PLANNING / LAWFUL DEVELOPMENT STATEMENT with regards to

Land at Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

Creation of earth bund substantially completed for more than 4 years prior to the service of Enforcement Notice **EN/22/0032 served on 12th September 2023**

I am instructed by Z Property Development who have recently bought the property. They are keen to work with the Council to bring this matter to a resolution. My clients are grateful for the Council letter at APPENDIX 1 extending the compliance period. It is my understanding that there has been further communication with the Council further extending the compliance period.

Executive summary

The evidence through aerial photo analysis contained within this statement confirms that on the balance of probabilities the bund was 87% substantially completed by September 2019.

The height of that 87% length of the bund has remained the same.

87% of the length of the bund shown on the enforcement notice equates to a distance of 126m out of a total length of 145m.

The last available aerial photo before the September 2019 immunity date is the September 2018 aerial photo. This photo shows that the bund is serving its purpose to retain the water.

It is noted that legal cases of this kind typically rely on dictionary definitions or what the layman would understand to be the case.

The 2009 aerial photo prior to any earthworks clearly shows an area of wet land distinct from the fields around. That area of wet land relates clearly to the extent of lake that is evident in the latest 2022 aerial photo.

The September 2012 shows the commencement of works. The subsequent aerial photos shows that it was clearly the intent of the occupier of the land to create a lake with an earth bund running from the north continuing south to form the eastern bank of the lake.

Prepared by – Phil Rowe, BA HONS, BTP Planning

PROwe Planning Solutions

Dictionary
Definitions from Oxford Languages · Learn more

substantial
/səbˈstanʃl/

adjective

1. 1. **of considerable** importance, **size,** or worth.

People also ask:

What is the meaning of substantial completion?

Substantial completion is the stage when a construction project is deemed sufficiently completed to the point where the owner can use it for its intended purpose. This definition of substantial completion is based on the language in the American Institute of Architects form contract AIA A-201: General Conditions.21 May 2019

Substantial Completion vs Final Completion: Learn the ...

vertexeng.com

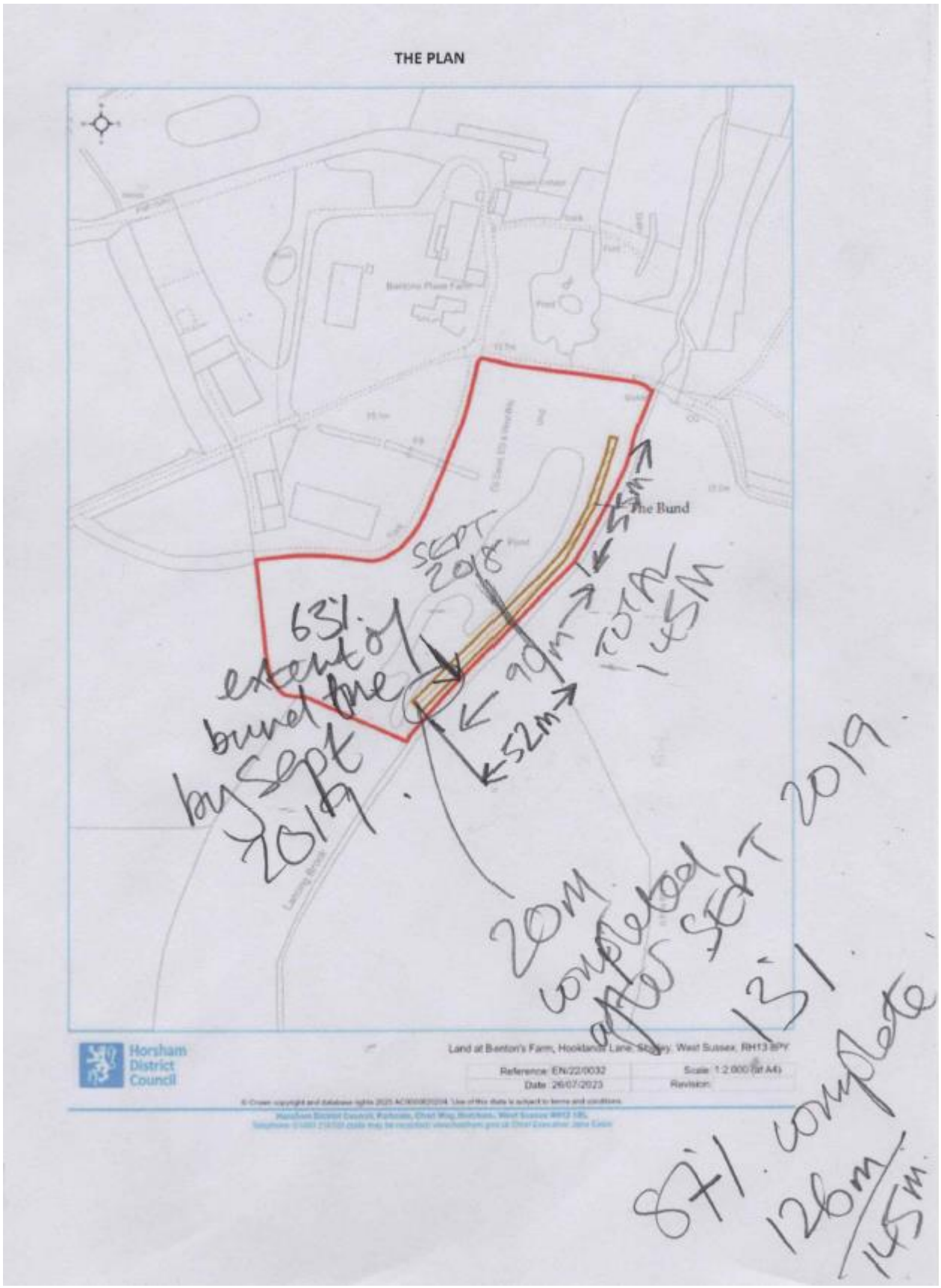
https://vertexeng.com › Insights

What is substantial completion in the UK?

