

## Development Control Committee

Meeting to be held on 25th October 2017

Electoral Division affected: Lancaster Rural North
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### Lancaster City: Application No. LCC/2017/0024

**Excavation and earthworks to reconfigure the existing lakes including removal, construction and extension of bunds including completion of the embankment adjacent to the M6 to the same dimensions as approved under planning permission 1/12/0890. The application includes the submission of a new section 106 ecological management plan for the site.**

**Clearwater Fisheries, Kellet Lane, Warton, Carnforth**

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### Executive Summary

Application – Excavation and earthworks to reconfigure the existing lakes including removal, construction and extension of bunds including completion of the embankment adjacent to the M6 to the same dimensions as approved under planning permission 1/12/0890. The application includes the submission of a new section 106 ecological management plan for the site. Clearwater Fisheries, Kellet Lane, Warton, Carnforth

### Recommendation – Summary

Subject to the applicant first entering into a Section 106 agreement providing for the ecological and angling management of the site for 15 years, that planning permission be **granted** subject to conditions controlling working programme, site operations, hours of working, highway matters, noise and dust, protection of watercourses, landscaping, restoration and aftercare.

### Applicant's Proposal

The application relates to an existing course fishing facility which has been developed in restored sand and gravel workings. The proposal has two elements:-

- The completion of an embankment adjacent to the M6 to the same dimensions as approved under planning permission 1/12/0890 through the importation of additional inert waste materials.
- Additional excavation and earthworks to reconfigure the existing lakes through the removal, construction and extension of bunds separating the lakes.

The proposed site alterations are for the purpose of further developing the leisure fishing business. Completion of the embankment would reduce noise and visual

disturbance from the M6 motorway. The removal of several bunds (themselves permitted under 01/98/0019) would allow the creation of larger water bodies and is proposed to improve the health of the fishery and provide enhanced fishing opportunities. Maintenance and improvement to retained bunds is necessary to prevent fish moving between lakes during flood events. One of the bunds on the southern boundary has been created already in order to secure the boundary to the fishery and enable the erection of an otter-proof fence on land within the applicant's ownership.

New landscape planting and habitat creation is proposed across the site together with track alterations to restrict vehicles other than quad bikes to the main car park only.

### **Description and Location of Site**

The site is located within in an area of open countryside, approximately 700 metres to the south west of Borwick, and 1.6 kilometres to the north east of Carnforth. The western boundary of the site is formed by the M6 motorway with the River Keer to the south with Kellet Lane to the east from where access is gained. The site measures approximately 500 metres by 600 metres.

The site comprises a number of fishing lakes, set in grassland with scattered stands of trees, with a timber café and accommodation building and car park at the main site entrance onto Kellet Lane.

### **Background**

#### History

The site was used for the extraction of sand and gravel during the 1960's. The site was subsequently abandoned and left undeveloped, allowing water bodies to form. As part of a complex of water bodies in the wider area, the site developed significant wildfowl interest and qualified as a Biological Heritage Site (Local Site) until 2007, when it was deemed to no longer qualify due to a reduction in ornithological interest attributed to increased disturbance from the operational fishery.

The site has an extensive planning history, including:

01/98/0019 - The importation of waste material for the creation of haul roads, hardstanding and temporary site cabin for the minor extension and division of existing lake to form five smaller waters as part of the development of a course fishing facility.

01/05/1144 Creation of a landscape bund along western boundary of Borwick Lake.

01/07/0008 Provision of alternative access route to facilitate construction of bund.

01/09/0466 Renewal of planning permission to allow completion of landscaped bund as permitted by planning permission 01/05/1144.

01/12/0890 Application to allow for the completion of landscaped bund to the dimensions and contours permitted by planning permission 01/05/1144 and 01/09/0466.

LCC/2014/0106 Non-compliance with condition 1 of planning permission 01/120890 to allow an additional 18 months for the completion of the bund with a further period of 6 months for restoration.

Lancaster City Council have also granted a number of permissions on this site for fishing facilities.

