

4.1 20/02463/FUL

Revised expiry date 8 January 2021

**Proposal:** Proposed flood mitigation improvements to facilitate the Leigh Flood Storage Area (FSA) expansion scheme. Improvements to Leigh and Cattle Arch embankments to include: partial raising of embankments; installation of 300mm high wave return wall; creation of pumping station platform area; erection of new fencing and gates and other associated works that include culvert, eel pass, temporary access and compound areas.

**Location:** Leigh Flood Storage Area, River Medway, Sevenoaks District Council Kent

**Ward(s):** Leigh & Chiddingstone Causeway

**Item for decision**

The Chief Planning Officer considers that this planning application to be significant and therefore require it to be determined by the Development Control Committee.

**RECOMMENDATION:** That planning permission be GRANTED subject to the following conditions:

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

In pursuance of section 91 of the Town and Country Planning Act 1990.

2) No works (including site clearance or preparation) shall commence on the development hereby permitted until final design and construction drawings and method statements in relation to works in the vicinity of the A21 Medway Bridge have been submitted to and approved in writing by the Local Planning Authority (who shall consult with Highways England). The construction of the development shall be carried out in accordance with the approved drawings and statements unless otherwise agreed in writing by the Local Planning Authority (who shall consult with Highways England). At the end of the construction period, a full set of as built drawings and associated documentation shall be provided to Highways England.

To ensure that the A21 Trunk Road continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety.

3) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval

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from the local planning authority. The remediation strategy shall be implemented as approved.

To reduce risk to controlled waters. There is always the potential for unexpected contamination to be identified during development groundworks and any contamination be identified that could present an unacceptable risk to Controlled Waters, in compliance with the National Planning Policy Framework.

4) Whilst the principles and installation of sustainable drainage schemes are to be encouraged, no infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by remobilised contaminants present in shallow soils/made ground in line with paragraph 170 of the National Planning Policy Framework.

5) Prior to the commencement of the development hereby permitted, a Construction Environmental Management Plan (CEMP) shall be submitted for the written approval of the local planning authority. The CEMP shall include, though not necessarily be limited to the following details: a) A Construction Traffic Management Plan incorporating details of heavy vehicles movement patterns, including earliest and latest arrival and departure times, routes to be used to and from the site and signs, information to instruct drivers and maintained at the applicant's expense throughout the construction period; b) The parking arrangements for vehicles of site operatives and visitors together with measures to reduce the daily number of trips to the site; c) The loading and unloading arrangements for heavy plant and materials; d) Processes of controlling/suppressing dust emanating from the site; e) The location and type of temporary fencing/hoarding; f) The details of wheel cleaning facilities within the site to prevent mud being deposited on the public highway; g) The tool-box talk for the site operatives regarding protected species and awareness.

To mitigate the impact arising from development upon existing habitats of protected species on or surrounding the site and safeguard the amenities of adjacent neighbouring properties and existing road network in accordance with Policy SP11 of the Sevenoaks District Core Strategy, Policies GI1, EN1, T1 of the Sevenoaks Allocations and Development Management Plan and guidance in National Planning Policy Framework 2019.

6) Prior to commencement of works (including site clearance), a biodiversity enhancement plan will be submitted to, and approved by, the local planning authority. The plan will include a map of proposed enhancements, management prescriptions and biodiversity net-gain metric calculations. The approved details will be implemented and thereafter retained.

To ensure that the proposed development will not have a harmful impact on protected species and habitats, and make further wider biodiversity

enhancements, in accordance with Policy SP11 of the Core Strategy and guidance in National Planning Policy Framework.

7) From the commencement of works (including site clearance), all mitigation measures for protected species and compensatory measures for habitats will be implemented in accordance with the details in section chapter 7 of the Environmental Statement (Environment Agency August 2020), unless varied by a European Protected Species licence subsequently issued by Natural England.

To ensure that the proposed development will not have a harmful impact on protected species and habitats, and wider biodiversity, in accordance with Policy SP11 of the Core Strategy and guidance in National Planning Policy Framework.

8) The increased capacity of the flood storage area up to 28.6mAOD shall not take place until the flood mitigation measures /Measures in the Interests Of Safety measures as hereby permitted are fully completed and operational unless otherwise agreed in writing by the local planning authority.

In the interests of reducing flood risk prior to completion of the development in accordance with National Planning Policy Framework.

9) Notwithstanding the approved drawings, no steps will encroach onto the definitive line of Public Right of Way SR435.

For the avoidance of any doubt

10) The development shall be carried out in strict accordance with the Environmental Action Plan as found in Appendix A Environmental Statement dated August 2020. Any changes to the Environmental Action Plan as hereby permitted shall be submitted to and agreed in writing by the Local Planning Authority. The development shall accord with the approved and implemented in full.

To mitigate the impact arising from development upon existing habitats of protected species on or surrounding the site and safeguard the amenities of adjacent neighbouring properties and existing road/footpath network in accordance with Policy SP11 of the Sevenoaks District Core Strategy, Policies GI1, EN1, T1 of the Sevenoaks Allocations and Development Management Plan and guidance in National Planning Policy Framework 2019.

11) No demolition, site clearance or building operations shall commence on site until the protective fencing and other protection measures in the Arboricultural Impact Assessment dated 05/08/2020 have been installed. At all times until the completion of the development, such fencing and protection measures shall be retained as approved. Within all fenced areas, soil levels shall remain unaltered and the land kept free of vehicles, plant, materials and debris.

To protect the trees on site which are to be retained in the interests of the visual amenities of the locality in accordance with Policy EN1 of the Sevenoaks Allocations and Development Management Plan.

12) The development hereby permitted shall be carried out in accordance with the following approved plans: ENVIMSE100377-JBA-LZ-OO-DR-PL-1000, ENVIMSE100377-JBA-LZ-OO-DR-PL-1002, ENVIMSE100377-JBA-LZ-OO-DR-PL-1010,

ENVIMSE100377-JBA-OO-ZZ-DR-PL-l000, ENVIMSE100377-JBA-OO-ZZ-DR-PL-l020, ENVIMSE100377-JBA-OO-CAOO-DR-PL-l100, ENVIMSE100377-JBA-OO-CAOO-DR-PL-1204, ENVIMSE100377-JBA-OO-CAOO-DR-PL-1240, ENVIMSE100377-JBA-OO-CAOO-DR-PL-1241 ENVIMSE100377-JBA-OO-ZZ-DR-PL-1000, ENVIMSE100377-JBA-OO-MEOO-DR-PL-1303, ENVIMSE100377-JBA-OO-ME01-DR-PL-l100, ENVIMSE100377-JBA-OO-ME02-DR-PL-l100, ENVIMSE100377-JBA-OO-ME03-DR-PL-1100, ENVIMSE100377-JBA-OO-ME04-DR-PL-1100ENVIMSE100377-JBA-OO-ME04-DR-PL-1101, ENVIMSE100377-JBA-OO-ME04-DR-PL-1220, ENVIMSE100377-JBA-OO-ME04-DR-PL-1225, ENVIMSE100377-JBA-OO-ME04-DR-PL-1200, ENVIMSE100377-JBA-OO-NR02-DR-PL-1100, ENVIMSE100377-JBA-OO-NR02-DR-PL-1200ENVIMSE100377-JBA-OO-EPOO-DR-EN-001, ENVIMSE100377-JBA-OO-EPOO-DR-EN-002, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1100 ENVIMSE100377-JBA-DE-PFOO-DR-PL-1101, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1102, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1103 ENVIMSE100377-JBA-DE-PFOO-DR-PL-1104, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1105, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1200-A5-C01, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1201 to 1211, ENVIMSE100377-JBA-DE-PFOO-DR-PL-1301 & 1302 and Planning Design Access Statement, Arboricultural Impact\_Assessment and Environmental Statement dated August 2020.

For the avoidance of doubt and in the interests of proper planning.

### **Informatives**

1) The drawings and documentation required prior to and post construction should be produced in accordance with and demonstrate the compliance of the development with the Design Manual for Roads and Bridges, insofar as they apply to the A21 Medway Bridge and its vicinity. Drafts may be sent to [planningse@highwaysengland.co.uk](mailto:planningse@highwaysengland.co.uk) for agreement prior to formal submission to facilitate expeditious processing.