Privately-owned construction, it occurs when the contractual conditions for completion of the construction obligations have been met and the owner is able to take possession **or assume beneficial use and occupancy of the project.**

What is the difference between practical completion and substantial completion?

Substantial Completion occurs when a project is usable or occupiable, **even if minor works remain unfinished.** Practical Completion, on the other hand, means the project is fully functional for its intended purpose, with only minor defects.


THE PLAN
The Bund
SEPT 2018
63m extent of bund to be by Sept 2019.
90m
52m
TOTAL 145M
20m completed after SEPT 2019.
131.
87m complete
126m
145m
Horsham District Council
Land at Benton's Farm, Hookland Lane, Slinfold, West Sussex, RH13 8PY
Reference: EN/22/0032
Date: 26/07/2023
Scale: 1:2,000 (at A4)
Revision:

The extracts from the Enforcement Notice are included below. The evidence contained within this Planning statement confirms on the balance of probability that the bund was substantially complete prior to 11th September 2019.

- **Without planning permission, the deposit of material including hardcore and rubble to form a bund in the approximate position shown hatched brown on the attached plan**

Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

Ref. No: EN/22/0032 | Received: Mon 24 Jan 2022 | Status: Notice Issued

It is our understanding that no appeal was lodged against the Enforcement Notice.

Legal advice has been obtained to confirm that despite the absence of an appeal it is still possible to obtain a Lawful Development Certificate provided sufficient evidence exists.

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

ENFORCEMENT NOTICE

Operational development

Issued by: HORSHAM DISTRICT COUNCIL ("the Council")

Reference number: EN/22/0032

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control within paragraph (a) of section 171A(1) of the above Act, at the land described below. The Council considers that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

   Land at Benton's Place Farm, Hooklands Lane, Shipley, Horsham, West Sussex, RH13 8PY, shown edged red on the attached plan ("the Land").

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

   Without planning permission, the deposit of material including hardcore and rubble to form a bund in the approximate position shown hatched brown on the attached plan.

4. **REASONS FOR ISSUING THIS NOTICE**

   (1) It appears to the Council that the above breach of planning control has occurred within the last four years. The site lies within the floodplain of Lancing Brook in an area identified as land at risk of flooding by the Environment Agency falling within Flood Zones 2 and 3.

   (2) The unauthorised development comprises the deposit of inert material to form a bund along the eastern perimeter of the field adjacent to Lancing Brook. The unauthorised development results in an increased risk of flooding elsewhere because the floodplain capacity has been reduced through the construction of the bund. All development that proposes works within Flood Zone 3 requires a Flood Risk Assessment (FRA). However, no such FRA has been submitted and insufficient information has provided to demonstrate that the development would not have a detrimental impact on the flood flow pathway along the Lancing Brook valley, increasing the risk

of flooding elsewhere. Therefore, it is considered the unauthorised development is contrary to the advice contained in paragraphs 167 and 168 of the National Planning Policy Framework and Policies 35 and 38 of the Horsham District Planning Framework 2015 concerning Climate Change and reducing the risk to flooding.

(3) In addition, the unauthorised development results in an unnatural feature in the landscape which neither protects, conserves or enhances the landform of the area. It is therefore considered to have a detrimental impact on the character and appearance of the surrounding area contrary to policies 25, 26 and 33 of the Horsham District Planning Framework 2015. The Council does not consider that planning permission should be granted, because planning conditions could not overcome these objections to the unauthorised development.

5. WHAT YOU ARE REQUIRED TO DO

(i) Remove the bund shown hatched brown on the attached plan from the Land;

(ii) Following (i) above, restore the Land to its original condition before the unauthorised development took place by levelling the ground to match the level of the Land either side of the unauthorised development and sow it with grass seed; and

(iii) Remove the resulting debris from the Land.

6. TIME FOR COMPLIANCE

Within six (6) calendar months from the effective date of this notice.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 18th October 2023 unless an appeal is made against it beforehand.

Dated: 12 September 2023

[redacted]

Lauren Kelly

Head of Legal and Democratic Services and Monitoring Officer on behalf of Horsham District Council, Parkside, Chart Way, Horsham, West Sussex RH12 1RL

