

SECTION C
MINERALS AND WASTE MANAGEMENT

Background Documents - the deposited documents; views and representations received as referred to in the reports and included in the development proposals dossier for each case; and other documents as might be additionally indicated.

Item C1

Details of a revised restoration scheme pursuant to Condition 38 of planning permission TM/05/723/MR88 at Postern Park Quarry, Hadlow Road, Tonbridge, Kent TN9 1PD - TM/05/723/MR88/38 (KCC/TM/0141/2019)

A report by Head of Planning Applications Group to Planning Applications Committee on 27 May 2020.

Application by CEMEX UK Operations Ltd for details of a revised restoration scheme pursuant to Condition 38 of planning permission TM/05/723/MR88 at Postern Park Quarry, Hadlow Road, Tonbridge, Kent TN9 1PD - TM/05/723/MR88/38 (KCC/TM/0141/2019)

Recommendation: Approval be given conditionally.

Local Members: R Long, M Payne, S Hamilton and M Balfour

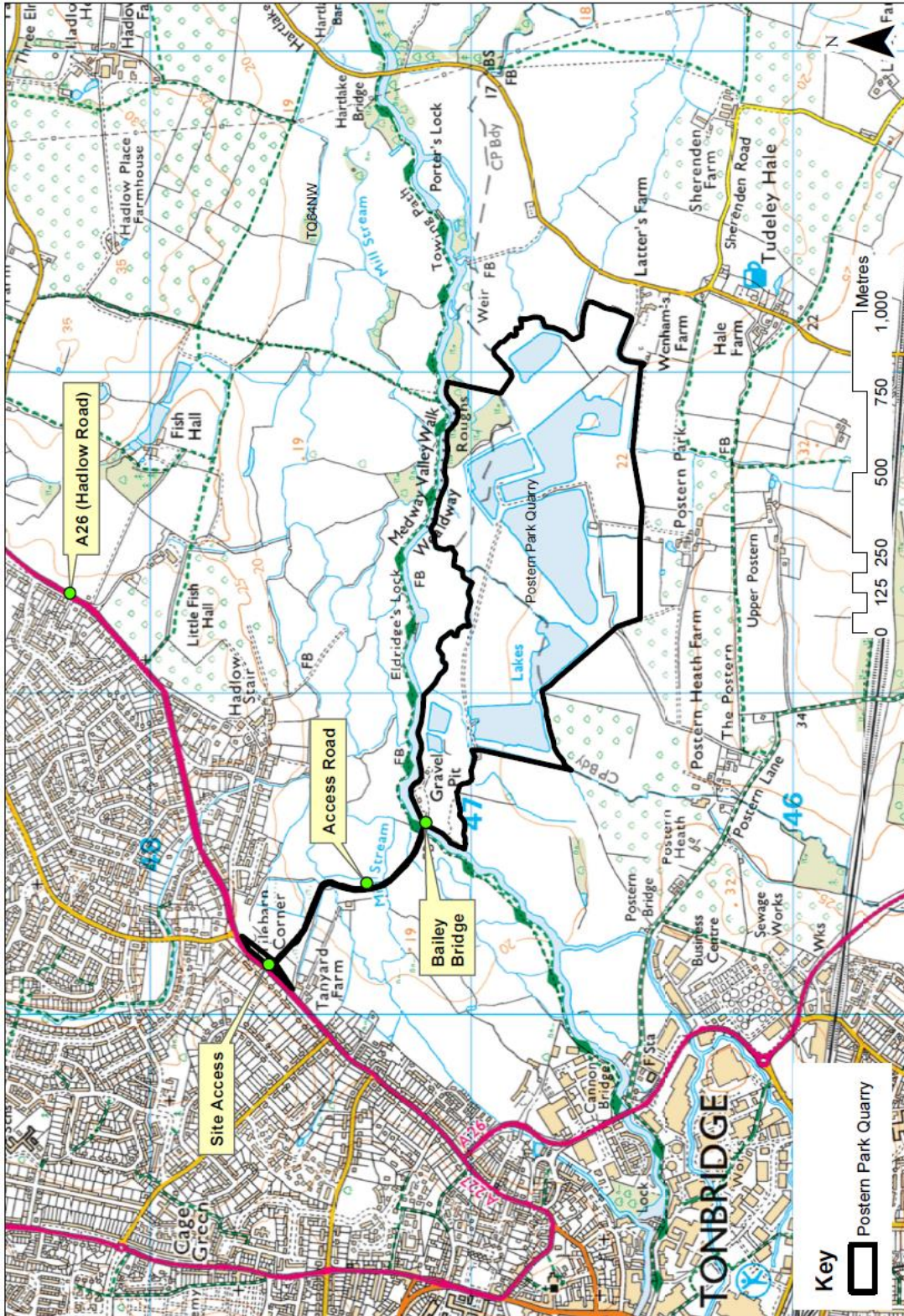
Unrestricted

Site Description

1. Postern Park Quarry lies to the east of Tonbridge and south of the River Medway within the Boroughs of Tonbridge and Malling and Tunbridge Wells. The former quarry is accessed from the A26 (Hadlow Road) via a purpose built haul road which crosses the River Medway on a bailey bridge just the west of the site. The land lies in the flood plain (Flood Zones 2 and 3) and is relatively flat, rising from 18m AOD in the east to about 19.5m AOD in the west (where the former plant site was located). The site is largely surrounded on all sides by agricultural land with orchards to the south west. An area of Ancient Woodland lies to the north east in part of the site unaffected by mineral working. The site and surrounding area also contains other areas of trees / woodland, hedgerows and other vegetation. There are no public rights of way within the site although Footpath MU32 follows the northern bank of the River Medway under the bailey bridge. The site lies within the Green Belt and the River Medway and area of Ancient Woodland lies within the East Tonbridge copses and dykes and River Medway Local Wildlife Site (LWS). The quarry lies within Groundwater Source Protection Zones (SPZs) 1, 2 and 3. The eastern end of the quarry (including part of the main eastern lake and recharge lagoon) lies within a SPZ1 (Inner Protection Zone). The rest of the main eastern lake lies within a SPZ2 (Outer Protection Zone). The remainder of the quarry (to the west) lies within a SPZ3 (Total Catchment). A high pressure gas pipeline crosses the centre of the site southwest to northeast on land not directly affected by mineral working or restoration works. It is understood that the land prior to mineral working was shown as undifferentiated Grade 3 land on the Agricultural Land Classification Map and of generally average agricultural quality.
2. The location of the application site and access is shown on the drawing on page C1.2.

