consideration for bats can be given. The NNC Ecologist had previously recommended a condition for pre-cautionary Great Crested Newt mitigation which could be secured to any approval granted.
4.19 As discussed above the local plan policies are considered up to date and the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The proposed development does not comply with any Development Management Policies and given the housing land supply of 39.6 years the social benefit of providing two additional dwellings is considered minimal. Therefore there are not considered to be overriding benefits to the development which policy DM1.3 requires to enable this to be acceptable.

4.20 Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration but in the instance of this application the other material planning considerations detailed above are of greater significance.

4.21 This application is liable for Community Infrastructure Levy (CIL) as it is for new dwellings.

5 Conclusion

5.1 In conclusion the proposed development is outside the development boundary for Dickleburgh in an area where the Council has a housing land supply of 39.6 years, and the development does not comply with any other development management policies. Given the minimal social benefits of providing two dwellings in light of the more than adequate land supply it is not considered the proposal would deliver overriding benefits as required by policy DM1.3 of the Development Management Policies. The application is therefore recommended for refusal for the following reason:

1) The site is located outside any development limit defined of the South Norfolk Local Plan Site Specific Allocation 2015 and does not comply with any of the South Norfolk Local Plan Development Management Policies 2015. Given the minimal social benefits of providing two dwellings in light of the existing significant housing land supply of 39.6 years it is not considered the proposal would deliver overriding benefits as required by policy DM1.3 of the South Norfolk Local Plan Development Management Policies Document to make the development acceptable.

Contact Officer, Telephone Number and E-mail: Helen Bowman 01508 533833 hbowman@s-norfolk.gov.uk
Applications submitted on Council owned land

6  
Appl.No : 2017/1271/F  
Parish : WYMONDHAM

Applicants Name : Mr Barry Rooks  
Site Address : Offices At 46-60 Ayton Road Wymondham NR18 0QH  

Recommendation : Approval with Conditions  
1  Full Planning permission time limit  
2  In accord with submitted drawings

1.  Planning Policies

1.1  National Planning Policy Framework  
NPPF 08 : Promoting healthy communities

1.2  Joint Core Strategy  
Policy 8 : Culture, leisure and entertainment  
Policy 10 : Locations for major new or expanded communities in the Norwich Policy Area

1.3  South Norfolk Local Plan  
Development Management Policies  
DM1.1 : Ensuring Development Management contributes to achieving sustainable development in South Norfolk  
DM1.3 : The sustainable location of new development  
DM3.11 : Road safety and the free flow of traffic  
DM3.12 : Provision of vehicle parking  
DM3.13 : Amenity, noise, quality of life  
DM3.16 : Improving level of community facilities

1.4  Site Specific Allocations and Policies  
Wymondham Area Action Plan

2.  Planning History

2.1  2014/0688  Over cladding of existing office building and provision of new car park  
Approved

2.2  2014/1138  Proposed staff WC and Welfare Block  
Approved

3  Consultations

3.1  Town / Parish Council  
Approve

3.2  District Councillor  To be reported if appropriate

3.3  NCC Highways  
No objections

3.4  SNC Water Management Officer  
No comments to make
Proposal and site description

4.1 The proposal is for the change of use of a vacant office building, to a building for use as part of the Alive Church (currently meeting at Central Hall) offering a variety of community projects such as Men’s Shed, a Tech room for computers and other technology based projects and a lounge for tea and coffee. The building will also be used for some mid-week church activities including prayer meetings and training sessions. The building will not be used for Sunday Morning worship. No external alterations or extensions are proposed as part of this application.

4.2 The building is located on Ayton Road which is a commercial area with a variety of other office and commercial premises adjacent to and opposite the site. The site comprises the office building to the front which is the subject of this application, and a large building to the rear of the site, which had all been vacant since 2008. While the whole site is within the same ownership in 2013, the main workshop to the rear of the site was rented out to a Simmonds bus company which still operates from the site. The office building to the front (the subject of this application) remained vacant and will now be rented by the applicants to be used as a community building. In recent months the windows of the former office building have all been replaced and the building refurbished which significantly improves the visual appearance of the building within the locality and provides a building which is now fit for use.

4.3 The application has been referred to the Development Management Committee as the Council owns the ground lease for the site.

Principle of development

4.4 The site is within the Development Limits as defined within the Wymondham Area Action Plan.

4.5 Part 2 of Policy DM3.16 of the South Norfolk Local Plan is directly applicable insofar as it supports development that improves the level of community facilities within development boundaries. For this reason the principle of the development is acceptable in planning terms.

Key issues

4.6 The following are considered to be the key issues associated with this proposal:

- Amenity
- Highway safety

Amenity

4.7 The site is surrounded by other commercial premises, and the Recreation Ground which is opposite the site. The nearest residential properties are located on Station Road some considerable distance to the south west of the site, for this reason the proposed use will have no impact on residential amenities and accords with policy DM3.13 of the SNLP 2015.
Highway safety

4.8  The site is accessed off Ayton Road with a parking area to the front of the premises. From the information provided the site already benefits from 9 parking spaces. Given that the site is located in an area which is easily accessible by foot and cycle, the level of parking has been assessed and is acceptable for the use proposed. The Highways Authority have been consulted and raise no objections. The scheme accords with policies DM3.11 and DM3.12 of the SNLP 2015.

Other issues

4.9  The building is already connected to the main sewer therefore no issues with the disposal of foul drainage with the proposed use.

4.10  No other issues have been raised as a result of the consultation process.

4.11  Under Section 143 of the Localism Act the council is required to consider the impact on local finances. This can be a material consideration but in the instance of this application the other material planning considerations detailed above are of greater significance.

4.12  This application is not liable for Community Infrastructure Levy (CIL) as the proposed use is classes as D1 which is a community building and has a zero rating.

5  Conclusion

5.1  The building has been vacant for some time and having recently been refurbished will provide a good location for use as a community facility being easily accessible and having no impact on the residential amenities of residential properties. The scheme accords with the above policies.

Contact Officer, Telephone Number and E-mail: 
Jacqui Jackson 01508 533837 
jjackson@s-norfolk.gov.uk
### Planning Appeals
Appeals received from 11 July 2017 to 7 August 2017

<table>
<thead>
<tr>
<th>Ref</th>
<th>Parish / Site</th>
<th>Appellant</th>
<th>Proposal</th>
<th>Decision Maker</th>
<th>Final Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017/0500</td>
<td>Aslacton Barn South Of Low Common Road Aslacton Norfolk</td>
<td>Ms Joanna Barnes</td>
<td>Notification for Prior Approval for a proposed change of use and associated building works of an agricultural building to a dwellinghouse (Class Q(a) and Class Q(b))</td>
<td>Delegated</td>
<td>Approval of details - Refused</td>
</tr>
</tbody>
</table>

### Planning Appeals
Appeals decisions from 11 July 2017 to 7 August 2017

<table>
<thead>
<tr>
<th>Ref</th>
<th>Parish / Site</th>
<th>Appellant</th>
<th>Proposal</th>
<th>Decision Maker</th>
<th>Final Decision</th>
<th>Appeal Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>