2) Fuel, Oil and Chemical Storage - Care should be taken during and after construction to ensure that all fuels, oils and any other potentially contaminating materials should be stored (for example in bunded areas secured from public access) so as to prevent accidental/unauthorised discharge to ground. The areas for storage should not drain to any surface water system.

Drainage - The following points should be noted wherever infiltration drainage (such as soakaways) are proposed at a site:

- Appropriate pollution prevention methods (such as trapped gullies or interceptors) should be used to prevent hydrocarbons draining to ground from roads, hardstandings and car parks. Clean uncontaminated roof water should drain directly to the system entering after any pollution prevention methods;
- No infiltration system should be sited in or allowed to discharge into land impacted by contamination or land previously identified as being contaminated;
- There must be no direct discharge to groundwater, a controlled water. An unsaturated zone must be maintained throughout the year between the base of the system and the water table;

- A series of shallow systems are preferable to systems such as deep bored soakaways, as deep bored soakaways can act as conduits for rapid transport of contaminants to groundwater.

Disposal of soil - Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment

Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12-month period, the developer will need to register with us as a hazardous waste producer.

Proposed ecological enhancement schemes - Works such as Stage zero and river enhancements (Powdermill stream and Straight

Mile) are likely to require an internal Flood Risk Activity Permit, which will assess impacts for flood risk, environmental and ecological concerns.

Any floodplain or riverine based mitigation/enhancement schemes will need to demonstrate that the activity will not cause detriment to Water Framework directive (WFD) status or protected species.

If delivered, the changes could also be included as an update within the Biodiversity Net Gain (BNG) calculations. The LPA may request to see an update if they wish.

Invasive Non Native Species (INNS) management plan approach and named references It is welcome to see a dedicated plan for identifying and managing the risk of potentially spreading INNS either around site, or through the activity (Le. spread elsewhere off site). There is specific example reference to Himalayan balsam and mudsnail species, which are locally detected and relevant risks to manage. However, it is recommended that the plan continues to also approach other high risk species, including American skunk cabbage (also reported within the area, but not listed on the legislation as Himalayan balsam - yet presents a credible risk to colonise wetland

areas just as well) another approach is to direct a focus on the biosecurity protocols to control the most likely potential spread pathways of the most likely range of assumed species, i.e. rather than purely a prescriptive approach to specific species.

This is because the risk of spreading and introducing INNS are assumed to be ubiquitous, and the measures in place which affect the potential spread pathways will be appropriate for a range of species. Different taxa will also require different spread risk pathway analysis and biosecurity protocols.

Recommendation for INNS biosecurity protocols in site management documentation  
It is recommended to ensure biosecurity measures for each construction Area and phase is included within relevant Environmental Action Plan (EAP) and/or CEMP.

3) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

4) Any changes or improvements to the public rights of way across the site will require the express consent of the Highway Authority, in this case KCC PROW and Access Service.

5) Southern Water Informatives

- The 450 mm public foul sewer and 450 mm public foul trunk sewer requires a clearance of 3.5 meters on either side of the sewers to protect it from construction works and to allow for future access for maintenance. No development or tree planting should be carried out within 3.5 meters of the external edge of the public sewer without consent from Southern Water.

- The 350 mm public foul rising main requires a clearance of 3 meters on either side of the sewers to protect it from construction works and to allow for future access for maintenance. No development or tree planting should be carried out within 3 meters of the external edge of the public foul rising main without consent from Southern Water.

- No soakaway, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 meters of a public sewer.
- All existing infrastructure should be protected during the course of construction works.
- Please refer to: [southernwater.co.uk/media/default/PLPDFs/stand-off-distances.pdf](http://southernwater.co.uk/media/default/PLPDFs/stand-off-distances.pdf).
- For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119).

### **National Planning Policy Framework**

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

### **Description of site**

- 1 The site comprises works within three Local Planning Authorities (LPA). This is a cross boundary application for flood work improvements to the Leigh Flood Storage Area (FSA).
- 2 The total area of land is 278 hectares and proposed works straddle three LPA's, i.e. Sevenoaks District Council, Tonbridge and Malling Borough Council (TMBC), and a small part of the site within Tunbridge Wells Borough Council (TWBC) area. The largest part of the site area lies within our jurisdiction.
- 3 The Leigh Embankment extends 1.3km in a north to south direction. The northern end of the embankment lies circa. 100m south of the Tonbridge Environment Agency offices. It crosses the River Medway and Leigh Control Structure, passing under the A21 Tonbridge Bypass running adjacent to Haysden Water, and terminates at Lower Haysden Lane.
- 4 There is both formal and permissive public access throughout the Leigh area, with public rights of way crossing the Leigh FSA (following the course of the River Medway) and over the Leigh barrier embankment. There is also informal public access for recreational use along the Leigh embankment associated with Haysden Country Park, sailing and angling on Haysden Water, and angling on the River Medway.

## Background

- 5 Communities in Tonbridge and Hildenborough are at risk of flooding from the River Medway. Severe flooding occurred in these areas in 1960, 1963, 1968, 1974, 2001, and 2013/14.
- 6 There was significant flooding in Tonbridge and Hildenborough in 1968. The Leigh flood storage area (FSA) was built to reduce the risk of future flooding to approximately 1,200 homes and businesses.
- 7 The Leigh FSA is operated to store the peak water flows during a flood and, along with the Tonbridge town floodwalls, reduces the risk of flooding from the River Medway. It was completed in 1982 in response to the devastating flood of 1968.
- 8 The FSA is formed of a 1.3-kilometre-long, 5-metre-high earth embankment across the Medway valley. The River Medway itself passes through a reinforced concrete control structure (known as Leigh Radial Gates) built into the embankment which is currently located near to Haysden Lakes within our jurisdiction.
- 9 The structure includes 3 steel radial gates which can be moved to control the amount of water flowing downstream. The gates can either let the river flow normally, or restrict the flow to hold water in the storage area.
- 10 The original Flood Storage Area has a capacity of 5.56 million cubic metres, and covers 278 hectares stretching from Leigh upstream towards Penshurst.
- 11 In December 2019 the Environment Agency operated the Leigh Flood Storage Area (FSA) for the first time since 2014. Steady rain in the week before its operation gave rainfall totals of approximately 80mm for the week.
- 12 The Environment Agency started to store water on 20 December 2019. The FSA stored flood water for 62 hours in total before flows were low enough that water no longer needed to be stored. The water level in the reservoir reached 27.08m above ordnance datum (AOD). This means that 60% of the FSA's capacity was used.
- 13 Several weeks later on 16 February 2020, the Leigh FSA was needed again. Over a period of 66 hours' water was stored to a level of 27.83m AOD which this time used 90% of the total storage capacity.
- 14 There is a threat that climate change will increase the risk of flooding in the coming years. The Environment Agency is proposing a scheme to increase the storage capacity of the Leigh FSA. This will help reduce the risk of flooding to more local homes and businesses.
- 15 Currently the Environment Agency can legally store flood water to a maximum level of 28.05m above ordnance datum (AOD), as measured at the control structure. Investigations have shown that storing water to 28.6m AOD will reduce flood risk to over 1,400 homes and 100 businesses in Tonbridge and Hildenborough. Storing to this level will need 16.4 hectares



of extra land but will provide 7.3million m3 of storage. This increases the capacity of the FSA by 24%.

- 16 Increasing the maximum stored water level requires a separate permission from the Secretary of State for Environment, Food and Rural Affairs. This approval is essential for both the Leigh expansion and Hildenborough parts of the scheme to proceed. The Environment Agency has been working with local organizations and landowners who are affected by the proposal to explain what it means for them and discuss any concerns they have. The Environment Agency submitted their request to increase the maximum stored water level to the Secretary of State in early June 2020 and a public inquiry into the increased capacity is to be held in the new year.
- 17 The Secretary of State will decide whether or not the Environment Agency will be able to store flood water to 28.6m AODN, which is an increase of 0.55m from the existing 28.05m AODN.
- 18 Members of this committee are assessing the impact of the flood mitigation engineering works required to facilitate the increased flood water storage, the impact of those works within the immediate vicinity as well as their wider implications.