## **Planning Policy**

National Planning Policy Framework (NPPF)

Paragraphs 6 – 17, 56 – 57, 93 – 94, 103, 109 and 118 are relevant in relation to the presumption in favour of sustainable development; the need for good design, climate change and flood risk and conserving and enhancing the natural environment.

Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD (JLMWDF)

Policy CS7 Managing our Waste as a Resource

Policy CS9 Achieving Sustainable Waste Management

Joint Lancashire Minerals and Waste Local Plan (JLMWLP)

Policy DM2 – Development Management

Lancaster District Local Plan (2008)

Policy E4 Countryside area

Policy E11 Development within areas at risk of flooding

Policy E12 Nature conservation in the wider environment

Lancaster District Development Management DPD 2011-2031

Policy DM27 The protection and enhancement of biodiversity

Policy DM38 Development and flood risk

## **Consultations**

Lancaster City Council – no response received.

Environment Agency – objected initially due to absence of flood risk assessment. The objection was subsequently removed by submission of an acceptable FRA. The EA are supportive of proposals for fishery management, including merging of alien species lakes to give larger species more room, and creation of new bund in order to maintain the otter fence. The EA are supportive of continuing restrictions on angling over winter, and generally support the habitat improvements but recommend that tall trees are not planted in the middle of the site to retain openness.

Highways Agency – no objection.

LCC Highways Development Control – no observations received.

Natural England – The development will not affect any statutory sites. No objections are raised but advise that the LPA assess impacts on protected landscapes and species and local sites.

Borwick and Warton Parish Council – no observations received.

LCC Specialist Advisor (Ecology): The proposals to remove some of the internal bunds that divide the lakes is welcomed as it would help to reinstate the larger size of the water bodies that existed when the site was designated as a BHS. It is important that some controls on no fishing areas are retained in order to protect overwintering bird interests. The applicant's proposals to provide further landscaping are welcomed and would give greater diversity of habitats. A revised management plan is required to ensure that the angling activities and landscaping are managed in a way that benefits biodiversity.

Representations – The application has been advertised by press and site notice, and neighbouring residents informed by individual letter. One representation has been received raising the following issues:

- Proposals should be considered 'change of use' due to deviation from original development vision as a visitor and angling centre for education and amenity;
- the previously consented restrictions on angling are not applied;
- the proposals will result in the loss of smaller ponds and spread common carp;
- the proposals do not maintain habitats and species of biodiversity value, and result in the loss/ damage to features of nature conservation value.

## **Advice**

This site is a former sand and gravel working. Mineral extraction was completed in the 1960's leaving a large lake. In 2002 the County Council granted planning permission for the subdivision of the lake into a number of smaller waterbodies so that the site could be used as a commercial coarse fishery. At the time of the application, the site was designated as a Biological Heritage Site for its value for birds. A management plan was agreed as part of a section 106 agreement to control the fishing activities in order to protect the bird interest on the site.

Subsequently, the site has changed ownership and the new owner whilst wishing to continue with the use of the site as an angling centre wishes to make a number of changes to the site.

There are several elements and issues associated with the application. These are considered in turn below.

### *Bund (motorway embankment) completion*

The applicant is applying to complete the embankment adjacent to the M6, and to undertake landscaping works on the embankment, in accordance with the details and scheme previously approved.

Planning permission for the construction of an embankment parallel to the M6 using imported inert waste was granted in 2006 (01/05/1144), but works were not completed within the permitted timeframe. Further applications to renew the permission were approved in 2009 (01/09/0466), 2012 (01/12/0890) and 2014 (LCC/2014/0106). However, a small area of the bund at the northern end of the site measuring approximately 50 metres in length and approximately 6 metres in height has not been completed. The area of the bund that has already been constructed has been landscaped and is of acceptable visual appearance.

The principle of the embankment construction in order to reduce motorway noise at the fishing lakes has been established via the previous planning permissions. The length of embankment remaining uncompleted is comparatively small. Given the limited impact of the remaining tipping operations and the benefit of completing the bund to its approved dimensions, it is considered that the granting of an additional 18 month period for bund completion is acceptable and complies with policy DM2 of the Lancashire Minerals and Waste Local Plan – Site Allocation and Development Management Policies.