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Site Location Plan



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Planning History and Background

3. Two planning permissions for sand and gravel working were granted at Postern Park in May 1980. TM/78/843 related to that part of the site in Tonbridge and Malling and TW/79/801 to that in Tunbridge Wells. The terms and conditions in the permissions were identical other than in respect of the land to which they related. A number of subsequent permissions and approvals were given. These related to details of the access road and bailey bridge (July 1985 and May 1986), dewatering of the overburden layer at the site (November 1986), a working and restoration scheme (July 1987), an amended landscaping scheme (October 1988), the proximity of mineral working to the Postern Stream (June 1989), dewatering of the working area down to the base of the gravel layer (May 1991), variations to the working and restoration scheme (March 1996) and a minor alteration to the working and restoration scheme (June 1999).
4. Planning permission TM/05/723/MR88 was granted in December 2005 under the mineral review (ROMP¹) provisions of the Environment Act 1995. This permission related to those parts of the quarry within both Boroughs and effectively updated the earlier conditions and schemes of working, restoration and aftercare. A further planning permission TW/05/2136 was granted at the same time which provided for the excavation of sand and gravel to form a groundwater recharge lagoon at the eastern end of the quarry. Planning permission TM/05/723/MR88 required extraction to cease by the end of 2015 and for the site to be fully restored within two years of the completion of extraction in accordance with the requirements of a revised restoration scheme (which condition 38 stated was to be submitted to and approved by KCC within 12 months of the date of the permission). An aftercare scheme was also required by condition 46 to be submitted for KCC's approval within 12 months of the date of the permission. The restoration scheme illustrated in 2005 (which was expected to form the basis for the revised scheme) is shown on drawing number P2/886/5 titled "Final Restoration" (dated January 2005). The location of the recharge lagoon is shown on drawing number P2/886/10 titled "Site Plan for Recharge Lagoon" (dated August 2005) and the extent of the final lake provided for by this is shown on drawing number P2/886/8F titled "Phase drawings – Removal of bunds and creation of lake" (dated June 2005). These are all included in Appendix 1.
5. An archaeological watching brief was approved pursuant to TW/05/2136 in June 2007 and details of a mechanism to control the discharge of silt in the recharge lagoon were approved pursuant to TM/05/723/MR88 in August 2007.
6. Mineral working at the quarry was undertaken by Cemex UK Materials Ltd, formerly known as Hall Aggregates (South East) Ltd and RMC South East. Extraction ceased in about 2009 and the site remained mothballed for a period of years. However, the revised restoration and aftercare schemes required by conditions 38 and 46 of TM/05/723/MR88 were not submitted until March 2014.

¹ Review of Old Mineral Permissions.

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7. Approval was given in November 2014 for a Revised Restoration Scheme and Aftercare Scheme pursuant to conditions 38 and 46 of TM/05/723/MR88. The Revised Restoration Scheme was necessary both to address (albeit belatedly) the requirement of condition 38 and as the quarry had not been fully worked and would not be completed as previously intended. The Aftercare Scheme was required to address condition 46 and reflect the restoration scheme that was proposed. The approved 2014 restoration scheme is shown on drawing number P2/886/5/D titled "Final Restoration" (dated October 2014) and drawing number P2/886/13 titled "Detail Restoration Sections" (dated March 2014). These are both included in Appendix 1.
8. The main difference between the restoration scheme envisaged in 2005 and that approved in 2014 was that the 2005 scheme assumed the vast majority of the permitted site would be worked (including the area of Ancient Woodland) and a single large lake provided in the eastern part of the site (with a small conservation island). Other parts of the quarry (including excavated water bodies and silt lagoons) were to be backfilled using overburden stripped from the working areas and restored to agriculture by re-spreading soils available on site. Trees and shrubs were to be planted around the lake and around the perimeter of the site and a hedgerow planted to subdivide the largest area of restored land. The 2014 scheme provides a slightly smaller lake in the eastern part of the site (which would be sub-divided by a north south causeway), a number of irregular shaped linear islands (reflecting the remains of internal haul routes within the mineral working area), an additional pond further east (reflecting the recharge lagoon which has been excavated since 2007) and an additional lake and a pond at the western end of the site (reflecting the fact that these areas would no longer be backfilled using indigenous overburden and soils). It also provides for a former silt disposal area to be retained as wetland and allowed to recolonise from reedbed and open water to wet woodland. New tree and shrub planting is also provided (including a number of hedgerows designed to sub-divide the agricultural land and provide field boundaries). As well as reflecting the fact that not all of the permitted mineral would be extracted (including the area of Ancient Woodland), the scheme also includes the retention of trees and vegetation that had regenerated naturally since mineral working ceased in different parts of the site.
9. Restoration commenced in July 2016 and the site has been restored to agriculture and a number of lakes / ponds although the access road and associated bridge over the River Medway and a further smaller bridge which crosses a small stream in the north western part of the site and a concrete slab which protects the high pressure gas pipeline which crosses the centre of the site southwest to northeast have yet to be removed since they may still be required to ensure the completion of restoration and aftercare. The restoration that has been undertaken does not accord with that approved in 2014 in a number of respects. The main differences were the inclusion of an additional pond to the north of the main arable restoration area, the retention of open water with wet woodland margins (as opposed to reedbed) in the former silt disposal area, the retention of recolonising grassland and wet woodland scrub on the south eastern margins of the eastern lake, the retention of margins and mature willow trees on the south western lake, the natural regeneration of the internal secondary haul road (retained as a longitudinal island feature), the retention of edge protection bunds at various locations around the site (including on both sides of the north south