Nominated officer: Reg Hawks

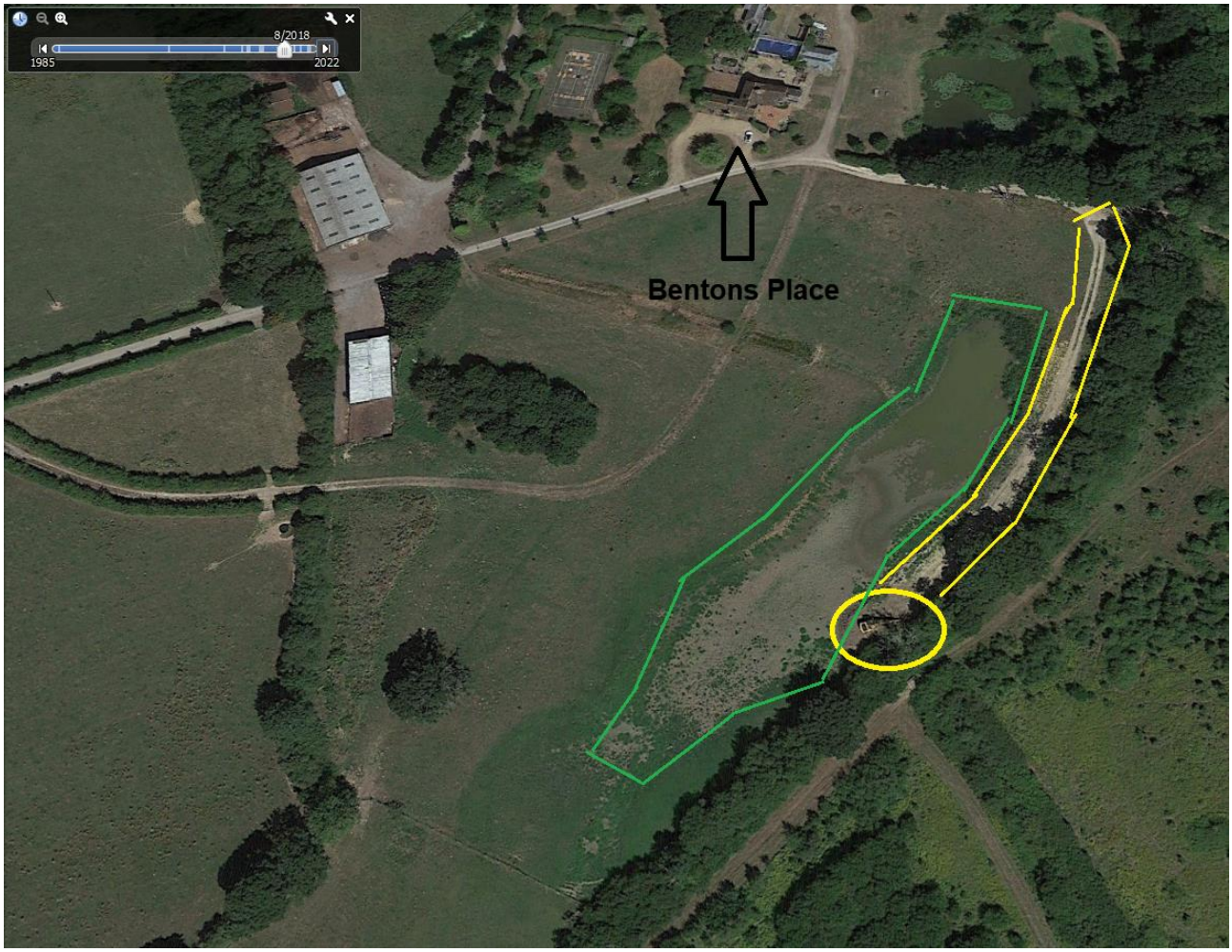
Telephone number: 01403 215076

THE PLAN



Prepared by – Phil Rowe, BA HONS, BTP Planning

PROwe Planning Solutions



Above - Aerial photo September 2018

Below – Zoomed in



Above - September 2018 - Zoomed in

4 year date for Enforcement Notice substantial completeness immumity September 2019.

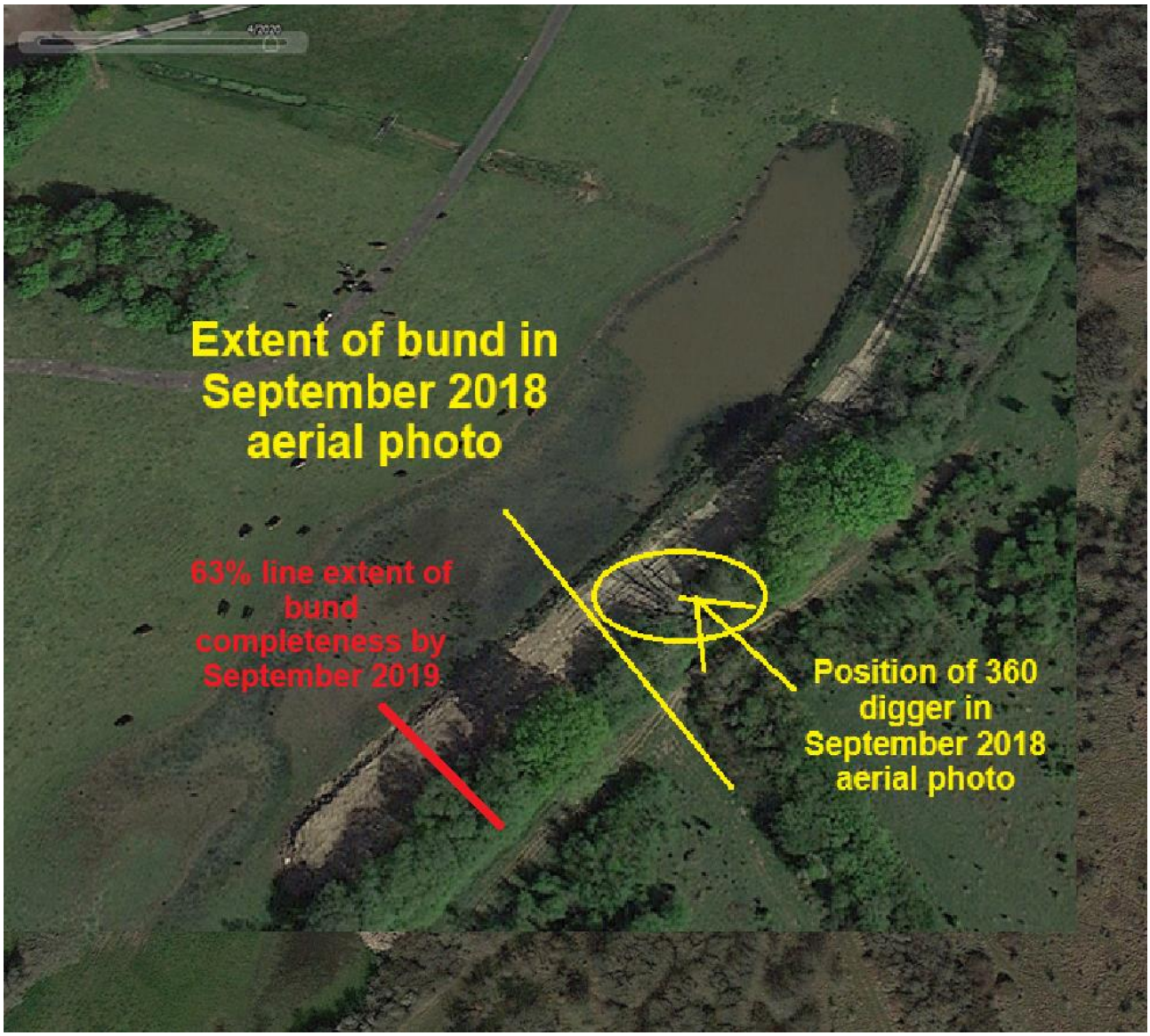
19 months difference between the dates of September 2018 and April 2020 aerial photos.