#### **Description of proposal**

- 19 The majority of the application site/works will be in Sevenoaks District Council, and in Tonbridge and Malling Borough Council areas.
- 20 This Council is the lead LPA on this cross boundary application for flood mitigation improvements to facilitate the Leigh Flood Storage Area (FSA) expansion scheme.
- 21 The same application has been submitted to all three LPA's. All three LPA's have also consulted one another as required by the planning legislation.
- 22 Proposed flood mitigation measures are to facilitate the Leigh Flood Storage Area (FSA) expansion scheme. Improvements to Leigh and Cattle Arch embankments to include: partial raising of embankments; installation of 300mm high wave return wall; creation of pumping station platform area; erection of new fencing and gates and other associated works that include culvert, eel pass, temporary access and compound areas.
- 23 The existing main embankment at Leigh is already high enough to accommodate the proposed increase in water level and allow more water to be held within the storage area. The maximum level at which water can be stored at Leigh barrier is set by legislation - within the River Medway (Flood Relief) Act 1976. Increasing the water storage level requires a change to this legislation. This is being addressed through a separate mechanism to the planning application for the scheme as detailed above.
- 24 Although no changes are required to the height of the main embankment, work is required to raise the cattle arch and pumping station embankments near Leigh, off Enfield Road, Leigh. The main embankment protrudes out from the railway embankment in a semi-circular shape and forms part of the

retaining embankments that impound Leigh FSA. It is upstream of the control structure, to ensure that the increase in water level does not cause flooding in the village of Leigh. The scheme also includes proposals to prevent wind-driven waves eroding these upstream embankments.

- 25 The cattle arch embankment will therefore be raised up to 29.52m AOD with earth fill and re-seeded. A small 300mm high vertical wall will be inserted into the top of the front shoulder of the increased embankment as a wave return wall, the top of which will be at 29.52mAOD so it does not sit proud of the grassed crest. The wall will be incorporated into the southern edge of the grassed crest.
- 26 Southern Water's pumping station and the Environment Agency's Archimedes Screw site are both located off Ensfield Road, Leigh. The purpose of the Archimedes screw pump is to allow over pumping of water from a low-lying area draining from the north of the railway line, should the area ever become fully impounded.
- 27 The Southern Water pumping station will be affected by the increase in impounded water levels in the FSA. To mitigate the increased risk of flooding a new raised defence will be constructed along the crest of the existing earth embankment located to the south of the two pumping stations.
- 28 The raised defence will extend towards Ensfield Road and adjacent to the southern edge of the existing concrete access road that leads to the pumping stations. Before it reaches Ensfield Road, the defence line will turn south west across the small channel to tie into high ground at the edge of the agricultural field in the form of an embankment that is approximately 1.9m in height. This embankment will have the same wave return wall as the Cattle Arch Embankment. The proposed works in this area comprise a combination of raised existing earth embankment, new low-level concrete wall, road raising, and a new length of earth embankment.
- 29 The proposed Embankment and Pumping Station Platform will be sited south of the access road within Southern Waters Pumping Station site, west of Ensfield Road.
- 30 The area immediately west of Ensfield Road drains to a small watercourse running broadly west to east. To ensure that water does not become impounded (and present a risk of flooding) when the FSA is operating, a new pumping platform is required. The new facility will enable temporary pumps to be installed in the event of an extreme flood event, so that water can be pumped from this small catchment area and into the FSA.
- 31 The new flood embankment will be constructed across the drainage ditch, in an east to west direction. A culvert will be constructed within the drain, through the embankment.
- 32 A small hardstanding area with a stoned hard core finish is proposed as the pumping platform.

- 33 This area will be used as a set-down area for water pumps and associated fuel tank. The pumps will only be operated during an extreme flood event when the FSA is impounding and water is required to be pumped from the fluvial system to the north of the FSA embankment, into the FSA. The set-down area will measure approximately 10m x 15m and it will be located adjacent to the watercourse. The overall area of the proposed hardstanding will be approximately 300m<sup>2</sup>. The hardstanding will also serve as a vehicle turning area that will be used by the Environment Agency during flood events, when delivering and operating the pumps, fuel tank and associated materials and equipment.
- 34 New mesh walkways and hand railing will be installed around the new structures, the new electricity supply cable will be run from an existing nearby substation, and the mechanical elements (pumps, screens, penstock mechanism) will be installed.
- 35 As part of the Scheme, the Environment Agency is also installing erosion protection on the crest, downstream slope, and toe of the main embankment. These 'Measures in the Interests of Safety' - or 'MIOS' - works are a legal requirement to ensure that the main embankment is protected from erosion should water levels ever exceed the maximum storage level. In the event that the FSA reaches its capacity and the maximum operating water level is reached, the operating procedure would remain unchanged: the gates would be operated to keep the stored water at a safe level.
- 36 The MIOS erosion protection materials will be covered with soil and then re-seeded with grass cover so that the appearance of the Main Embankment will not change. Upgrading and maintenance works are also planned to the Control Structure itself. This will include works to the gates, replacement kiosks and other mechanical/electrical elements.
- 37 Construction of the scheme is planned to commence in spring 2021 and continue until 2023. Works will be undertaken simultaneously at different locations to reduce the overall construction programme.
- 38 It is planned that the smaller scale works such as those proposed at the cattle arch and the pumping station embankment near Leigh will be completed during the first year of construction (2021). The MIOS works to the main embankment are larger in scale and will therefore be carried out over 3 consecutive seasons (2021 to 2023). The control structure will remain operational throughout the duration of the work. Works will be generally carried out between spring and autumn (March to October) when ground conditions will be drier and more favourable and the likelihood of needing to operate the control structure will be lower. The main site compound for the works will be set up next to the control structure, off Powdermill Lane.
- 39 Two additional compounds will be set up, one in Haysden Country Park (off Lower Haysden Lane - to service the MIOS works to the main embankment to the south of the railway) and the other near Leigh (off Ensfield Road - to service the pumping station and cattle arch embankment sites).
- 40 The proposal will also seek to maximise the delivery of multiple benefits into its

- 41 projects to enhance biodiversity, heritage, landscape, and the human environment wherever it is feasible to do so. The Leigh FSA Expansion Scheme will replace any habitat damaged or lost through construction and at least achieve a 10% biodiversity net gain (BNG) to help improve the biodiversity value of the area. The enhancements range from replanting and woodland management, to the creation of scrapes to improve wetland habitat and stream restoration.
- 42 A formal request for an EIA screening and scoping opinion for the Scheme was submitted to the three Local Planning Authorities involved - Tonbridge and Malling Borough Council, Sevenoaks District Council and Tunbridge Wells Borough Council - in 2018. A further scoping request was submitted in December 2019 following significant changes to the Scheme (the removal of major earthworks to protect the railway which were no longer needed). The scoping opinion issued by Tonbridge and Malling Borough Council was informed by responses received from the other Local Authorities and statutory consultees (including Natural England and Historic England). The scoping opinion confirmed the issues to be addressed in the EIA.
- 43 It has to be noted that this application is for the flood mitigation improvements as proposed and not the consequential impact as the resultant increase in flood storage area capacity, as this decision is under consideration with the Secretary of State.

#### **Relevant planning history**

- 44 18/02956/ADJ - Request for Scoping Opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011: whether the proposed works for the Leigh Expansion and Hildenborough Embankments Flood Risk Management Scheme are likely to require a statutory EIA - NO OBJECTIONS
- 45 20/0007/ADJ - Request for Scoping Opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017: concerning proposed works for the Leigh Expansion and Hildenborough Embankments Flood Risk Management Scheme - NO OBJECTIONS

#### **Policies**

- 46 National Planning Policy Framework (NPPF)
- 47 National Planning Policy Guidance (NPPG)
- 48 Core Strategy (CS)
- SP1 Design of New Development and Conservation
  - LO8 Rural Economy
  - SP11 Biodiversity
- 49 Allocations and Development Management Plan (ADMP)
- SC1 Presumption in Favour of Sustainable Development

- EN1 Design Principles
- EN2 Amenity Protection
- EN4 Heritage Assets
- EN5 Landscape
- EN7 Noise Pollution
- G11 Green Infrastructure
- T1 Mitigating Travel Impact

50 Other:

- Development in the Green Belt Supplementary Planning Document (SPD)
- Countryside Character Assessment Supplementary Planning Document (SPD)

### Constraints

51 The following Constraints apply

- Metropolitan Green Belt
- Flood Zones 2 & 3
- Areas of Archaeological Potential
- Source Protection Zone 3
- Flood Storage Area
- Biodiversity Opportunity Area
- Surface Water Flooding-medium and high risk areas
- Public Rights of Way SR432, SR435
- Local Wildlife sites
- Non-designated heritage assets - (WWII pillboxes and holdfasts)

### Consultations

52 Leigh Parish Council - 'Leigh Parish Council supports this application and its very sound objectives, but members wish to make the following comments:

53 1. Traffic movements to the site both down Powdermill Lane and Ensfield Road are restricted in the application at peak times from 8-9am and from 4-6pm. The Parish Council ask that the hours of restriction are changed slightly in the afternoon to be from 3-5pm. This will avoid the school pickup time, which causes traffic congestion in the village.