There is an area of land adjacent to the northern end of the bund that has been used for plant and materials storage. This area is unsightly especially from the M6 and the applicant proposes to restore this area to grass. This is considered acceptable and can be the subject of a planning condition.

As with previous permissions, conditions are proposed to limit the period within which to complete and restore the bund and to restore the access to the bund site from Kellet Lane.

*Excavation and earthworks to reconfigure the existing lakes including removal, construction and extension of bunds*

The application seeks permission for various earthworks across the site, including: the creation of a bund across the southernmost bay of the largest lake for the purposes of securing the site; the removal of several existing bunds to create larger bodies of water for the purposes of improving fish health and enhancing the commercial fishery; and works including raising the height of existing bunds for the purposes of preventing the movement of fish between lakes during flood events.

The works to create the bund on the southernmost bay of the main lake have already been completed. The applicant states that this was a matter of urgency to secure a boundary to the site and enable the erection of an otter-proof fence within their ownership in order to prevent the predation of valuable fish by otters that are within the River Keer immediately to the south.

The removal and elevation of bunds for the purposes of the health of the fishery are broadly supported. The raising of existing bunds would not have a major visual impact and is required only to prevent fish being able to transfer between lakes

during times of flood. Subject to a condition being imposed regarding landscaping of any new or raised embankments and bunds, this aspect of the development is considered acceptable in terms of visual amenity.

The flood risk assessment suggests that the bund works, excavations and infills will not require any additional material to be imported to the site. The applicant has confirmed that a planning condition to restrict importation of material other than to complete the motorway embankment would be acceptable.

## Ecology

**Protected species** - The constructed bund (and associated otter fence) on the southern bay of the main lake will prevent otter (a European protected species) from accessing the site. The site had previously benefited from an otter-proof fence but this is no longer wholly within the control of the current owners, hence the need to now replace the otter-proof fence along the southern boundary. It is considered that a secure boundary can be reinstated without resulting in an impact on otter or their habitat. As a breach of legislation seems reasonably unlikely, the provisions of the Conservation of Habitats and Species Regulations 2010 (as amended) do not apply in the determination of the planning application.

**Over-wintering wildfowl refuge area** - The existing section 106 agreement makes provision for restrictions on angling to provide disturbance-free zones for wintering birds. These restrictions were required due to the site having a BHS designation at the time of the application and were intended to preserve the value of the site for birds and to prevent disturbance by the angling activities. The new bund encroaches into the area designated as 'no fishing' and the larger lake area that is subject to seasonal angling restrictions within the existing section 106 agreement. The new bund is proposed to have a permanent track across it. It is considered that activity in this area will result in disturbance and displacement to birds, and is not compatible with the wildfowl refuge area.

However, the amended site plan does indicate that there would be new 'no fishing' zones including the island on the western side of the main lake, on the newly isolated southern bay, and along the eastern bank of the lake on the eastern side of the site. Fishing pegs around the main lake would also be at low density fishing, with two only on the southern bank. The applicant maintains that the proposed non-angling zones will substantially reduce angler pressure whilst maintaining a viable fishery.

Whilst the southernmost 'bay' might be designated a no fishing zone, it is separated from the main lake by a new bund with otter-proof fence and track and will therefore be disturbed by activity on the track/ bund. Moreover, the adjacent landowner retains ownership of part of the southern bay and is therefore outside of the control of the applicant.

The reduction in peg numbers and density on the main lake would not, by itself, compensate for the removal of seasonal fishing restrictions, since even low density activity on the banks will disturb birds. However, the removal of the bund between the south western lake and the main lake will remove fishing pegs (and activity) from

this location. Taken together with the restriction on angling from the newly created island, it is considered that there would be a sufficiently large and undisturbed area of open water and bankside habitat for birds even in the absence of the seasonal fishing restriction (wildfowl refuge area). Clearly, this would need to be monitored, and additional measures (including for example seasonal restrictions at 'problem' pegs) considered if the current proposals do not maintain suitable 'refuge' areas for wintering wildfowl.