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causeway which sub-divides the large south western lake) and a small soil stockpile (where woodland and scrub vegetation had developed). Other more detailed differences related to the precise location and extent of some of the proposed planting (e.g. some of the required planting was replaced by trees and other vegetation which had recolonised naturally, some was moved to create different field areas and a proposed hedgerow was not planted since it had effectively been replaced with another on a different alignment).

10. The above discrepancies, and a number of related issues, were identified as part of site monitoring undertaken by officers and also brought to the attention of KCC by the landowners. The landowners had also expressed concerns about the quality of some of the restoration that had been undertaken (e.g. soil depths). However, Cemex insists that the restoration was undertaken with correct soil depths and handling (i.e. a full 300mm topsoil profile for the restored arable and seeded areas within the site with soils handled appropriately and ripped after placement). Officers requested that unless the approved restoration scheme was to be implemented in full, a revised scheme should be submitted for consideration.
11. It should be noted that there is an ongoing dispute between the landowners and Cemex about the working and restoration that has been undertaken. This is explained further in the "Representations" section in paragraphs 39 to 49 below.

The Proposal

12. A revised restoration scheme was submitted pursuant to condition 38 of planning permission TM/05/723/MR88 in June 2019. This scheme sought to regularise the restoration that had been undertaken at the site and which is described in paragraph 9 above. The proposed revised restoration scheme submitted in June 2019 is shown on drawing number P2/886/5/G titled "Final Restoration" (dated July 2019) which is included in Appendix 1.
13. As a result of consultee responses, representations from the landowners and my own consideration of the proposals, the proposed scheme was further revised in December 2019. The main changes were: the removal of edge protection banks (bunds) and remnant stockpiles (including from the central causeway which sub-divides the main eastern lake and in the north western part of the site) and the regrading (lowering) of the causeway which sub-divides the main eastern lake and the creation of marginal shelves cut into the water level, both to improve the local landscape topography and drainage and provide materials to create more marginal wetland habitat on the north bank of the western lake; the removal of smaller heaps of scattered materials where mature vegetation canopies allow; the creation of additional shallows and reedbeds along the northern bank of the western lake to provide an additional area of priority marginal reedbed habit; corrections to the former silt pond to reflect the fact that it is proposed to comprise a balance of open water, marginal fringe and mature tree regeneration; and the relocation of the proposed field boundary between the central arable fields in order to retain an existing vegetation line (hedgerow) which has established though the area whilst not significantly affecting field size, shape or usability.

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14. The applicant also responded to other issues that had been raised. These included clarifying that an additional 3.11 hectares (ha) of agricultural land would be lost compared with the approved 2014 restoration scheme (whilst emphasising the net biodiversity benefits of what is now proposed) and accepting that a preliminary ecological appraisal (PEA) would be required if the edge protection banks and existing established vegetation were to be removed to ensure that any potential protected species presence is understood and appropriate mitigation measures implemented during the works (suggesting that this be secured by condition). It also stated that: the lake margins around the majority of the site were reinstated many years ago at the time of the original excavation and have subsequently recolonised without recourse to additional planting; natural colonisation from suitable adjacent areas may be more beneficial for local biodiversity than planting with imported stock; whilst some of the wet woodland planting blocks may lie above the normal water line, the native species mixes used will establish over both wetter and drier areas and, in time, wet woodland and scrub will rapidly colonise any suitable wetter areas; and the majority of the restoration planting shown on the drawings has already been undertaken at the sizes and spacing indicated on the approved drawing and that is not proposed to modify this on the revised submission. It also pointed out that some of the consultation responses sought amendments to the revised restoration scheme which were not mutually reconcilable and that it had therefore proposed amendments which it felt would (on balance) deliver bio-diversity gain. The proposed amended revised restoration scheme is shown on drawing number P2/886/5/H titled "Final Restoration" (dated December 2019) which is included in Appendix 1.

15. The applicant provided further information in January 2020 in response to issues raised by KCC Ecological Advice Service and KCC's Landscape Consultant. In respect of ecology, it stated (amongst other things): that the remaining restoration works relate to a very small part of the overall site (primarily on the causeway); the works to the causeway now reflect the approved 2014 scheme (which was not subject to further ecological survey or appraisal work); it has to comply with the Wildlife and Countryside Act 1981 regardless of any planning requirements; and that it accepts the need for a preliminary ecological appraisal (PEA) prior to the removal of edge protection banks and established vegetation but wishes to do this later in case of further delays (and would accept a condition to this effect). In respect of excavation and relocation of materials, it stated: excavation works for regrading around the eastern lakes (which lie within the SPZ1 and 2) would be undertaken in late summer when water levels are at their lowest to avoid hydrological issues; the causeway dividing the main eastern lake would be lowered and marginal shelves cut in at the appropriate higher winter water level; and that materials would only be directly placed along the northern bank of the water area in the west of the site (away from the SPZ1 and 2).

Planning Policy Context

16. **National Planning Policies** – the most relevant National Planning Policies are set out in the National Planning Policy Framework (NPPF) (May 2019) which is supported by the associated National Planning Practice Guidance (NPPG). These are material

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planning considerations.