54 2. We ask that traffic movements be co-ordinated so that the two out of three access roads into Leigh (Powdermill Lane and Ensfield Road) are not gridlocked with traffic movements to the site at the same time.

55 3. We seek assurance that the existing village drains which run into Crandalls Pond, then under the railway bridge towards the Environment Agency owned land to the south of the railway bridge are not adversely impacted by these proposals.

- 56 4. We seek assurance that the drainage systems under the railway bridge on Ensfield Road are not adversely impacted by these proposals. There are a number of agencies that control drainage in this location: the Environment Agency, Highways and Network Rail, please can these three work in partnership to ensure that drainage is free- flowing.
- 57 5. We request that an embankment is built at the eastern end of the railway embankment where the river goes under the railway so that that field, the cattle arch foundations and the gardens of Wyndham Close are not adversely impacted.'
- 58 Peshurst Parish Council - objects for the following reasons:
- 59 'Initial flooding occurs at Chafford Bridge (Chafford Lane), Colliers Land Bridge (B2188), Long Bridge (B2188) and Rogues Hill (B2176) due to the flow of water from upstream, rather than through the operation of the Leigh Barrier. However, once the barrier is in operation, the floodwater in these areas of the FSA cannot continue to flow downstream at the same rate as if it were not impounded.
- 60 As a result, roads remain flooded and properties between the rivers Medway and Eden are effectively cut off and unable to be accessed by emergency services. We note that Page 4 figure 2.2 of the Planning Statement shows that "water levels in the FSA take longer to reduce due to greater volume of water".
- 61 Consequently, it is very clear that, whilst the increase in depth of the flooding of the roads may be minimal, the duration will be increased - in other words, the flood risk is increased.
- 62 We would also stress that water levels are not measured on the B2176 between the two bridges at the bottom of Rogues Hill, downstream of the confluence between the rivers Medway and Eden. Any measurements are extrapolated from readings taken further upstream and as such should be treated as indicative rather than accurate.
- 63 The application identifies receptors downstream of the barrier, but, as well as the roads identified above, fails to identify the properties upstream which will be affected, namely Bridge House and the studio in the garden of Colquhouns Cottage. Currently, the garden of The Yews at the bottom of Rogues Hill (B2176) also floods and it is possible that even a 0.1 m increase in flood level could
- 64 affect the house. However, since no measurement of flood depth has ever been made on this stretch of road, neither the Parish Council nor the Environment Agency can assess the likelihood of this.
- 65 In conclusion, the application fails to acknowledge the increased flood risk and fails to provide any measures required to mitigate this risk. Whilst we appreciate the benefits to properties and businesses downstream of the barrier, we regret we cannot support the application unless

1) adequate highway measures are included to ensure that the safety of our parishioners is not put in jeopardy by the prolonged closure of roads to emergency vehicles and;

2) appropriate measures are taken to mitigate the increased risk to the properties and land within our Parish.'

- 66 Tunbridge Wells Borough Council - No objection
- 67 Tonbridge and Malling Borough Council - No comment received
- 68 Other Consultees -
- 69 Environment Agency - No objection subject to recommended planning conditions and informatives
- 70 Environment Agency independent review -
- 71 "In summary, the FRA is in line with the NPPF and PPG in that it has modelling to fully demonstrate both the benefits and impacts of the scheme (extents, depths, duration of flooding and increased release times). It does consider climate change but we would suggest for transparency using the allowances for More Vulnerable/residential properties (35%) as that is what the scheme is designed to protect rather than just allowances for water compatible development (as the planning application is for flood control infrastructure). Third party impacts could be elaborated upon i.e. the compensation originally agreed with landowners when the scheme was built, any discussions/mitigation agreed with landowners either listed in the FRA or owning land in the 16.4 hectares which has not previously been affected when the levels were at 28.05m AOD.
- 72 **Net Gain:** Whilst we understand that a 10% biodiversity new gain (BNG) improvement has been factored into the scheme we would recommend a 20% provision in line with EA eMission2030 tool. The tool proposes that as an organisation we will be achieving 20% net gain on EA operations by 2023, higher than the generally referred to 10%. We note that the 'Kent Nature Partnership' have also recommended the 20% provision to utilise this opportunity of setting an example on a large site where gains could be maximised and also options on land outside of the red area.
- 73 Section 7.7 of the ES (Biodiversity) mentions habitat reinstatement and enhancement and shows a plan of areas. But it is not clear whether all/any of the options (within the WFD report) are being further considered or implemented e.g. 'stage-zero' river restoration, the creation of wetland features within the Leigh FSA, improvements on the Powdermill stream, the Straight Mile section of the Penshurst Canal and within the Haysden Country Park (the 'Shallows' and other areas).
- 74 Should the above not be achievable, due to the impact on the schemes viability, we would expect to see this justification provided.
- 75 **Water Framework Directive (WFD):** We note the WFD Assessment report that JBA have undertaken in consideration of the potential hydrological and

geo-morphological impacts. The report confirms that the works lie within the area covered by the Thames River Basin Management Plan (RBMP) and that the scheme involves work on a feature crossing the Medway that could directly impact the Mid Medway from Eden Confluence to Yalding WFD water body (GB106040018182).

- 76 We haven't reviewed the report in detail but note the conclusion that the scheme has been assessed as being WFD compliant with impacts not expected to cause a deterioration in overall status.
- 77 Again, we note the mitigation required as detailed in section 4.2 and also the potential enhancement options/habitat creation and also the potential fish pass option at the Leigh Control Structure which was not considered viable. Linked to the net gain comments above we would recommend that these options be considered as part of a 20% BNG provision if possible.
- 78 The scheme, including the proposed mitigation works will require a Flood Risk Activity Permit (FRAP) which, similar to the planning application, will likely require an internal independent review.”
- 79 Natural England - No objection raised.
- 80 Network Rail - No objection raised
- 81 Highways England - No objection subject to condition relating to works near the A21
- 82 Southern Water - No objection raised
- 83 KCC Lead Flood Authority: No objection raised
- 84 KCC Public Rights of Way - No objection subject to the use of surfacing on Public Bridleway MU60 and no steps will be placed on the legal line of the footpaths SR435 and MU46.
- 85 KCC Highways - No objection subject to the following pre-commencement condition.
- 86 A condition survey is required before the commencement of the construction works and following the completion of the works.
- Wheel washing to be provided on site and to include adequate drainage arrangements to ensure no water drains over the public highway with regular checks of the public highway.
  - An agreed restriction of HGV movements per day
  - Appropriate temporary warning signs are required in advance of the construction access and at the construction access and maintained at the applicant's expense throughout the construction period.
  - On-site parking arrangements for all operatives together with measures to reduce the daily number of trips to the site.
  - Early consultation with KCC streetworks Coordination Team is recommended.



- 87 KCC Ecology - No objection subject to conditions
- 88 KCC Archaeology - No objection raised
- 89 SDC Environmental Health - No objection
- 90 SDC Tree Officer - No comment received
- 91 Kent Wildlife Trust - No comment received

### **Representations**

- 92 1 letter received neither objecting nor supporting the proposal
- 93 1 rebuttal letter from planning agent
- 94 8 letters of objection have been received relating to the following issues:
- Flooding would undermine the railway embankment and cattle arch railway bridge (area 2);
  - No certificate was received;
  - Lack of consultation with Environment Agency with Penshurst Place Estate;
  - The impact and operation of Penshurst Place Estate has not been properly assessed;
  - No mitigation or accommodation of works have been proposed to address risk to the Penshurst Place Estate and its occupiers;
  - It is believed that the development would lead to increase of flooding elsewhere in particular to the roadway between the two stone bridges on B2176 in Penshurst, a studio in the garden of Colquhouns Cottage and Bridge House;
  - Proposed development is contrary to National Planning Policy Framework;
  - 3 residents would like a condition to be imposed in ensure the Environment Agency pays the cost of making the occupiers buildings resilient to flood and agree to financial settlement/compensation should flooding exceeds agreed water depths.