The submitted plan indicates that a footbridge will be retained to the island and it is considered that there would need to be a restriction on access to the island during the core winter months to avoid disturbance to wintering birds. Full public access around the site would also result in disturbance to wintering (and other) birds in more sensitive locations. For this reason, a restriction on public access during winter around the southern end of the main lake, and across the new bund, is also considered necessary. There would also need to be a continuation of the previous restriction on angling from boats during winter. These matters can be the subject of a revised fishing / habitat management plan which can be required through conditions and an associated section 106 agreement.

In this way, it is considered that it may be possible to provide an undisturbed area for wintering birds without further restrictions on angling.

*Habitat losses* - A new track has been created around the southern edge of the main lake to facilitate creation of the new bund. This resulted in the destruction of a ditch, the creation of which was a requirement of an earlier planning permission (01/05/1144). The ditch was required to compensate for the loss of a ditch due to the creation of the motorway screening bund and which was identified as a lying up site by otters during the summer.

The need to reinstate this ditch, or provide replacement elsewhere, has been raised. In response, the applicant points out that the ditch (as created) did not in fact provide otter habitat as it was located within the otter-proof fencing. Moreover, the ditch had not been created in accordance with the previously approved details, such that a habitat of high environmental value has not been lost.

The applicant maintains that the proposed extensive marginal planting to fishing lakes will be adequate to compensate for the loss of the original habitat feature. Planning conditions are therefore recommended to secure details of landscaping including lake edge profiles and gradients, suitable to support extensive marginal planting which will be sufficient to mitigate for any habitat losses elsewhere on the site.

*Bund removal* - The proposed bund removal to merge smaller waterbodies would reinstate larger water bodies at this site which could be beneficial to wildfowl and wintering birds. At the time of the original proposals (01/98/0019) nature conservation organisations raised concerns that a larger number of smaller lakes would be less attractive to birds (than a smaller number of larger lakes) and would result in increased disturbance due to increased human proximity. In general, the proposals to remove some of the bunds to create larger water areas would allow the site to regain some of its original condition when it benefited from a BHS designation.

The currently proposed section 106 Management Plan (discussed below) does not make provision for any form of monitoring. The applicant has agreed to monitoring and for the Management Plan to make provision for reporting and subsequent actions arising from monitoring inspections. This can be addressed by planning condition/ revised section 106.

*Section 106 agreement – Management Plan:* The original planning application 01/98/0019 was approved subject to a section 106 agreement to provide for the management of the site for 25 years and for the protection and enhancement of the BHS status of the site during and after the development.

The aims of the section 106 and attached management plan are to allow angling to take place whilst maintaining overwintering wildfowl interest on the main lake and ecological interests elsewhere within the site. At the time of the original 2002 permission, margins of water bodies were potential nest sites for tufted ducks and other species, but were under-used due to sparse development and impoverished flora, and the semi-natural grasslands were similarly poorly developed with impoverished flora.

The existing section 106 agreement includes a range of objectives to achieve these aims, including that a management plan would be produced at year four, and that site monitoring should inform the management process. The current application proposes a new section 106 ecological management plan for the site, to cover the period 2017-2021 in the first instance.

The management plan includes proposals for extensive tree planting across the site. Additional tree planting to woodland areas and site boundaries would be in accordance with the requirements of the existing section 106. However, it remains preferable that tall planting in/ adjacent to the core wildfowl area (main lake) is avoided: expansion and diversification of copses through under and middle-storey planting remains most appropriate both ecologically and in landscape terms. Planting on the bunds adjacent to the main lake should therefore comprise lower growing scrub species rather than full height canopy trees.

The applicant has already undertaken some of the proposed tree planting within the section 106 management area. It is recommended that tall trees are not allowed to establish immediately adjacent to the main lake except within and adjacent to existing areas of planting. The applicant has also been advised that some of the proposed trees are not recommended for the creation of new native woodland here, being atypical of the area. These issues can be addressed as part of woodland management controls within any revised site management plan to include provision for the removal of inappropriate species.