17. **Kent Minerals and Waste Local Plan 2013-30 (July 2016)** – Policies CSM1 (Sustainable Development), DM1 (Sustainable Design), DM2 (Environmental and Landscape Sites of International, National and Local Importance), DM3 (Ecological Impact Assessment), DM4 (Green Belt), DM10 (Water Environment), DM11 (Health and Amenity), DM12 (Cumulative Impact), DM17 (Planning Obligations) and DM19 (Restoration, Aftercare and After-use).
18. **Tonbridge and Malling Borough Council LDF Core Strategy (September 2007)** – Policies CP1 (Sustainable development), CP3 (Green Belt), CP9 (Agricultural Land), CP10 (Flood Protection), CP14 (Development in the Countryside) and Policy CP24 (Achieving a High Quality of Life).
19. **Tonbridge and Malling LDF Managing Development and the Environment DPD (April 2010)** – Policies CC3 (Water environment), NE1 (Local sites of wildlife, geological and geomorphological interest), NE2 (Priority habitats), NE3 (Biodiversity), SQ1 (Landscape and Townscape Protection and Enhancement) and SQ4 (Air quality).
20. **Tunbridge Wells Borough Local Development Framework Core Strategy Development Plan Document (June 2010)** – Policies CP2 (Green Belt), CP4 (Environment), CP5 (Sustainable Design and Construction), CP8 (Retail, Leisure and Community Facilities Provision) and CP14 (Development in the Villages and Rural Areas).
21. **Tunbridge Wells Borough Site Allocations Local Plan (July 2016)** – Policy AL/STR1 (Limits to Built Development).
22. **Tunbridge Wells Borough Local Plan (2006) Remaining Saved Policies** – Policies EN1 (Development Control Criteria), EN13 (Trees and Woodland Protection), EN16 (Protection of Groundwater and other Watercourses), EN18 (Flood Risk), EN25 (Development Control Criteria for all Proposals Affecting the Rural Landscape) and MGB1 (Metropolitan Green Belt).
23. **Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 Pre-Submission Draft (November 2018)** – This has no direct bearing on the current application. The Early Partial Review of the Kent MWLP was subject to an independent examination between 8 and 15 October 2019 and the Inspector's Report was published on 23 April 2020. The Report concludes that the Plan is sound provided that a number of main modifications are made. The main modifications were discussed at the examination hearings, subject to sustainability appraisal and public consultation and considered by the Inspector along with any representations made on them. Given this, it is appropriate that substantial weight be given to the Plan in the period prior to its adoption.
24. **Kent Mineral Sites Plan Pre-Submission Draft (December 2018)** – This has no direct bearing on the current application. The Draft Mineral Sites Plan proposes to allocate an extension to Stonecastle Farm Quarry and a site at Moat Farm (to the east

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of Postern Park Quarry), both of which would be worked through Stonecastle Farm Quarry and use the existing access to that site. The Kent Mineral Sites Plan was subject to an independent examination between 8 and 15 October 2019 and the Inspector's Report was published on 23 April 2020. The Report concludes that the Plan is sound provided that a number of main modifications are made. The main modifications were discussed at the examination hearings, subject to sustainability appraisal and public consultation and considered by the Inspector along with any representations made on them. Given this, it is appropriate that substantial weight be given to the Plan in the period prior to its adoption.

25. **Tonbridge and Malling Borough Council Local Plan Regulation 19 Pre-Submission Publication (September 2018)** – Draft Policies LP1 (Presumption in Favour of Sustainable Development), LP11 (Designated Areas), LP13 (Local Natural Environment Designations), LP14 (Achieving High Quality Sustainable Design), LP17 (Flood Risk), LP18 (Sustainable Drainage), LP20 (Air Quality) and LP21 (Noise Quality).
26. **Tunbridge Wells Borough Draft Local Plan Regulation 18 Consultation Draft (20 September to 1 November 2019)** – Draft Policies STR2 (Presumption in favour of Sustainable Development), STR4 (Green Belt), STR8 (Conserving and Enhancing the Natural, Built and Historic Environment), STR10 (Limits to Built Development Boundaries), EN1 (Design and other Development Management Criteria), EN2 (Sustainable Design and Construction), EN5 (Climate Change Adaption), EN11 (Net Gains for Nature: Biodiversity), EN12 (Protection of Designated Sites and Habitats), EN14 (Trees, Woodlands, Hedges and Development), EN15 (Ancient Woodland and Veteran Trees), EN20 (Rural Landscape), EN22 (Agricultural Land), EN26 (Water Quality, Supply and Treatment), EN28 (Flood Risk), EN29 (Sustainable Drainage) and EN30 (Noise).

Consultations

27. **Tonbridge and Malling Borough Council** – No objection.
28. **Tunbridge Wells Borough Council** – No objection. TWBC's Landscape and Biodiversity Officer has commented that the scheme as amended in December 2019 is an improvement on that submitted in June 2019 but does not address his earlier comments relating to public access and longer term management (which had sought the inclusion of public access to the site and long term management). He states that the planning permission and approved scheme only require landscaping to be managed for two and / or five years whilst the approach being taken with some areas is now reliant upon a longer term strategy of regeneration and succession requiring a longer term vision and commitment. He believes that more modern / higher standards should be applied and that this would reflect Cemex's Sustainability Statement. He also comments that whilst it would appear that there are some restrictions on the creation of islands due to ground water protection zones, this would not preclude floating islands which could also include planted material to assist with improving water quality as well as providing nesting opportunities. He therefore suggests that further consideration is given to securing:

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- Public access and involvement;
 - Longer term management commitments and prescriptions; and
 - Floating islands.
29. **Hadlow Parish Council** – Notes the proposed revised restoration scheme.
30. **Capel Parish Council** – No comments received.
31. **Environment Agency** – No objection. It has additionally provided advice on the potential need for an Environmental Permit (if the deposit, transfer and/or treatment operations being undertaken are not subject to any other exemptions or authorisations) and advised that the operator would need to ensure that watercourses are protected and pollution risks are managed appropriately. It has also advised that several invasive non-native species (e.g. Giant Hogweed and Winter Heliotrope) are known to be locally present (either due to local knowledge and / or records) and that it is illegal to cause them to spread elsewhere into the wild or be introduced. It therefore provides guidance on potential biosecurity protocols.
32. **Natural England** – No objection. It advises that the revised scheme is unlikely to have significantly different impacts on the natural environment than the original.
33. **KCC Ecological Advice Service** – It is satisfied in principle with the scheme as amended in December 2019 and notes that it is proposed (in part) to allow the retention of habitats that had developed naturally before the approved 2014 scheme was implemented. Having initially raised concerns about the proposed loss of reed bed and wet woodland habitat (compared to the approved 2014 scheme), it supports the inclusion of additional reed bed habitat in the December 2019 amendment given that this is a priority habitat. However, it has advised that a preliminary ecological appraisal (PEA) should be required prior to determination to enable all potential protected species impacts to be taken into consideration when the application is determined and for the relative ecological benefits and impacts of removing the bund / edge protection banks to be weighed up. Having been advised that Cemex is unable to gain access to the site to undertake a PEA and may be unable to implement further restoration works at this stage, it has suggested that a condition be attached to any approval which would require the submission of a method statement for the protection of biodiversity (informed by an up to date PEA and (as necessary) protected species surveys) to be submitted for KCC's written approval. It has also supported some of the views expressed by TWBC's Landscape & Biodiversity Officer in respect of the desirability of longer term management commitments and prescriptions but notes that many of these would also apply to the approved 2014 scheme were it being considered now.
34. **KCC Landscape Consultant** – It supports the scheme as amended in December 2019. It notes that with the exception of the removal of the edge protection banks along the length of the causeway (to reduce its height and regrade the edges to create a shallower profile), the redistribution of excavated material to be used to create an additional reed-bed in the area and the removal of the edge protection banks adjacent

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to the water-course in the North-east corner of the site, the majority of the restoration works have already been implemented. It states that the regraded causeway (with its lower profile and softer, graded edges) would appear more integrated within the context of the wider landscape (particularly once it is colonised with vegetation), that the graded edges would provide valuable, marginal habitat (offering refuge for various mammals, birds, fish and terrestrial and aquatic invertebrate species), that the additional reed bed would enhance the mosaic of marginal and wetland habitats already established across the site and that removal of the edge protection banks would avoid the need for drainage channels (which would reduce the need for their long-term management). It advises that a preliminary habitat assessment should take place prior to the removal of any structures, that the operations should be timed to avoid bird nesting season and that excavation and relocation of materials should be undertaken to as to avoid groundwater contamination or silt pollution (in accordance with a simple method statement).

35. **Kent Wildlife Trust** – No comments received.
36. **Upper Medway Internal Drainage Board** – No comments received.
37. **Southern Gas Networks** – No specific comments received. It has provided advice on where to find details of its apparatus in the area and guidance on how works should be undertaken close to these.
38. **South East Water** – No comments received.

Representations

39. The landowners were notified and invited to comment on the proposal in July 2019 and again in December 2019. They were also notified of my intention to report the applicant to KCC's Planning Applications Committee for determination in February 2020. The landowners have responded on a number of occasions, both directly and via their legal representatives (DLA Piper UK LLP).
40. The landowners first advised that they were likely to take legal action against Cemex and were opposed to the proposed revised restoration scheme on 2 July 2019. As a result of that correspondence, Cemex was invited to withdraw the application. Cemex responded on 4 July 2019 stating that it continued to occupy the quarry, that the question of whether the owners had brought proceedings against Cemex was not relevant to the application and that KCC was to continue to process and determine the application.
41. On 6 August 2019, DLA Piper UK LLP advised that Cemex no longer had any land ownership interest in or control of the quarry as its lease on the quarry and tenancy at will on the terms of the lease had ceased. It stated that Cemex was no longer legally capable of implementing the approved 2014 restoration scheme, the scheme now proposed or any other scheme since it had no legal or beneficial interest that would enable it to do so and that responsibility for all restoration and aftercare liabilities would therefore rest with the landowners. DLA Piper UK LLP also stated that Cemex had

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been given 21 days to remove all its belongings and leave the quarry in a safe and secure state and that the landowners would contact KCC to discuss how best to address their obligations once Cemex had vacated the quarry and possession had been regained. It also made it clear that the landowners did not consent to the revised scheme and suggested that there was no point in KCC proceeding to the deal with the application.