Based on the continuous progress of lengthing the height of the bund, on the

Prepared by – Phil Rowe, BA HONS, BTP Planning

PROwe Planning Solutions

balance of probabilities, it is reasonable to assume that by the September 2019 immunity date the bund had progressed a further 63% in length.



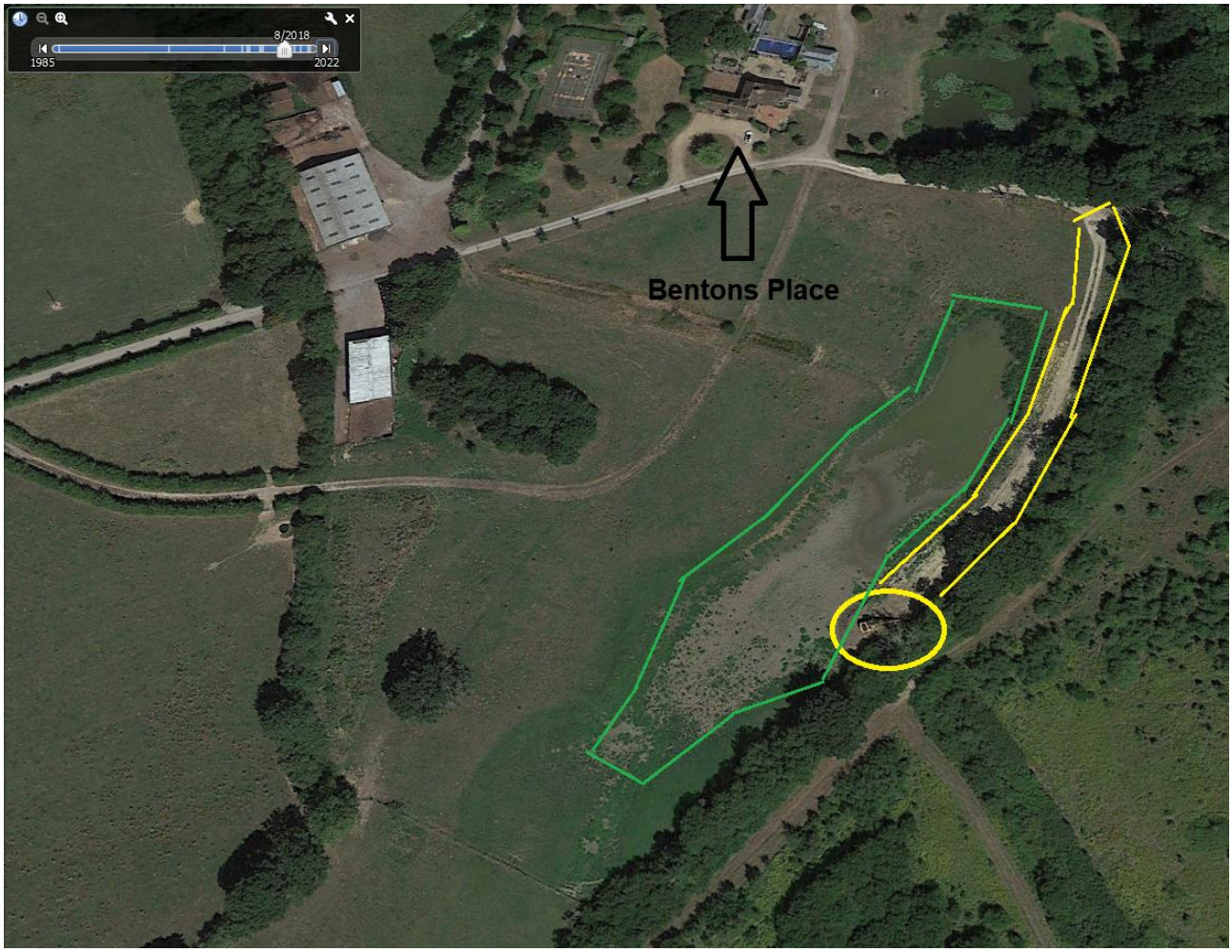
Above – April 2020 - Zoomed in



Above - Aerial photo April 2020



Above - Aerial photo February 2021



Above - Aerial photo September 2018

No aerial photos exist on Google Earth between September 2015 and August 2018.