In addition to maintaining overwintering wildfowl, the existing section 106 agreement requires habitat enhancements for ground nesting birds, including scrapes and no fishing zones during the nesting season. The current management plan does not make similar provision, but this is considered acceptable in the context of the current condition, characteristics and use of the site and surroundings.



There will in any case need to be revised landscaping/ management proposals to take account of the site layout amended as a result of the Flood Risk Assessment. The applicant has agreed to submit amended landscaping and management proposals. A planning condition is recommended to address this matter.

A revised section 106 agreement will also need to be agreed to amend some of the specific aims and objectives for this site. Given the fairly significant alterations to the site and the loss of established/ establishing vegetation, the original section 106 agreement and attached management plan is no longer appropriate.

The applicant is unwilling for the section 106 to be extended for a further 10 years, but is agreeable to manage the site in accordance with a management plan for a further 5 years beyond the original section 106 period. Whilst a longer period of management would be desirable, the proposed management duration is considered acceptable given that the site is no longer a BHS.

*Flood Risk Assessment:* The site lies in flood zone 3 and is part of a main river necessitating submission of a Flood Risk Assessment (FRA) for the scheme. The application was originally submitted without an FRA, resulting in an objection to the proposals by the Environment Agency.

The applicant has submitted a completed FRA which has necessitated some amendments to the proposed site layout would result in a betterment in terms of flood storage compensation. The Environment Agency is satisfied with the conclusions of the FRA and the amended proposals and has withdrawn its objection accordingly.

Although the proposals increase flood storage capacity, there remains a risk of fluvial flooding at this site. The FRA makes a number of recommendations to mitigate the risk, including a requirement for the site to register for Environment Agency flood alerts; development and implementation of an evacuation plan from flood zone 3 to flood zone 1, to include informative site signage; and to ensure balance of volumes displaced by earthworks. A condition can be attached to any permission requiring these to be implemented.

In summary, it is considered that the proposals to complete the bund adjacent to the M6 are acceptable. The works to the existing lakes would involve some disturbance to existing habitats on the site. However, it is considered that the new arrangement of water bodies on the site would have some benefits for nature conservation provided that the site is subject to appropriate landscaping and subsequent management of ecology and angling activities over an appropriate period. The development is therefore acceptable in terms of the policies of the Development Plan.

In view of the location, scale, nature and design of the development, it is considered that no Convention Rights set out in the Human Rights Act 1998 would be affected.

## **Recommendation**

That subject to the applicant first entering into a Section 106 agreement providing for the ecological and angling management of the site for 15 years, that planning permission be granted subject to the following conditions:-

## **Working Programme**

1. The development shall be carried out, except where modified by the conditions to this permission, in accordance with the following documents:
  - a) The Planning Application received by the County Planning Authority on 10th February 2017.
  - b) Submitted Plans and documents:
    - Drawing 2719.000 - OS Location Plan
    - Drawing No. 2719.PL.101 Rev E - Proposed Site Plan
    - Figure 1B - Remaining Bunding to be completed
    - Drawing BL.050506/A - Proposed Mound Development and Restoration
  - c) All schemes and programmes approved in accordance with this permission.

*Reason: For the avoidance of doubt, to enable the County Planning Authority to adequately control the development and to minimise the impact of the development on the amenities of the local area, and to conform with policy DM2 of the Lancashire Minerals and Waste Local Plan and policies DM27 and DM38 of the Lancaster District Development Management DPD.*

## **Screening Bund Construction and Restoration**

2. The works to complete the M6 screening bund to the dimensions and contours shown on drawing BL050506/A shall be completed with 18 months of the date of this planning permission.

Within one year of the mound construction being completed to the approved contours, the mound shall thereafter be landscaped in accordance with the details shown on drawing BL050506/A.

*Reason: To ensure the completion and landscaping of the mound within an acceptable timescale and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

3. Measures shall be taken at all times during the importation of materials to construct the M6 screening mound to ensure that no mud, dust or other deleterious material is deposited on Kellet Lane by Heavy Goods Vehicles leaving the site.