42. On 9 August 2019 I informed DLA Piper UK LLP that KCC could not refuse to determine the application and that subject to its acceptability in land use planning and environmental terms it might be approved. However, I also sought the landowners' agreement to relay its concerns to Cemex and to suggest that the application be withdrawn.
43. On 12 August 2019, DLA Piper UK LLP further advised that it had asked Cemex to withdraw the application but had received no response.
44. On 14 August 2019, DLA Piper UK LLP agreed that KCC could release its 6 August 2019 letter to Cemex with a view to further suggesting that the application be withdrawn and enable any legal action to take its course or agreement be reached between relevant parties and a mutually acceptable restoration scheme provided to KCC for its determination. It also advised that if Cemex did not respond to its own correspondence accepting that it was in breach of the lease that litigation was likely to ensue against breaches of the lease.
45. On 14 August 2019 the landowners also wrote setting out their objections. They consider the proposed revised restoration scheme to be a lesser scheme which is unacceptable for the following main reasons:
 - smaller and less efficient area of land for cultivation;
 - poor quality restoration works;
 - lack of lake-side planting (including reed beds);
 - lake edge profiles do not comply with the approved designs and cross sections;
 - the retained bunds limit access for agricultural machinery; and
 - wet woodland has been planted well above the water line.
46. Cemex was asked to respond to the suggested withdrawal of the application but declined to do so. On that basis, I made the decision to continue processing the application to determination.
47. On 12 December 2019 DLA Piper UK LLP wrote to KCC reiterating that the proposed scheme was of no relevance as Cemex's very limited interest in the site was determined as a result of August 2019 notice and that it would never be in a position to implement the scheme. It also reiterated the landowners "very strong objection" to the scheme being approved. It further stated that the landowners were forced to act against Cemex due to concerns about: (i) the quality of the restoration works undertaken by Cemex to date; (ii) the number of omissions by reference to the 2014 scheme; and (iii) the delay in implementing the scheme which should have occurred by 2007 when Cemex's lease determined. It also advised that Cemex had been allowed

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to remain on site as a tenant at will after 2007 and that since 2009 that occupation was purely to deal with restoration issues. It pointed out that 12 years later the restoration is still incomplete and that the landowners have no confidence that Cemex will ever restore the site fully in accordance with any scheme. It further stated that it appreciates that KCC is caught in the middle of this dispute, requests strongly that KCC decline to approve scheme, advises that the landowners will be in touch concerning restoration and asks for further patience from KCC at this time.

48. On 27 February 2020 I wrote to DLA Piper UK LLP and the landowners informing them that I had secured advice from KCC's Solicitors (Invicta Law) which was that KCC should proceed to determine the application.
49. The landowners responded on 8 March 2020 stating that their previous comments continued to apply and that the arrangements set out in the application may adversely impact on the future sustainability of the farm.

Local Members

50. County Council Members Richard Long, Michael Payne (Tonbridge), Sarah Hamilton (Tonbridge Wells Rural) and Matthew Balfour (Malling Rural East) were notified in July 2019 and again in December 2019.
52. No comments have been received from the Local Members at the time of writing this report.

Discussion

53. The application is being reported to KCC's Planning Applications Committee for determination as planning objections have been received from the landowners.
54. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In the context of this application, the development plan policies outlined in paragraphs 17 to 22 above are of most relevance. Material planning considerations include the national planning policies referred to in paragraph 16 and the draft development plan policies in paragraphs 23 to 26.
55. The main issues in this case are:
 - whether KCC should determine the application given the strong opposition of the landowners; and
 - the acceptability of the proposed revised restoration scheme having regard to the scheme approved in 2014.

These main issues are addressed in the following sections, together with others that have been raised or require consideration.

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Should KCC should determine the application given the strong opposition of the landowners?

56. As noted above, the landowners and their legal representatives have objected strongly to the proposed revised restoration scheme and have requested that KCC not determine the application.
57. KCC's Solicitors (Invicta Law) have been asked to provide advice in respect of these representations. Invicta Law has advised that it cannot see any legal basis for not proceeding to determine the application. It states that an application can be made by any person, whether or not they are the owner of the land or even hold any interest in the land, and that there is no requirement that the application must be made by, or with the approval of, the landowner.
58. Cemex has been asked to withdraw the application but has declined to do so and has requested that the application be determined. Whilst it has agreed to a number of extensions of time for the determination of the application (most recently until 26 June 2020), it is not clear whether further agreement would be forthcoming. Should the application not be determined by this date and no further extension of time be agreed, Cemex (as applicant) could appeal against non-determination. In such circumstances, the matter would be determined by the Planning Inspectorate or Secretary of State for Communities and Local Government. The administrative costs associated with any appeal would need to be borne by KCC as Mineral Planning Authority, as would KCC's own costs of participation (including any planning and legal costs). The likelihood of costs being awarded against KCC (for not determining the application in time) would be dependent on whether it had acted unreasonably in not doing so. Assessing any risk associated with this is difficult to quantify. However, the question of the acceptability or otherwise of what is proposed would have some bearing on this.
59. Whilst the contractual arrangements and dispute between the landowners and Cemex is clearly both regrettable and unhelpful, it is not technically a planning issue. Given the advice from Invicta Law, I see no reason not to report the application nor for it to be determined. The question of which of the schemes is to be implemented (assuming the proposed revised restoration scheme is approved) is a matter for the landowners and Cemex. It is worth noting that compliance with the 2014 scheme would be more onerous since significant further land remodelling work would be required than would be required by the proposed revised restoration scheme.

Is the proposed revised restoration scheme acceptable having regard to the scheme approved in 2014?

60. Paragraph 204 of the NPPF states (amongst other things) that planning policies should ensure that worked land is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place. Paragraph 205 states that when considering proposals for mineral extraction, mineral planning authorities should ensure that there are no unacceptable adverse impacts on the natural environment and that restoration and aftercare is provided for at the earliest opportunity and to high environmental standards through the application of appropriate conditions. Paragraph

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146 states that mineral extraction is not inappropriate in the Green Belt provided it preserves openness and does not conflict with the purposes of including land within it. Paragraph 163 states that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 170 states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside, by protecting and enhancing sites of biodiversity value (in a manner commensurate with their statutory status or identified quality) and minimising impacts on and providing net gains for biodiversity and by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Paragraph 175 states that when determining planning applications, local planning authorities should refuse development which that would result in significant harm to biodiversity if this cannot (as a last resort) be compensated for.