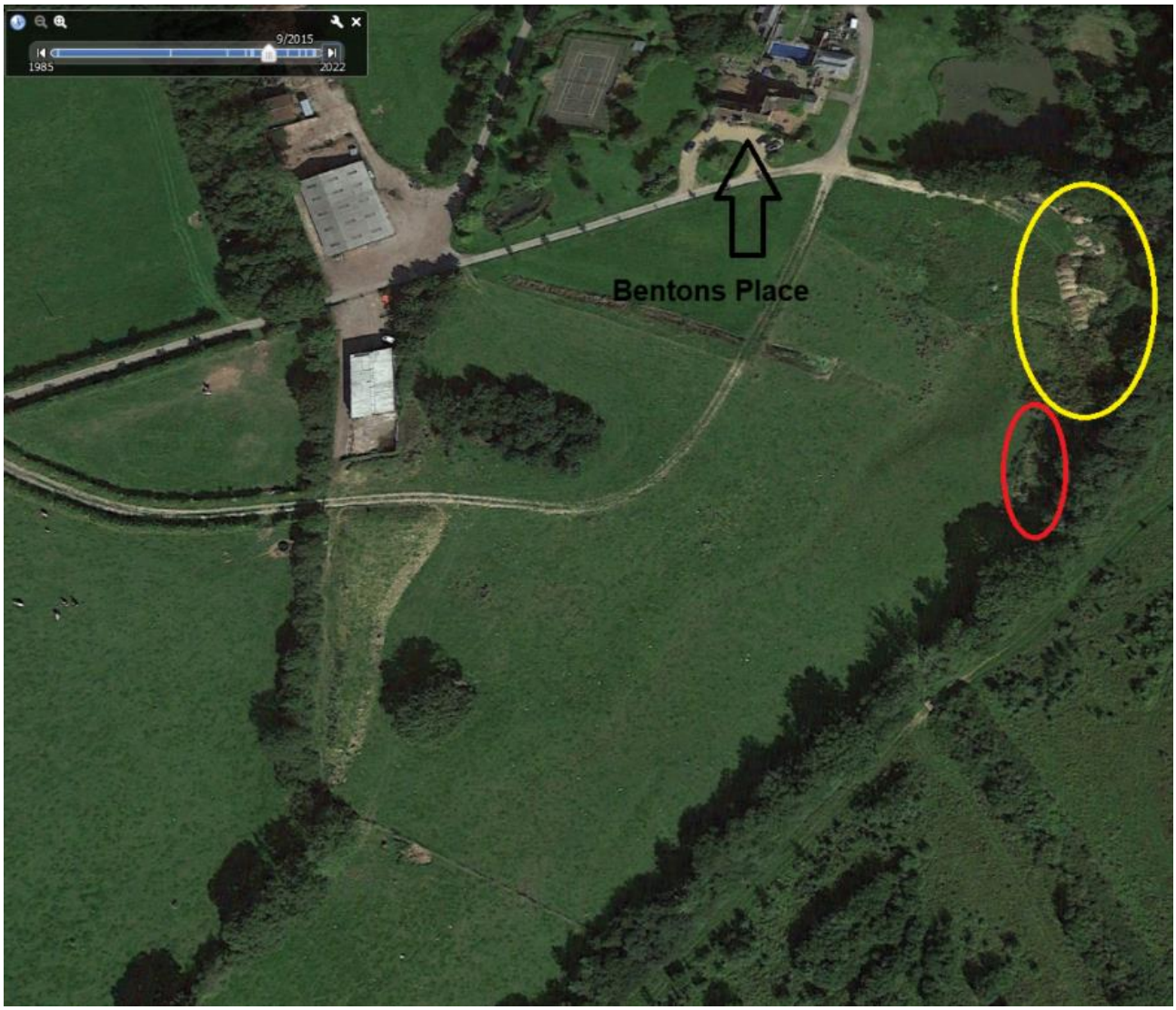
Record of enforcement investigation:

- **Importation of soil.**

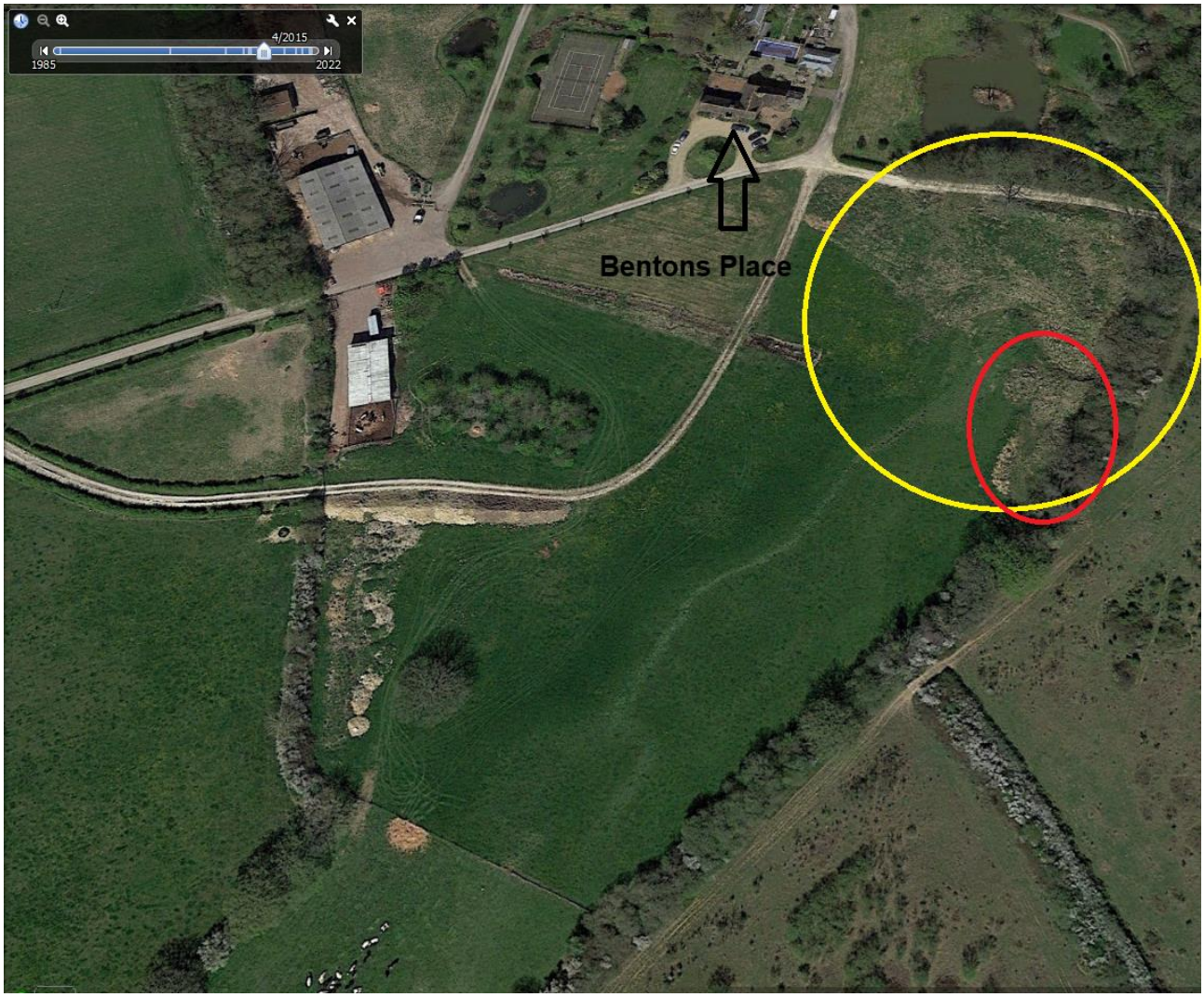
Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

Ref. No: EN/17/0480 | Received: Mon 25 Sep 2017 | Status: Case Closed

COMMENT – Enquiries have been made to the Council's enforcement department to ascertain any sites notes, photos that were taken and why the case was closed. Despite chasing no response has been received.