### **Chief Planning Officer's appraisal**

- 95 The main planning considerations are:
- Findings of the submitted Environment Statement
  - Impact upon the Green Belt and character and appearance of the area
  - Water and Flooding
  - Biodiversity
  - Impact upon residential amenities
  - Highways and Public Rights of Way
  - Heritage Assets

## Findings of the submitted Environmental Statement

- 96 This planning application is accompanied by an Environmental Statement (ES) in accordance with Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended). The purpose of the ES is to identify the likely environmental impacts of the development.
- 97 This process can also identify ways in which the development can be modified to avoid, reduce or offset likely adverse impacts, as well as ways in which beneficial impacts can be optimised.
- 98 For the purposes of this report, the key findings and environmental information are set out below, including the weight to be attached to those impacts.
- 99 Water and Flooding
- 100 The ES confirms that the expansion scheme would meet the Water Framework Directive objectives by requires natural water bodies in achieving Good Chemical Status and Good Ecological Status. With various ecological measures proposed to be implemented i.e. eel pass, river restoration, will assist in achieving such compliance with the Directive.
- 101 The ES provides flood modelling information with regards to the increased storage capacity of the FSA. The additional capacity of the FSA will flood an additional 16.4ha of land when the water is impounded. The greatest change in depth is in the immediate vicinity of the FSA embankment and the effect diminishes in the flood valley upstream, due to the existing topography of the valley. The ES identifies the potential receptor affected by the increase in water levels being:
- 102 Railway line to the east of Leigh Station - due to high water levels during impoundment, but would not exceed the level of the railway;
- 103 Tonbridge Sailing Club - The existing structure is set above the proposed maximum storage level and it is classified as water compatible development in the NPPF;
- 104 Ensfield Road - An increased depth of flooding up to 0.5m is predicted.
- 105 The impacts are considered to be slight adverse effects. Any impacts from such changes will be limited and within the area already flooded. The increased capacity of the FSA does not change the flood risk to any households.
- 106 The increase of capacity of the FSA will provide a decrease in flood risk of Major magnitude, by improving flood risk for hundreds of properties downstream in Tonbridge - over 1400 homes and 100 businesses, plus critical infrastructure. The scheme will deliver a very large beneficial impact in relation to flood risk and have a long-term benefit.

- 107 The proposal include works to further enhance the safety of the embankment i.e. from erosion, so the likelihood of a breach occurring is not expected.
- 108 Biodiversity, Flora and Fauna
- 109 The predicted effects of the scheme on biodiversity, during both construction and operation, are considered to be minimal, with very few permanent adverse effects as a result of the Scheme. Impacts mainly relate to small scale vegetation clearance and tree removal which will be reinstated on completion of the works or addressed through proposals for compensation planting or management. No significant long-term adverse effects are anticipated in terms of overall ecology. More detail regarding site clearance requirements is provided on the Final Landscape Masterplan drawings of the ES and the Arboricultural Impact Assessment for the Scheme.
- 110 By adopting a Biodiversity Net Gain approach and the proposed ecological enhancement measures, the Scheme will deliver a net positive impact on biodiversity, flora and fauna. The proposals include woodland habitat management and habitat creation/enhancements within the mitigation and enhancement areas identified on the Scheme Overview Plan.
- 111 Biodiversity Net Gains of at least 10% are predicted in relation to habitats and 13% for hedgerows, giving a significant positive residual effect overall. If funding allows, additional habitat gain over and above this could be delivered by the scheme.
- 112 To address Water Framework Directive objectives, an eel pass will be provided on the River Medway by the Control Structure along with habitat improvement works on Powdermill and Straight Mile streams.
- 113 Conditions can be imposed to secure the management and mitigation required.
- 114 Other legislations will still apply in relation to any protected species.
- 115 Archaeology and Heritage
- 116 The ES identifies that the scheme is unlikely to contain archaeological remains of such sensitivity that warrant preservation in situ. There are identified areas of archaeological potential - Prehistoric, Romano-British, Saxon, Medieval, Post Medieval, Modern. The ES summarises that in terms of built heritage and archaeology receptors, no cumulative impacts have been identified and any groundworks proposed are of shallow excavation and limited and no archaeological monitoring or investigations are undertaken.
- 117 Human Environment
- 118 The main impacts of the Scheme on local residents and visitors are likely to be as a result of local travel disruption (in relation to construction traffic and deliveries) and the dust, noise and visual impacts associated with construction activity. Traffic lights will be required on Lower Haysden Lane

to allow HGV access for deliveries to the compound that is proposed in Haysden Country Park.

- 119 Construction impacts will be minimised through good construction practice and specific mitigation measures as set out in the Environmental Action Plan (EAP). These will include controls on working hours and how construction is to be carried out. The Contractor will develop a Traffic Management Plan prior to construction to minimise traffic disruption.
- 120 Access to the sailing club, Haysden Water and the Haysden Country Park will be maintained for visitors throughout construction.
- 121 There will potentially be adverse impacts on recreational users of the Country Park during construction due to construction noise, dust or impact on visual amenity, but this will be temporary. Footpaths and other Rights of Way may need to be diverted locally during construction or temporarily closed. If this is necessary measures will be agreed with Kent County Council and advance warning will be provided, along with appropriate local diversion routes.
- 122 As an enhancement, new steps will be provided as part of the scheme on the line of the Public Rights of Way that cross the main embankment (Footpaths MU46 and SR435) but would not cross their legal line.
- 123 Landscape and Visual environment
- 124 The scheme will have no long-term effects on landscape character due to the limited scale and nature of the works proposed and the re-establishment of vegetation that will be removed during the construction works. After installation of the MIOS erosion protection on the main embankment, grass will be re-established - impacts on landscape character and views will therefore be short-term and temporary. As part of the pumping station / cattle arch embankment works, there will be construction of a new flood embankment as well as a nominal change in height of the existing embankment.
- 125 These changes are not expected to have a significant effect on local views or character. When areas have been replanted the changes will not be noticeable in the context of the existing pumping station infrastructure.
- 126 The residential properties most likely to be affected by the Scheme are those overlooking construction areas on Lower Haysden Lane or located on Ensfield Road with views towards the pumping station embankment. However, impacts would be short-term, during construction activity. No long-term landscape or visual impacts are predicted on residential receptors because of the scheme.
- 127 Where installation of erosion protection on the main embankment means it will not be possible to replace woodland or scrub, planting will be carried out within the mitigation and enhancement areas.

- 128 This will include creation of wood pasture parkland landscape within Area 3, reinforcing the sense of place and distinctive landscape character seen within the large estates nearby.
- 129 Cumulative affects and Interrelationships
- 130 Effects can be more significant when impacts of a proposed scheme are considered alongside the environmental impact of other existing or approved projects.
- 131 Consultation with the planning teams for the relevant local authorities - namely Tonbridge and Malling Borough Council, Sevenoaks District Council and Tunbridge Wells Borough Council - and a review of local planning applications did not identify any other developments of a scale that were likely to cause significant effects should they overlap with the Scheme. Inter-relationship effects for local residents and visitors have already been partly considered above, in terms of the combined effects of changes to visual amenity, noise impacts, dust and disruption due to traffic and impact on those taking part in recreational activity within Haysden Country Park.
- 132 Mitigation for the Scheme will include measures set out in the Environmental Action Plan (EAP), such as the appointment of a Community Liaison Officer, controls on speed limits and working hours/timing of deliveries.”
- 133 Summary of ES
- 134 The scheme will provide significant benefits to residents and to business downstream from the FSA.
- 135 Significant benefits for biodiversity would also be delivered with a minimum of 10% Biodiversity Net Gain.
- 136 There are some impacts upon the landscape character and visual amenity during construction, but this will be temporary and in the short-term.
- 137 There will be disruption during access to local residents and visitors to Haysden Country Park and users of the PROW’s, however this too will be in the short-term.
- 138 Taking the above into account, it is considered that the Environmental Statement is fit for purpose and assessment of cumulative effects has been carried out in accordance with the provisions of existing national and local policy guidance.