*Reason: In the interests of highway safety and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

4. Access and egress to / from the site for Heavy Goods Vehicles associated with the importation of materials to create the M6 screening bund shall not be other than the access route from Kellet Lane shown on Figure 1B.

*Reason: In the interests of highway safety and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

5. Within six months of the M6 screening bund being completed to the contours shown on drawing BL050506/A, the access from the site onto Kellet Lane shall be reduced to an agricultural access. The works shall include removal of the double access gates and planting of a double staggered row of hedgerow plants to reduce the width of the access to an agricultural access.

*Reason: In the interests of visual amenity and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

6. No works to construct the M6 screening embankment shall take place outside the hours of:

07.30 to 18.00 hours, Mondays to Fridays (except Public Holidays)

08.00 to 13.00 hours on Saturdays

No works to construct the M6 screening embankment shall take place at any time on Sundays or Public Holidays.

This condition shall not, however, operate so as to prevent the carrying out, outside these hours, of essential repairs to plant and machinery used on site.

*Reason: To safeguard the amenity of local residents and adjacent properties/landowners and land users and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

### **Works to existing Lake margins**

8. No waste materials shall be imported for the purposes of undertaking the works to the existing bunds and embankments shown on drawing 2719.PL.101 Rev E.

*Reason: In the interests of local amenity and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

9. The works to reconfigure the lake margins shown on drawing 2719PL.101 Rev E and described in section 1 of the design and access statement shall be completed within one year of the date of this planning permission.

*Reason: In the interests of visual amenity and to ensure that the works are completed within an acceptable timescale and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

10. Within six months of the date of this planning permission, a landscaping scheme for the site shall be submitted to the County Planning Authority for approval in writing. The scheme shall be based upon the proposals in the submitted Ecological Management Plan and shall contain details of the following:-
- a) a plan showing the layout of the landscaping of the site including woodland / shrub planting area, areas to be sown to grassland and areas for development of marginal / wetland habitats.
  - b) the seed mixes to be applied to any areas that are affected by regrading or other excavation operations
  - c) planting mixes for any areas to be planted with trees / shrubs identified under a) above including details of species to be planted, sizes and types of plants, planting techniques and protection measures
  - d) details for the creation of wetland / marginal areas on lake edges including grading works to create suitable levels, works to create reed beds and other areas of marginal planting. The details shall include information on the planting of marginal plants including species to be planted and measures and techniques to be used to secure establishment.
  - e) the restoration of the plant and materials storage area in the north western corner of the site including removal of all plant, equipment and storage materials, regrading works and seeding including details of seed mixes to be used.

The landscaping works contained in the approved scheme shall be undertaken within one year of the completion of the works to reconfigure the lake margins as shown on drawing 2719.PL.101 Rev E.

*Reason: To ensure the satisfactory landscaping of the site in the interests of visual amenity and ecology and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

11. Within one year of the date of this planning permission a management plan for the site shall be submitted to the County Planning Authority for approval in writing.

The management plan shall contain details of the following:-

- a) the fishing facilities including details of design and location of fishing pegs.
- b) the areas of the site where access to be restricted for fishing and recreational purposes including measures to be taken to restrict or prevent public access

- c) management of invasive species including Himalayan balsam.
- f) management of tree and shrub planting including replacement of failed plants, weed control and maintenance of protection measures.
- e) the management of grassland areas including grazing or cutting regimes to be followed.
- f) management of habitat on lake edges.
- g) details of monitoring of habitats and biodiversity over wintering bird interests. The details shall including frequency of monitoring, objectives of monitoring and a procedure for reporting of results to the County Planning Authority. The monitoring reports shall contain details of any works that are necessary to increase the biodiversity value of the site together with a timescale for their implementation.

Thereafter, the management of the site shall be undertaken in accordance with the approved management plan together with any proposals contained with the monitoring reports.

*Reason: To ensure the management of the angling and landscaping works on the site in the interests of ecology and to conform with Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Ext
LCC/2017/0024		

Sarah Manchester  
Planning and Environment  
534150

Reason for Inclusion in Part II, if appropriate

N/A