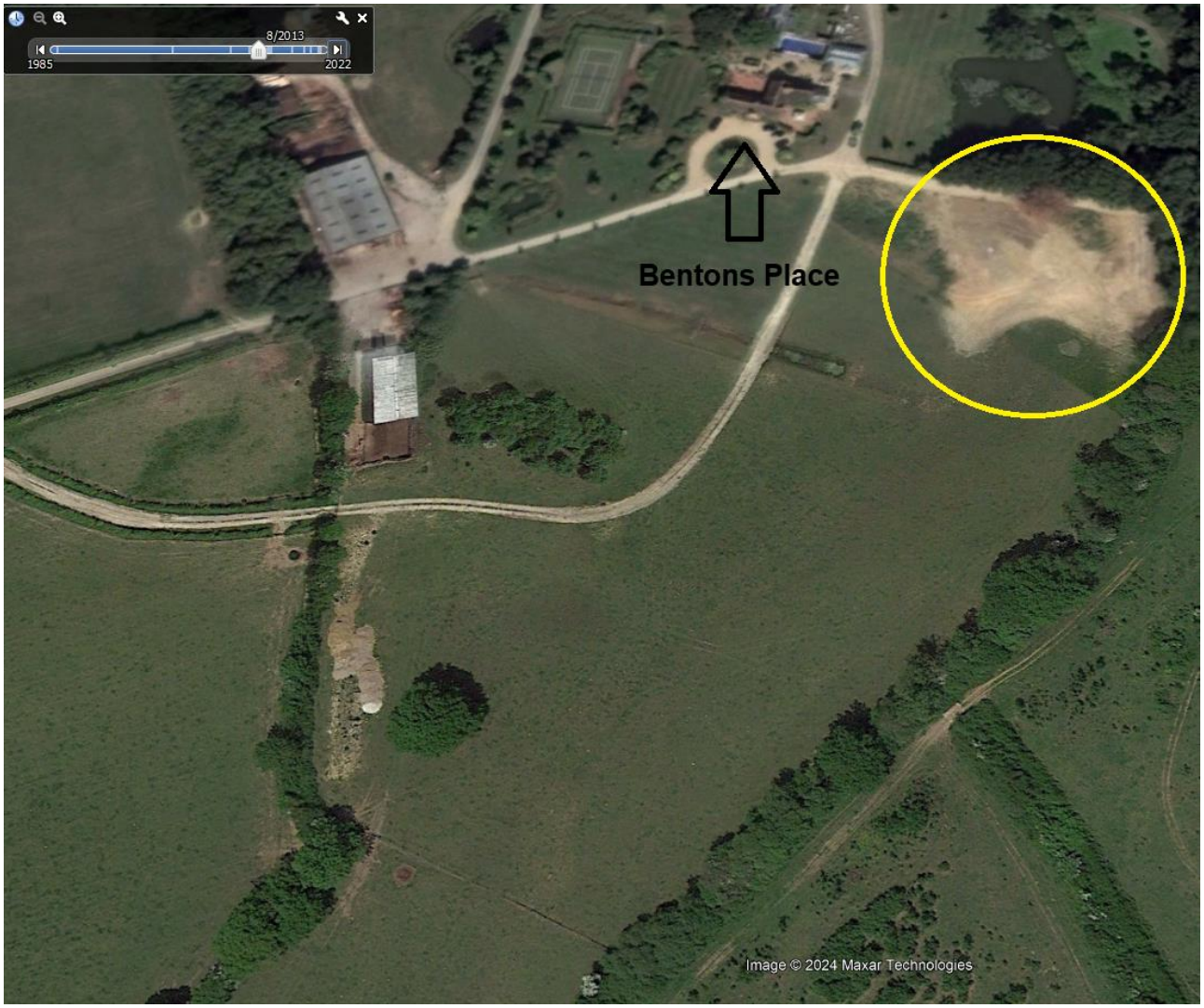


Aerial photo September 2015



Above - Aerial photo April 2015

This aerial photo shows the further bunding of material to the south within the area circled red. There is no ambiguity in this aerial photo that it was the occupiers intention to continue with importing further inert material to form the eastern bund to create a lake. The northern end of the section of bund within the enforcement notice plan includes the section outlined red. The enforcement notice plan excludes any of the importation of piles of inert material shown prior to the 2013 aerial photo below.



Above - Aerial photo August 2013

This photo shows earth works increasing, that the piles in the June 2013 photo below have been spread with land levels both in area and also starting to extend southwards.

Piles of fresh inert material are evident in the photo along with plant vehicle tracking lines.

Record of enforcement investigation:

The three records of enforcement investigations listed below (EN/13/0458, EN/13/0336 and EN/13/0155) are all within 2013. All three cases were closed with two confirming no breach.

