

E/0054/06/13

EARTH BUND BEING CONSTRUCTED ALONGSIDE BACK STREAM, BISHOPS LYDEARD

OCCUPIER:

OWNER: MR J RAUCKI
26 CHURCH STREET, BISHOPS LYDEARD, TAUNTON
TA4 3AT

PURPOSE OF REPORT

To consider whether it is expedient to serve an Enforcement Notice requiring the removal of the earth bank along the stream and the bank along the northern boundary of the agricultural land at Lime Tree Farm, Bishops Lydeard.

RECOMMENDATION

The Solicitor to the Council be authorised to serve an Enforcement Notice and take Prosecution action subject to sufficient evidence being obtained that the Notice is not complied with.

The Enforcement Notice shall require:-

- the removal of the earth bank along the stream and the bank along the northern boundary of the agricultural land at Lime Tree Farm, Bishops Lydeard . (Refer to plan attached).

Time for compliance - 1 month from the date of the notice coming into effect.

SITE DESCRIPTION

Lime Tree Farm is situated on the east side of Bishops Lydeard, at the end of Lydeard Mead. The site is a well established builders yard, with trees along the northern boundary, open fields to the south and west and a stream abutting the site to the south.

BACKGROUND

A complaint was brought to the Council's attention in March 2013. Investigations were carried out and it was established that the bank which had been constructed along the stream was in two different ownerships. Contact was made with both owners and planning applications were submitted in an attempt to regularise the situation in May, but were unable to be validated as documents were missing. Both applications were subsequently validated and refused (see Planning History)

DESCRIPTION OF BREACH OF DEVELOPMENT CONTROL

Two earth embankments have been constructed, one bank is formed along the northern boundary of the agricultural land, between land within the ownership of the

builders yard and the neighbouring land, in separate ownership. The other bank is formed alongside the stream to the west of the agricultural land. Both of the banks, as viewed on site, are approximately 1 metre in height.

The construction of the banks is considered to be an engineering operation that amounts to development (as set out in Section 55 of the Town and Country Planning Act 1990). No permitted development rights exist which would allow the works, nor do the benefit from the express grant of planning permission. The works are therefore a breach of planning control .

RELEVANT PLANNING HISTORY

Planning permission was refused for residential development on the site in October 2002 (ref: 06/00/0027) and this was dismissed at appeal in June 2003.

A further application for 7 dwellings was subsequently refused in September 2004 (ref: 06/04/0025).

Planning permission was granted in December 2010 by committee for the erection of a replacement builders store with office accommodation (ref: 06/10/0045), which has since been constructed.

Retrospective planning permission was refused for the creation of the earth banks on 19th August 2013 due to the potential for altering water flows in the functional flood plain and their unnatural appearance in landscape.

RELEVANT PLANNING POLICES

National Planning Policy Framework

Paragraph 207
Section 10

Taunton Deane Borough Council Core Strategy 2011-2028

DM1 – General Requirements
CP8 – Environment

DETERMINING ISSUES AND CONSIDERATIONS

Paragraph 100 of the National Planning Policy Framework requires the safeguarding of land from development that is required for current and future flood management. The site falls within Flood Zone 3 (High Risk Area) and the agricultural land, on which the earth banks have been constructed, forms a fundamental part of the functional flood plain in times of flood. As a result of the creation of the earth banks, it is, on the balance of probability, highly likely that flood flows would be directed towards third party land. In the absence of a Flood Risk Assessment it can not be demonstrated that the creation of the earth banks do not lead to increased flood risk to neighbouring properties. Furthermore, no evidence has been submitted to demonstrate that the scheme does not result in an increased impact upon water quality, wildlife that may be using the site or their habitats. As such, the proposal is contrary to Policy CP8 of the Taunton Deane Core Strategy and Section 10 of the National Planning Policy Framework.

The earth banks are positioned on agricultural land that appears rural in nature. The earth banks do not appear as natural features and are considered to harm the natural landscape character of the river and the rural character of the countryside. As such, the proposal is contrary to Policies DM1 and CP8 of the Taunton Deane Local Plan.

It is therefore considered necessary to follow a precautionary principle and serve an enforcement notice that requires the removal of the earth banks and restore the functional floodplain back to its previous condition.

In preparing this report the Enforcement Officer has considered fully the Implications and requirements of the Human Rights Act 1998

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