#### **Impact upon the Green Belt and character and appearance of the area.**

- 139 Paragraph 133 of the NPPF states that “the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”. Paragraph 134 provides five purposes to Green Belts, including point c), to assist in safeguarding the countryside from encroachment.

- 140 The openness of the Green Belt has a spatial aspect as well as a visual aspect. In respect of a recent Supreme Court judgement reference - Samuel Smith Old Brewery (and others) v North Yorkshire County Council, [2020] UKSC 3 states that how to take account of the visual effects of a scheme on openness is a matter of planning judgement rather than one of legal principle. The judgement also noted that openness is the counterpart of urban sprawl and that it does not imply freedom from any form of development and that the visual qualities of the land may be an aspect of the planning judgement in applying this broad policy concept.
- 141 In accordance with paragraph 146 of the NPPF, exceptions to inappropriate development include engineering operations provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- 142 It is considered that the proposals would not demonstrably harm the openness of the Green Belt. The works proposed to the existing embankments are minimal and justified. The development would take place against either existing structures or adjacent embankment and as such they are not considered to conflict with the purposes of land being within the Green Belt. As such the development would constitute as appropriate development within the Green Belt and comply with NPPF.
- 143 Policy SP1 of the Core Strategy states that all new development should be designed to a high quality and should respond to the character of the area in which it is situated.
- 144 Policy EN1 of the ADMP states that the development should respond to the scale, height, materials and site coverage of the area and should respect the character of the site and surrounding area.
- 145 A Landscape and Visual Impact Assessment (LVIA) has been prepared and can be found at Chapter 10 of the Environmental Statement. The LVIA assessed the effects of the proposal on both landscape character and visual amenity.
- 146 The LVIA notes that works on the main embankment are short-term and temporary and involve no change in embankment height. The works within the pumping station / cattle arch area are minor and involve the construction of a new, low flood wave wall and embankment as well as a nominal change in height of the existing embankment.
- 147 There will be no long-term effects on landscape character at either a national, regional or local level due to the scale and nature of the scheme and the re-establishment of vegetation removed to allow construction.
- 148 The visual effects will be short-term and limited to the period of construction until grass cover is re-established. No long-term impacts are predicted on residential receptors because of the scheme.
- 149 Where tree and vegetation clearance works are proposed, re-planting will be carried out with additional planting undertaken in the defined mitigation and enhancement areas. This will include creation of wood pasture parkland

landscape within Area 3, reinforcing the sense of place and distinctive landscape character seen locally.

- 150 Given the scale and temporary nature of the work, and proposed planting and enhancements, the proposals will not have any lasting impact upon local landscape or views including into or from the adjacent High Weald AONB. The proposals are therefore in accordance with policies LO8, SP1, of the Core Strategy and Policies EN1 of the ADMP.

### **Impact of flooding**

- 151 Storing water to 28.6m Above Ordnance Datum (mAOD) will flood an additional 16.4 hectares of land when the storage area operates to full capacity, but this will provide 7.3million m<sup>3</sup> of storage - a capacity increase of 24%. The additional land that would be flooded if the Storage Area were to store flood water to 28.6m AOD would be mainly agricultural land.
- 152 By increasing the volume of storage that is permitted behind the embankment the Flood Storage Area will be able to accommodate more severe flood events in the future. The scheme will decrease flood risk for hundreds of properties, businesses and transport infrastructure downstream in Tonbridge and Hildenborough, delivering a significant beneficial impact for the local area (reducing flood risk to over 1,400 homes and 100 businesses downstream).
- 153 The 2015 Medway flood model indicates that in certain circumstances, operation of the flood storage area can slightly increase the depth of flood water in the vicinity of Rogues Hill (B2176), Bridge House, The Yews, the garden of Colquhouns Cottage and the Concrete Road by Place Barn Farm when the water level reaches 28.05 metres above Ordnance Datum (mAOD) measured at the barrier. However, the depth and timing of flooding at Penshurst is principally dictated by upstream flows and in many events (when the capacity of the flood storage area is not fully used) operation of the flood storage area has no or negligible effect this far upstream due to the natural topography/flood plain of the area.
- 154 Penshurst Parish Council object to this proposal because they are concerned that the proposed changes for which planning permission is sought will increase the flood risk to roads when the increased capacity of the flood storage area is used principally due to it taking longer for water levels within the flood storage area to return to normal.
- 155 They are also concerned that the proposed changes will increase the flood risk to Bridge House, a studio in the garden of Colquhouns Cottage and The Yews.
- 156 The Flood Risk Assessment confirms that the development for which planning permission is sought will not change the flood water levels at Rogues Hill or at the location of the three named properties (see section 5.1 of the Flood Risk Assessment). Under the proposed change, when the flood storage area is operated to its maximum capacity, the duration of flooding at Rogues Hill may be longer.

- 157 The Environment Agency recognises the concerns regarding the impact of flooding in the parish. The Environment Agency have engaged the National Flood Forum, to help the local community to set up a flood action group. This will allow the concerns of the community to be raised with all of the organisations involved in managing flood risk, such as Kent County Council Highways, so that ways to mitigate the impact and improve the resilience of the community to flooding can be explored together. This may lead to the development of a traffic management plan for use when Rogues Hill is anticipated to flood.
- 158 The residents of 4, 5 & 7 Wyndham Close have expressed concerns that the current maximum extent of flooding north of the railway line will extend further west, potentially affecting the foundations of the Cattle Arch Railway Bridge and their gardens.
- 159 The extent of flooding is shown in the plans included in Appendix A of the Flood Risk Assessment. The area of land that currently floods north of the railway line forms part of the capacity of the flood storage area. The existing ground levels in the field to the east of the track running from The Green Lane and Green View Avenue to the Cattle Arch rise sufficiently to contain the flood water in this area before it reaches this track and the gardens of the houses in Wyndham Close beyond it.
- 160 There are also third party concerns in Penshurst that that the proposed development is contrary to National Planning Policy because it will increase the flood risk. It is also claimed that the Environment Agency's modelling relies upon estimated water levels at Penshurst, and each time their properties flood is after the Environment Agency commences impounding of the FSA. They have requested a condition which prohibits operation of the expanded FSA until after a financial settlement has been reached with the Environment Agency.
- 161 The Leigh Flood Storage Area (FSA) was constructed in the early 1980s by the Southern Water Authority using powers granted to it contained in the River Medway (Flood Relief) Act 1976 (the 1976 Act). This Act of Parliament also authorised the Southern Water Authority to control the flow of the River Medway when required and temporarily store the excess water upstream of the embankment in order to reduce the flood risk for properties in and around Tonbridge and Hildenborough. When the flow control structure can be used and the maximum depth to which water can be stored within the FSA was also approved by the Minister.
- 162 The FSA is now operated by the Environment Agency, as the statutory successor to the Southern Water Authority. The Environment Agency has submitted an application to the Minister seeking consent to raise the maximum depth to which water can be stored.
- 163 Property interests are protected by an obligation upon the Environment Agency in section 17(4) of the 1976 Act to pay full compensation where damage is sustained because of the operation of the FSA.
- 164 In order to discharge that obligation to pay compensation each time damage is sustained, the Southern Water Authority entered into agreements with



landowners when the FSA was constructed under section 25 of the 1976 Act. The consideration for those agreements gave the Southern Water Authority (and now its successor, the Environment Agency) the right to flood that part of the owner's land identified on a plan attached to the agreement for any duration and to any depth. There are agreements which cover the kitchen of Bridge House (but not the living room nor dining room), a large part of the garden at The Yews including the greenhouses and sheds (but not the stables or house), and part of the garden at Colquhouns Cottage (but not the studio).