- **Importation of soil**

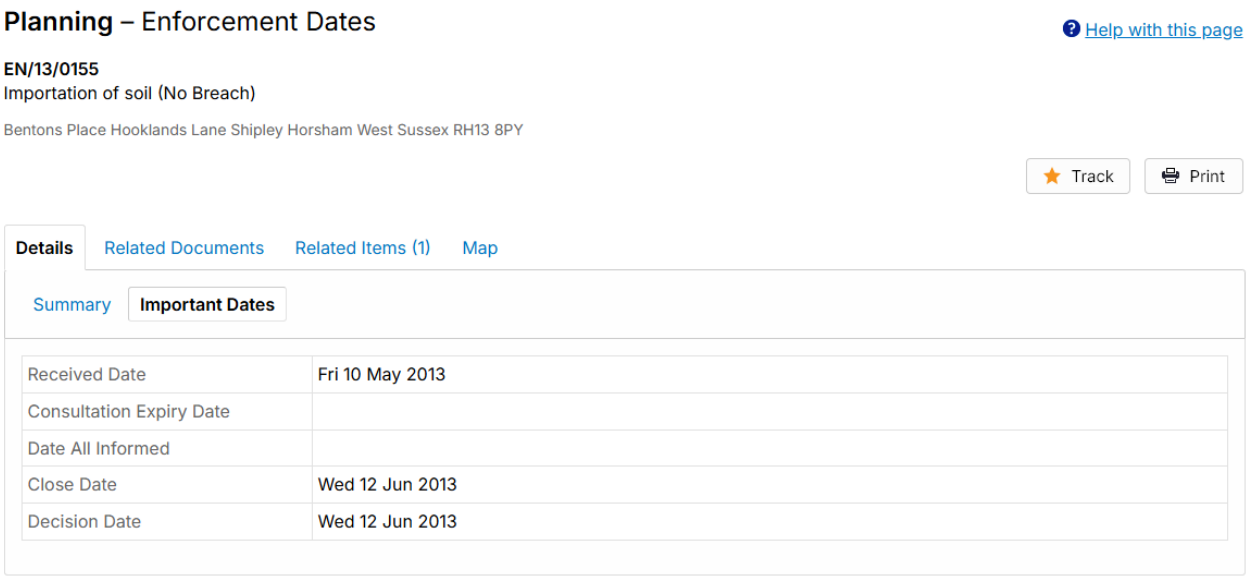
Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

Ref. No: EN/13/0458 | Received: Wed 16 Oct 2013 | Status: Case Closed

- **Engineering operations (No Breach)**

Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

Ref. No: EN/13/0336 | Received: Mon 12 Aug 2013 | Status: Case Closed



Planning – Enforcement Dates

Help with this page

EN/13/0155
Importation of soil (No Breach)

Bentons Place Hooklands Lane Shipley Horsham West Sussex RH13 8PY

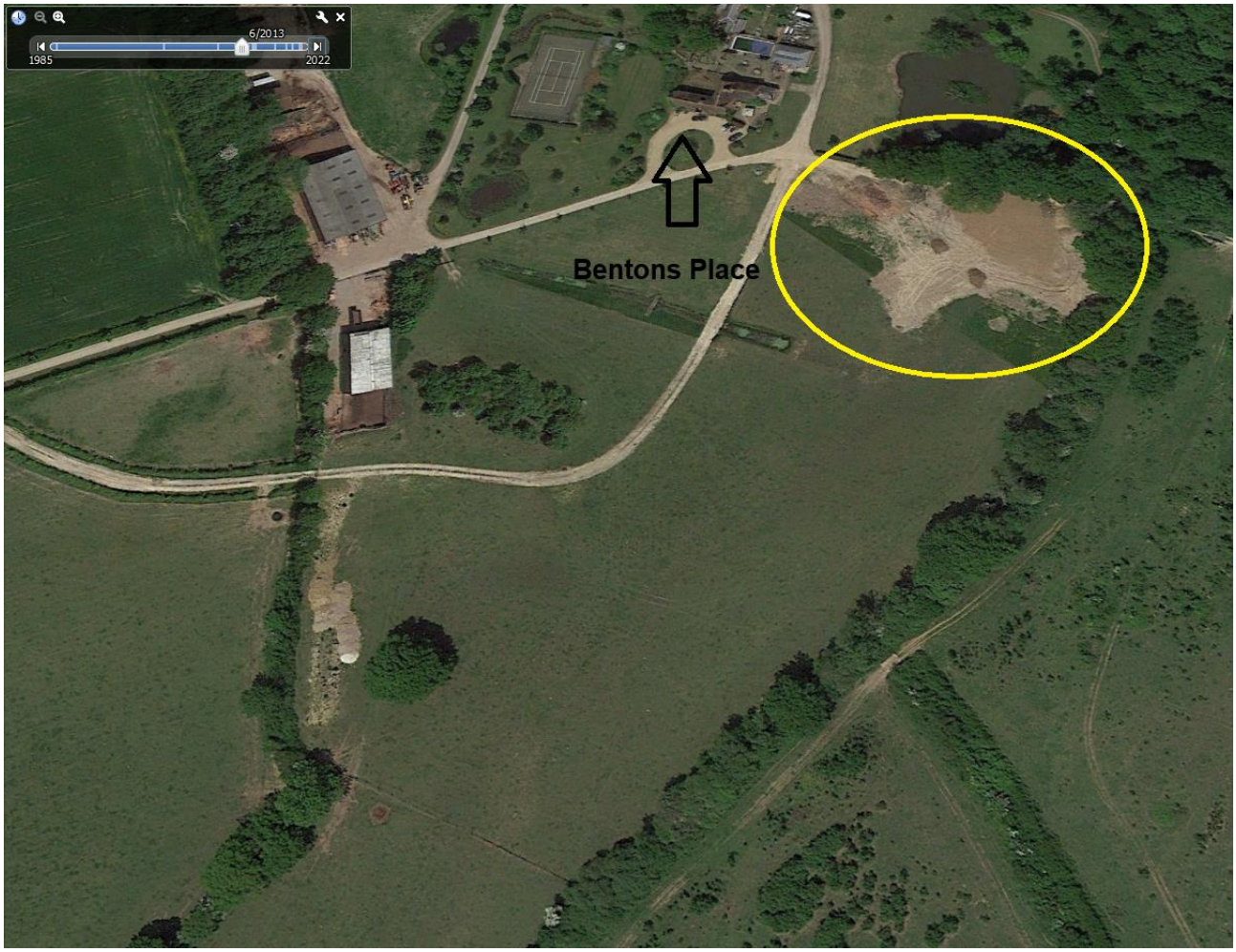
Track Print

Details | Related Documents | Related Items (1) | Map

Summary | **Important Dates**

Received Date	Fri 10 May 2013
Consultation Expiry Date	
Date All Informed	
Close Date	Wed 12 Jun 2013
Decision Date	Wed 12 Jun 2013

COMMENT – Enquiries have been made to the Council's enforcement department to ascertain any sites notes, photos that were taken and why the case was closed. Despite chasing no response has been received.