61. The National Planning Practice Guidance for Minerals (the Minerals PPG) includes further guidance on the restoration and aftercare of mineral sites. It reinforces the desirability of ensuring that land is reclaimed at the earliest opportunity and that high quality restoration and aftercare of mineral sites takes place. Amongst other things, it states that separate planning permission is likely to be required for most forms of after-use except agriculture and forestry, nature conservation and informal recreation which does not involve substantial public use.
62. The restoration of mineral sites to the highest possible standard to sustainable after-uses that benefit the Kent community economically, socially or environmentally and, where possible, with after-uses which conserve and improve local landscape character and incorporate opportunities for biodiversity is one of the strategic objectives of the Kent Minerals and Waste Local Plan (MWLP) and is consistent with its spatial vision. The key restoration, aftercare and after-use requirements for mineral sites are set out in Policy DM19 of the Kent MWLP. Policy DM19 states that satisfactory provision should be made for high standards of restoration and aftercare such that the intended after-use of the site is achieved in a timely manner and that restoration plans should be submitted with the planning application which reflect the proposed after-use and include appropriate details. These include: a site-based landscape strategy for the restoration scheme; the key landscape and biodiversity opportunities and constraints ensuring connectivity with surrounding landscape and habitats; the geological, archaeological and historic heritage and landscape features and their settings; consideration of land stability after restoration; details of the proposed final landform; types, quantities and source of soils or soil making materials to be used; proposals for meeting targets or biodiversity gain; planting of new native woodlands; details of the seeding of grass and planting of trees, shrubs and hedges; and a programme of aftercare to include details of vegetation establishment, vegetation management and biodiversity habitat management. It also states that aftercare schemes should incorporate an aftercare period of at least five years.
63. Policy DM1 of the Kent MWLP supports sustainable development and states that proposals will be required to demonstrate that they have been designed to protect and enhance the character and quality of the site's setting and its biodiversity interests or

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mitigate and if necessary compensate for any loss and minimise the loss of Best and Most Versatile Agricultural Land. Policy DM2 states that proposals for minerals development will be required to ensure that there is no unacceptable adverse impact on the integrity, character, appearance and function, biodiversity interests, or geological interests of sites of international, national and local importance. Policy DM3 states that proposals for minerals development will be required to ensure that it results in no unacceptable adverse impacts on Kent's important biodiversity assets (such as European and nationally protected species and habitats and species of principal importance for the conservation of biodiversity / Biodiversity Action Plan habitats and species). It also states that proposals that are likely to have unacceptable adverse impacts upon important biodiversity assets will need to demonstrate that an adequate level of ecological assessment has been undertaken and will only be granted planning permission following: (1) an ecological assessment of the site, including preliminary ecological appraisal and, where likely presence is identified, specific protected species surveys; (2) consideration of the need for, and benefits of, the development and the reasons for locating the development in its proposed location; (3) the identification and securing of measures to mitigate any adverse impacts (direct, indirect and cumulative); (4) the identification and securing of compensatory measures where adverse impacts cannot be avoided or mitigated for; and (5) the identification and securing of opportunities to make a positive contribution to the protection, enhancement, creation and management of biodiversity.

64. Policy DM4 of the Kent MWLP states that proposals for minerals and waste development within the Green Belt will be considered in light of their potential impacts, and shall comply with national policy and the NPPF. Policy DM10 states that planning permission will be granted for minerals development where it would not result in the deterioration of physical state, water quality or ecological status of any water resource and water body (including rivers, streams, lakes and ponds), have an unacceptable impact on groundwater Source Protection Zones (SPZs) or exacerbate flood risk. Policy DM17 states that planning obligations will be sought where appropriate, to achieve suitable control over, and to mitigate and / or compensate for, the effects of minerals development where such objectives cannot be achieved by planning conditions and that matters to be covered by such planning obligations may include long term management and monitoring of mitigation or compensation sites and their protection from further development.
65. These issues are also addressed in so far as they relate to development more generally in the adopted and emerging policies of the Tonbridge and Malling and Tunbridge Wells Local Plans referred to in paragraphs 18 to 22, 25 and 26 above. The draft policies in the Early Partial Review of the Kent MWLP and the Kent Mineral Sites Plan (referred to in paragraphs 23 and 24 above) are of no direct relevance in this case.
66. In approving the Revised Restoration Scheme and associated Aftercare Scheme in 2014, KCC has already determined them to be acceptable. The issue now is whether the proposed amendments are themselves acceptable.

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67. As noted in paragraph 12 above, the further revised restoration scheme submitted in June 2019 sought approval for the restoration that had been undertaken in 2016. However, the June 2019 scheme was considered to be unacceptable for a number of landscape and ecological related reasons which are referred to in paragraph 13 above. The changes proposed in December 2019 reintroduced some of the elements of the 2014 restoration scheme (which had been removed) and served to reduce the difference between the approved and proposed schemes. The main differences remaining between the two were the inclusion of an additional pond to the north of the main arable restoration area (the former balancing pond), the retention of open water with wet woodland margins (as opposed to reedbed) in the former silt disposal area (to reflect the reality on the ground), the retention of recolonising grassland and wet woodland scrub on the south eastern margins of the eastern lake (as opposed to an extension to the adjoining arable land) and the introduction of reedbed to the northern end of the western lake once regrading works have been undertaken. Other more detailed differences include the precise location and extent of some of the proposed planting (some is replaced by trees and other vegetation which have recolonised naturally), the retention of an existing hedgerow sub-dividing the main arable area (as opposed to the planting of a new hedgerow about 100m further west), the retention of some former soil stockpiles (where their removal would be likely to significantly affect the natural regeneration which has occurred since their placement) and the provision of steeper bank profiles in places in the main lake (to avoid the removal of further vegetation which has regenerated naturally). The amount of land restored to agricultural use would also be reduced by about 3.11ha.
68. In considering any changes to the approved 2014 restoration scheme it is important to note that the ability to significantly alter the restoration associated with the main lake at the eastern end of the site (including the causeway) is limited by the presence of the aquifer (SPZ1 and 2) which prevents the placement of restoration materials against the lake edges. It should also be noted that requiring significant changes more generally would also be likely to further disturb the site (including the natural regeneration that has occurred and restoration and planting already undertaken).
69. The proposed restoration scheme (as amended in December 2019) is supported by KCC's Landscape Consultant for the reasons set out in paragraph 34 above and I concur with its opinion.
70. KCC Ecological Advice Service is also satisfied in principle although it would prefer to see a preliminary ecological appraisal (PEA) submitted prior to determination to enable all potential protected species impacts to be taken into consideration and for the relative ecological benefits and impacts of removing the bund / edge protection banks associated with the central causeway to be weighed up. However, it has also advised that if this is not possible, the matter should be addressed by the imposition of a condition requiring the submission of a method statement for the protection of biodiversity informed by an up to date PEA and (as necessary) protected species surveys for KCC's written approval before the works take place and for the method statement to be implemented as approved thereafter. Given that the works could take place under the terms of the approved 2014 restoration scheme without the need for such a submission, as compliance with the Wildlife and Countryside Act 1981 would