- 165 If consents are granted so that more water can be stored in the FSA, much of the additional 16.4 hectares that will be flooded across the whole FSA during the most severe events is already covered by these agreements. Where land is not covered by an existing agreement, owners can rely upon the statutory protection provided by section 17(4) of the 1976 Act for damage sustained.
- 166 Bridge House, The Yews and the garden of Colquhouns Cottage are within the floodplain of the River Medway so are affected by naturally-occurring flooding. These properties are situated at the upper end of the reservoir that is created when the FSA is used. The additional information contained in Appendix 1 demonstrates how the flooding in Penshurst is dominated by naturally occurring flooding which occurs before impounding commences. The Leigh FSA only operates when there are high flows in the river. Therefore, the same conditions that drive naturally-occurring flooding in Penshurst also determine operation of the FSA.
- 167 However, the Environment Agency acknowledges that operation of the FSA currently may, in certain circumstances, make the flood water slightly deeper at Penshurst, depending on the severity of the flood event. Therefore, in accordance with the 1976 Act, compensation has been paid to those who have suffered damage as a result of operation of the FSA where that damage is not covered by an existing agreement.
- 168 Section 5.1 of the Flood Risk Assessment confirms that the proposed changes for which planning permission is sought will not increase the extent or depth of flooding at Bridge House, The Yews or the garden of Colquhouns Cottage. Therefore the conditions sought by the three objectors fail the tests set by paragraph 55 of the National Planning Policy Framework, in particular because (i) the conditions are not necessary because of the existing statutory obligation to pay compensation if damage is caused, (ii) they are not relevant to planning, and (iii) they are not relevant to the development to be permitted because the request seeks to address an existing concern and the proposed changes do not increase flood risk in these locations.
- 169 That said, where it has been identified that there is a residual liability to pay compensation for future damage caused by operation of the existing FSA, the Environment Agency is willing to consider entering into new agreements with those affected in full and final settlement of those potential claims for future damage for which compensation would be payable in accordance with the 1976 Act.

- 170 The greatest change in depth in flood water is in the immediate vicinity of the FSA embankment and the effect diminishes in the flood valley upstream, due to the existing topography of the valley. The impacts are considered to be slight adverse effects as noted from the ES. Any impacts from such changes will be limited and within the area already flooded. The increased capacity of the FSA does not change the flood risk to any households.
- 171 The increase of capacity of the FSA will provide a decrease in flood risk of major magnitude, by improving flood risk for hundreds of properties downstream in Tonbridge - over 1400 homes and 100 businesses, plus critical infrastructure. The scheme will deliver a very large beneficial impact in relation to flood risk and have a long-term benefit.
- 172 As such the impact arising from the increased capacity of the FSA, is limited and any identified impacts upon existing receptors are limited. The scheme will deliver a significant benefit upon those households and businesses within Tonbridge - downstream of the FSA by reducing the risk from flooding. The socio and economic benefits in this instance far outweigh the impacts of this development. As such, the development would comply with the aims and objectives of the NPPF.

### **Impact upon biodiversity**

- 173 The NPPF recognises that, when determining planning applications, local planning authorities have an obligation to promote the conservation and enhancement of biodiversity by:
- Ensuring that adverse impacts are avoided, adequately mitigated or compensated for;
  - Refusing developments that may adversely impact on Sites of Special Scientific Interest (SSSIs) or their interest features unless the benefits of the development clearly outweigh the impacts;
  - Permitting developments where the primary objective is to conserve or enhance biodiversity;
  - Encouraging proposals to incorporate biodiversity in and around developments; and
  - Refusing planning permission for developments that would result in the damage or deterioration of irreplaceable habitats (e.g. ancient woodland, veteran trees).
- 174 Policy SP11 of the Core Strategy and Policy GI1 of the ADMP would apply. Comprehensive Phase 1 and Phase 2 habitat surveys together with any mitigation has been undertaken and submitted as part of the ES. These include:
- Phase 1 Habitat Survey Maps and Target Notes;
  - Protected Species Survey Report;
  - Badger Survey Report;
  - Vegetation Survey Report;
  - Great Crested Newt Survey, and
  - Dormouse Survey Report.

- 175 KCC Ecology has reviewed the information and expressed no objection to the proposal subject to the imposition of a condition for further information relating to the submission of a biodiversity enhancement plan that shows a positive Biodiversity Net Gain, as cited by the ES. The requirement on the scheme is to provide a minimum of 10% Biodiversity Net Gain. The scheme is providing this. The stretch target and Kent Nature Partnership target of 20% will be pursued once the scheme has fulfilled the other minimum requirements. In light of this, KCC Ecology has requested further information with regards to Biodiversity Net Gain calculations which will secure at least the 10% minimum net gain threshold.
- 176 Natural England raises no objection to the proposal.
- 177 As such the proposal would accord to the aforementioned policies.

### **Impact upon residential amenities**

- 178 Policy EN2 of the ADMP requires proposals to provide adequate residential amenities for existing and future occupiers of the development, while ensuring it would not result in excessive overlooking, visual intrusion, vibration, odour, air pollution, vehicle movements, or a loss of privacy and light enjoyed by the occupiers of nearby properties.
- 179 The proposed development would have no affected upon the existing residential amenities upon nearby residential properties in Leigh due to the separation distances involved and the sufficient physical separation by the railway and other intervening vegetation. However, it is noted that there will be additional vehicular construction traffic movements and construction activity arising for the development proposals that may cause some disruption. As such, as cited in the ES, this can be controlled by the use Environmental Action Plan that puts restrictions in place to minimise any impact arising from noise, dust vibration. The Councils Environmental Health Officer has raised no objections to this proposal. As such, any adverse effects arising from the development of the scheme can be adequately mitigated and that any impact is only in the short-term. By adhering to the proposal Environmental Action Plan would ensure compliance with Policy EN2 of the ADMP.

### **Impact upon highways and existing Public Rights of Way**

- 180 It is proposed that construction is due to commence in Spring 2021, with the main construction activities planned during the summer period of the year (April until October). The works will be undertaken simultaneously at different locations to reduce the overall construction programme.
- 181 Wherever possible, works will be completed within a single year of construction (i.e. one summer season, extending until October). This is anticipated to be achievable in 2021 for smaller scale works such as the works at the cattle arch and the pumping station embankment and have less impact if constructed during the winter months. The MIOS works are larger in scale and will be carried out over 3 consecutive summer periods 2021 to 2023.

- 182 Full details of the scheme with an indicative programme, anticipated traffic numbers, routes, and movements, are set out at Chapter 3 of the ES. Traffic Management controls such as staggered delivery timings, signage, traffic lights and specific route plans for deliveries, large and abnormal loads will be employed to minimise disruption to residents, schools, and businesses.
- 183 An increase levels traffic levels will be temporary during the construction works. There will be no increase in operational traffic as a result of the Scheme. The Cattle Arch compound will be located in Leigh. This will be accessed from the A21 and will therefore not impact on the local road network in Sevenoaks.
- 184 KCC Highways has raised no objection to the scheme and requested for a condition to the imposed relating to Construction Environmental Management Plan (CEMP). This is considered to be reasonable and necessary in accordance with the NPPG.
- 185 There will potentially be adverse impacts on recreational users of the Haysden Country Park during construction due to construction noise, dust or impact on visual amenity, but this will be temporary and also located within the constitutional boundaries of TMBC. Footpaths and other Rights of Way may need to be diverted locally during construction or temporarily closed. If this is necessary measures will be agreed with Kent County Council and advance warning will be provided, along with appropriate local diversion routes.
- 186 As an enhancement, new steps will be provided as part of the scheme adjacent to the line of the Public Rights of Way that cross the main embankment (Footpaths MU46 and SR435). The PROW officer has raised no objection to this part of the scheme providing the steps do not cross into the definitive line of the existing PROW's. Further to this, new surfacing is proposed to MU60, however this part of the scheme is within the Constitutional boundaries of TMBC and subject to the imposition of their own planning conditions if permission were to be forthcoming.
- 187 The recommended informative has been added with regard to express consent from the Highway Authority for changes to public right of ways.

### **Heritage Assets**

- 188 The proposal involves works/improvements to existing flood assets. The previous construction activities associated with the construction of the existing assets are expected to have already removed any near surface archaeological remains. Significant archaeological remains, if present, are likely to be buried at depth within alluvium (material deposited by rivers) and therefore beyond the impact of these works. Therefore, there would be no impact on archaeological remains because of the extent of the works proposed.
- 189 The proposed works at the cattle arch embankment and pumping platform are screened from nearby listed buildings at Pauls Farm (off Ensfield Road, Leigh) by dense, mature vegetation. The proposal area makes no

contribution to the setting and significance of the buildings. The works will result in a temporary, slight adverse significance of effect on the setting on Paul's Farmhouse, barn granary (and farmstead as a whole. Any temporary impacts will be mitigated by reinstatement works and proposed planting on completion of the scheme.