Above - Aerial photo June 2013

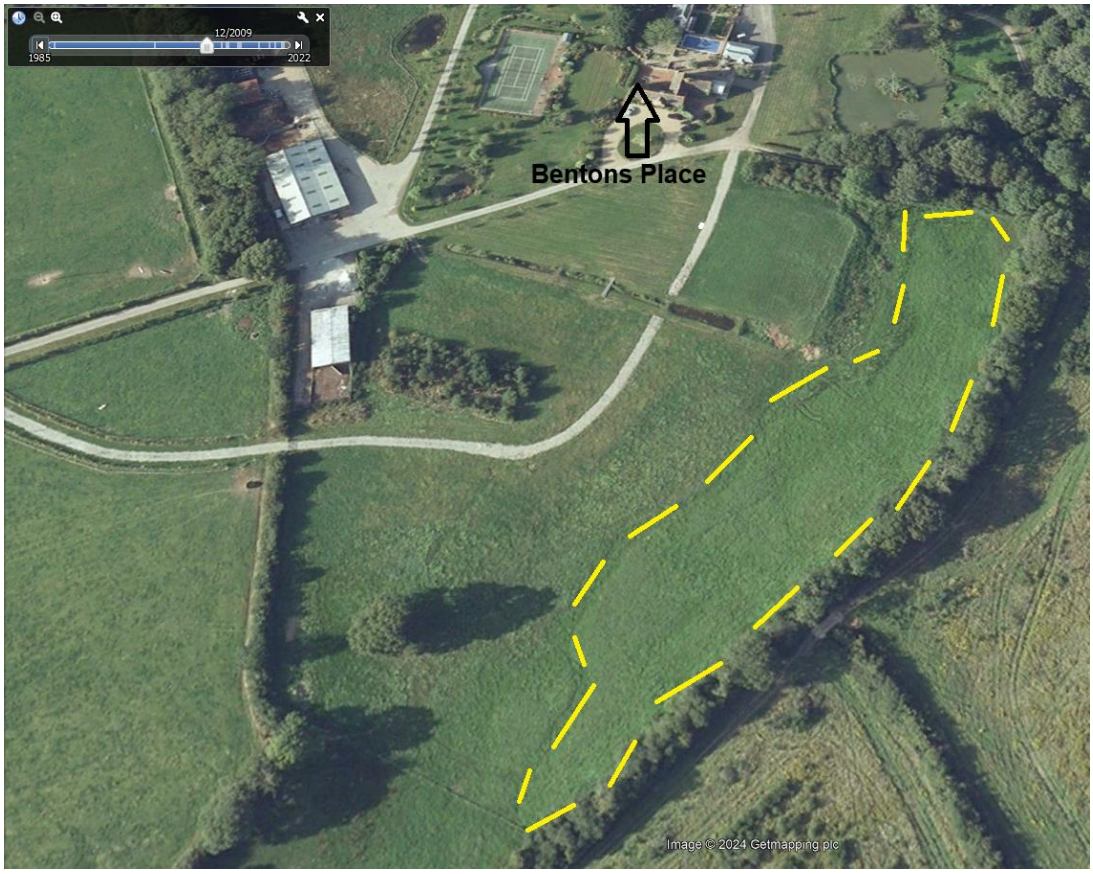
This photo shows earth works increasing land levels both in area and also starting to extend southwards.

Piles of fresh inert material are evident in the photo along with plant vehicle tracking lines.



Above - Aerial photo September 2012

This photo is the first that shows earth works increasing land levels at the northern end of what would become the lake. Piles of material and plant and machinery are evident in the photo



Above - Aerial photo December 2009

The evidence contained within this statement has been prepared in accordance with the guidance on Lawful Development Certificates contained within Circular 10/97 particularly paragraphs 8.12 and 8.15 which states, “As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

To sum up there appears to be no ambiguity that the earth bund referred to in the Enforcement Notice had been substantially complete and in situ for in excess of 4 years and importantly **was substantially complete prior to 11th September 2019.**

APPENDIX 1

Horsham District Council

Legal Department

BY FIRST CLASS AND RECORDED DELIVERY

[redacted]

EN ref: EN/22/0032

Our ref: CT/11719

Email: [redacted]

Telephone: 01403 215157

Date: 8th April 2024

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) s173A NOTICE OF VARIATION OF ENFORCEMENT NOTICE RELATING TO LAND AT BENTONS PLACE FARM, HOOKLANDS LANE, SHIPLEY, HORSHAM, WEST SUSSEX, RH13 8PY

EXTENSION TO THE PERIOD FOR COMPLIANCE WITH THE ENFORCEMENT NOTICE

Horsham District Council (the Council) issued an Enforcement Notice ('Notice') relating to the above land on 12th September 2023 with reference number EN/22/0032. This Notice took effect on 18th October 2023 and requested compliance within six (6) calendar months from the effective date of the notice, i.e. by 18th April 2024.

As a result of a recent prolonged heavy rainfall over the winter period and into the Spring, ground conditions are such that there is virtually no prospect of the bund being removed before the original deadline of 18th April 2024. Further, the Council understands that the previous landowner's company has gone into receivership. The Council therefore acknowledges that it would not be reasonable to expect compliance with the Notice by the expected date and has decided to exercise its powers under Section 173A of the Town and Country Planning Act 1990 to extend the period by which the Notice needs to be complied with to **18th October 2024**.

A copy of the Notice being varied is enclosed for ease of reference.

Please note that the Notice served on your property remains effective and has not been withdrawn. This letter dated 8th April 2024 serves as notice given to you as required by s173A that the Council has exercised its powers to extend the period for compliance specified in the Notice.

Parties on whom the Notice has been served and to whom confirmation to extend the compliance period on the Notice is now sent are as follows:-

[redacted]

Horsham District Council, Parkside, Chart Way, Horsham, West Sussex RH12 1RL
Telephone: 01403 215100 (calls may be recorded) horsham.gov.uk Chief Executive – Jane Eaton

[redacted]

Yours sincerely,

[redacted]

Legal Assistant
For Head of Legal and Democratic Services

Enc: *Enforcement Notice originally issued on 12th September 2023*