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still be necessary and as the applicant has advised that it is currently unable to access the site to undertake a PEA or other surveys, I am content with this approach. In the event that the PEA demonstrates that the works on the causeway should not proceed as proposed for ecological reasons further changes to the restoration scheme may be necessary.

71. TWBC's Landscape and Biodiversity Officer has suggested that further consideration be given to securing public access and involvement, longer term management and floating islands. Whilst these are good ideas in principle, and would merit detailed consideration if a new planning application for mineral working were being considered, I do not consider them to be reasonable or justified in this case. The mineral permission does not require public access nor management of the site beyond the 5-year aftercare period. Both of these would require the agreement of the applicant and landowner and need to be subject to legal agreement. The desirability of floating islands is something which could be considered outside the scope of the mineral permission and the current proposal.
72. Although the landowners have stated that the proposal may adversely impact on the future sustainability of the farm, no specific evidence has been presented to support this assertion. No details have been included as part of the current submission as to the quality of the land prior to mineral working or since the restoration undertaken in 2016. However, information provided as part of the ROMP application in 2005 indicated that the land prior to mineral working was shown as undifferentiated Grade 3 land on the Agricultural Land Classification Map and of generally average agricultural quality. That part of the permitted mineral site to the south of the main lake, which it is understood was better quality Grade 2 agricultural land, was not worked and was therefore not directly affected. Since it is unclear whether the Grade 3 land which was affected by mineral working fell within sub-Grade 3b it is not possible to say whether it was Best and Most Versatile (BMV). On that basis, I am unable to conclude that there would be a loss of BMV agricultural land. Similarly, no assessment has been made of the impact of the planting being in slightly different places than approved in 2014 nor of the implications of the existing hedgerow sub-dividing the main arable area being retained as opposed to the planting of a new hedgerow about 100m further west. Any disbenefits that may arise need to be considered in the context of the ecological benefits associated with what is now proposed.
73. Any of the other deficiencies alleged by the landowners to have occurred with the restoration that was undertaken during or prior to 2016 (such as the quality of the restoration itself and whether it was all completed) do not directly impact on the acceptability or otherwise of what is now proposed and the planning considerations for the current application. These alleged deficiencies fall to be considered in terms of compliance with the Restoration Scheme and Aftercare Scheme approved in 2014 (or, if approved, the restoration scheme now proposed). These are matters that can be pursued and addressed independently as necessary, although it is complicated by the ongoing dispute between the applicant and landowners.

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Conclusion

74. Having regard to consultee responses and all relevant issues, I am satisfied that there is no reason not to approve the proposed revised restoration scheme subject to the imposition of a condition to secure the submission of a method statement for the protection of biodiversity informed by an up to date PEA and (as necessary) protected species surveys for KCC's written approval before the works take place and for the method statement to be implemented as approved. If approval is given it will ultimately be for the landowners to decide whether the revised scheme is implemented or if they would prefer to rely on that approved in 2014. The dispute between the landowners and applicant is a matter for them to resolve (through the courts as necessary) and only once that has happened is it likely that there will be certainty on the form of the final restoration at the site. Until that time, I do not consider it desirable for KCC to take action to require further works on site.

Recommendation

75. I RECOMMEND that the application BE APPROVED SUBJECT TO a condition to secure the following:
- No further works taking place (including ground works and vegetation clearance) until a method statement for the protection of biodiversity has been submitted to and approved in writing by KCC. The method statement, which shall be informed by an appended up-to-date preliminary ecological appraisal (PEA) and (as necessary) protected species surveys, shall be implemented as approved.

And the following informative:

- You are advised that if the PEA and protected species surveys indicate that some or all of the further works are ecologically unacceptable, it will be necessary for the restoration scheme to be revisited and further revised.

Case Officer: Jim Wooldridge

Tel. no. 03000 413484

Background Documents: see section heading.

Appendix 1 to Item C1

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See separate Appendix 1 which contains the following drawings that are referred to in this report:

- Drawing number P2/886/5 titled “Final Restoration” (dated January 2005).
- Drawing number P2/886/10 titled “Site Plan for Recharge Lagoon” (dated August 2005).
- Drawing number P2/886/8F titled “Phase drawings – Removal of bunds and creation of lake” (dated June 2005).
- Drawing number P2/886/5/D titled “Final Restoration” (dated October 2014).
- Drawing number P2/886/13 titled “Detail Restoration Sections” (dated March 2014).
- Drawing number P2/886/5/G titled “Final Restoration” (dated July 2019).
- Drawing number P2/886/5/H titled “Final Restoration” (dated December 2019).