- 190 As such the proposals will therefore conserve the setting of the listed buildings. The scheme will help to protect and conserve heritage assets from flooding. Therefore, the proposals comply with Policy EN4 of ADMP and section 66 of the Planning and Listed Buildings Act 1990.

#### Other Issues

- 191 It should be noted that individually, some works to existing flood defence embankments, on Environment Agency 'operational land' (land which is used for the purpose of carrying out their undertaking, as defined in the Town and County Planning Act 1990), would constitute permitted development in accordance with Schedule 2, Part 13, Class D of the Town and County Planning (General Permitted Development) (England) Order 2015. However, the scheme as a whole is included within the EIA and planning application.
- 192 An objection has been submitted on behalf of Penshurst Place Estate, citing five concerns / grounds of objection.
- 193 The Estate's first ground of objection is that there is no guarantee the Environment Agency's application to the Minister for consent to raise the maximum stored water level in the flood storage area from 28.05 metres above Ordnance Datum (mAOD) to 28.6m AOD will be successful. This statement is correct but it is not a valid reason to refuse to grant planning permission.
- 194 The Estate's second ground of objection is the Estate say they did not receive formal notification of the planning application as required by Article 13 of the Town and Country Planning (Development Management) (England) Order 2015. However, the applicant stated that two notices were sent by Royal Mail Signed for to the Estate on 19 August 2020, copies of the proof of delivery have been submitted.
- 195 The Estate's third concern relates to the Environment Agency's rights to carry out proposed construction works on the Penshurst Place Estate's wider land holding given that the Environment Agency have not yet reached an agreement with the Estate. This is not a valid reason to refuse grant of planning permission as this is a private/civil matter.
- 196 Concern has been raised that the proposed changes risk could compromise Penshurst Place ability to maintain its income streams due to access issues caused by flooding events. Flood Risk Assessment submitted confirms that the proposed development for which planning permission is sought does not increase the extent or depth of flooding on the concrete road near to Place Barn Farm - which is a private road. Therefore, the proposed development will not impede access to the Penshurst Place Estate.

197 Lastly the Estate wishes for the Environment Agency to invest in raising the concrete road making it more flood resilient. However, as this is private road, and the modelling shows as this part of the Estate would not be affected by the changes, to do this off-site works would be unreasonable and unjustified in this instance.

### **Community Infrastructure Levy (CIL)**

198 The proposal is not CIL liable

### **Conclusion**

199 The proposed works will assist to reduce the risk of flooding to hundreds of properties and commercial businesses. The flood risk benefits of the scheme significantly outweigh any minor, temporary environmental impacts resulting from the construction work. These impacts will be managed and mitigated through the use of an Environmental Action Plan (EAP) and other mitigation measures to control working methods and deliver planting and habitat enhancements. The development proposed is considered to be appropriate development within the Green Belt and would be compliant with Development Plan Policies.

### **Background papers**

Site and block plan

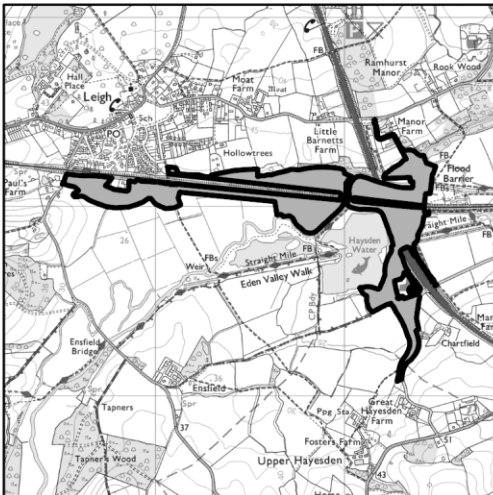
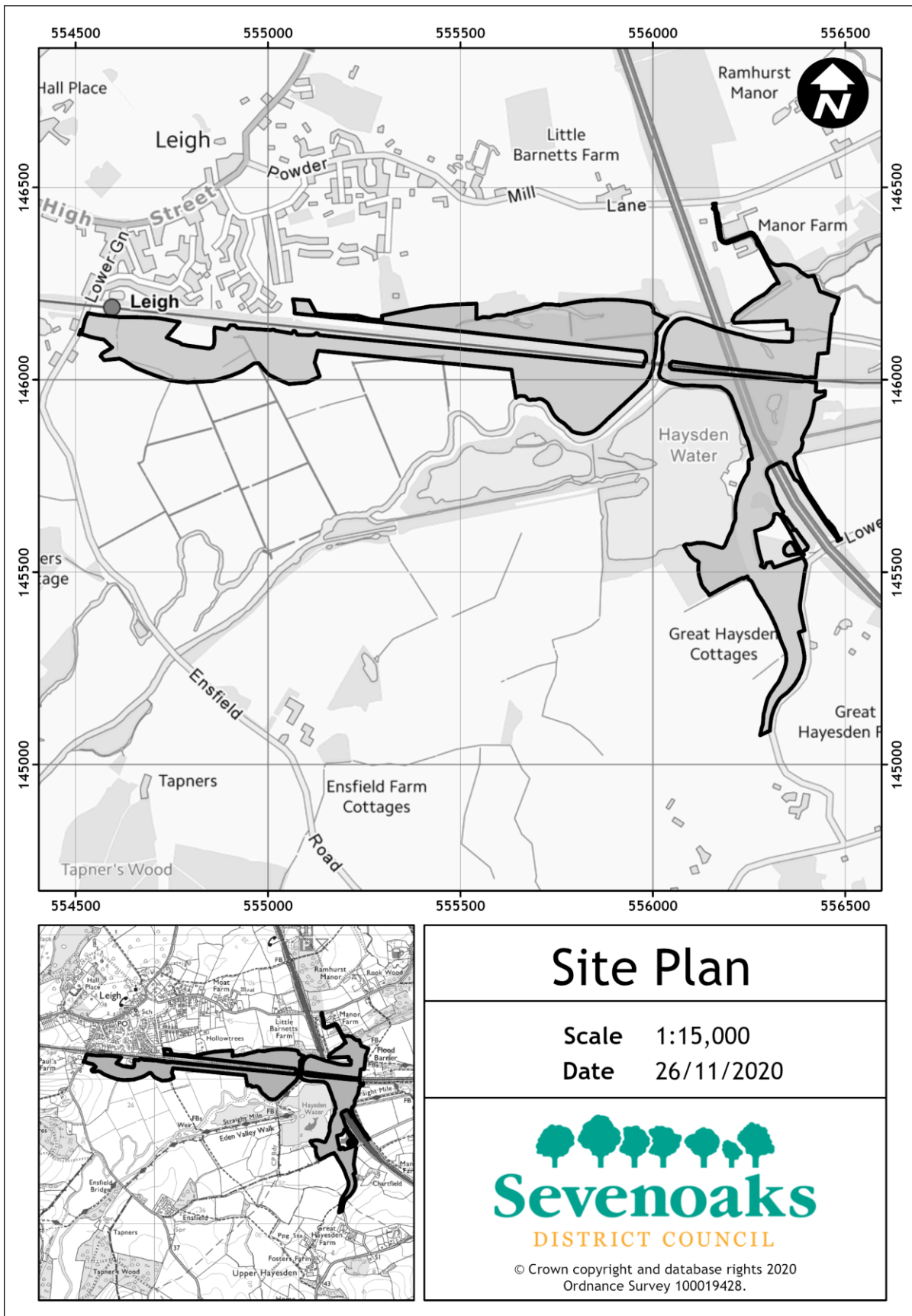
Contact Officer(s):

Sean Mitchell 01732 227000

**Richard Morris**  
**Chief Planning Officer**

[Link to application details:](#)

[Link to associated documents:](#)



# Site Plan

Scale 1:15,000  
Date 26/11/2020



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Ordnance Survey 100019428.

# BLOCK PLAN

