

2 DCSW2003/2345/F - STABILISATION OF APPROX 90M OF BANK TO THE DULAS BROOK WITH GABIONS, TO PREVENT BANK EROSION, HORSECROFT, EWYAS HAROLD, HEREFORD, HR2 0EQ

**For: Herefordshire Housing, Thorn Business Park,
Unit 3, Rotherwas Industrial Estate, Hereford, HR2 6JT**

Date Received: 1st August 2003 Ward: Golden Valley South Grid Ref: 38735, 28566

Expiry Date: 26th September 2003

Local Member: Councillor J. B. Williams

1. Site Description and Proposal

- 1.1 The application site follows the southern bank of the Dulas Brook for a length of approximately 90 metres alongside the eastern boundary of the Horsecroft Estate, Ewyas Harold. The Dulas Brook is an important local watercourse about 5 metres wide along the application site, its banks varying in height between one and three metres. The depth of water varies seasonally, at drier times of the year shingle banks are exposed and there are clumps of water plants in places. Shrubby saplings and a few larger trees grow along the banks within the application area. Sections of the bank within and on the opposite bank to the application area have already been shored up with a variety of materials over the years.
- 1.2 The proposal is to instal gabions alongside the riverbank to prevent bank erosion. The gabions would be 2 or 3 metres high, dependant on bank height, one metre deep and filled with stones apart from the top 200mm which would be filled with soil. To ensure stability the gabions would be spiked into the existing river bed with one metre long galvanised spikes and battered back 10 degrees towards the bank. At four points gabions will be set on edge and built into the bank to give extra support. A further gabion would be dug into the bank where the Dulas Brook meets the minor brook to the south so that the flow of water would not be obstructed.

2. Policies

2.1 Planning Policy Guidance

- PPG.1 - General Policy and Principles
- PPG.9 - Nature Conservation
- PPG.25 - Development and Flood Risk

2.2 Hereford and Worcester County Structure Plan

- Policy CTC.2 - Protection of Area of Great Landscape Value
- Policy CTC.9 - Development Requirements
- Policy CTC.10 - Protected Species

2.3 South Herefordshire District Local Plan

- Policy GD.1 - General Development Criteria
- Policy C.8 - Development in Area of Great Landscape Value
- Policy C.13 - Sites of Importance to Nature Conservation Value

Policy C.16	-	Protection of Statutorily Protected Species and Habitats
Policy C.30	-	Open Land in Settlements
Policy C.44	-	Flooding
Policy C.45	-	Drainage
Policy C.46	-	Flood Alleviation
Policy C.47	-	Pollution Control

2.4 Unitary Development Plan – Deposit Draft

Policy S.2	-	Development Requirements
Policy DR.4	-	Environment
Policy DR.7	-	Flood Risk
Policy DR.8	-	Culverting
Policy NC.1	-	Environmental Survey
Policy NC.4	-	Sites of Local Importance to Nature Conservation
Policy NC.5	-	Protected Species
Policy NC.6	-	Protection of Priority Habitats and Species
Policy NC.7	-	Mitigation and Compensation
Policy NC.8	-	Habitat Creation
Policy NC.9	-	Securing the Management of Bio-diversity Features

3. Planning History

3.1 None.

4. Consultation Summary

Statutory Consultations

- 4.1 Environment Agency - no objection and note that Land Drainage Consent will be necessary for the works proposed (and has already been applied for), but no obstructions or restrictions to flow, impediment to access, tipping or increase in sediment pollution should be allowed.
- 4.2 Open Spaces Society question the accuracy of the application form which states that the proposal would not affect a Right of Way, assert that it would, that this is a material consideration and that a temporary Closure Order would be necessary to expedite the works.
- 4.3 Ramblers Association question why the application form does not state that a Right of Way would be affected. Seek assurances that on completion the footpath surface would be made good, that none of the gabions would form unnecessary steps and that the footpath surface would be made good.

Internal Council Advice

- 4.4 Head of Engineering and Transportation (Southern) has no objection.
- 4.5 Land Drainage Officer - no comment.
- 4.6 Rights of Way Manager states that the proposal would appear to affect public right of way EH.24 and that we do recognise that the work needs to be carried out, ask that the applicant liaise with the Rights of Way Department throughout the project and states that the applicant would need to apply for a temporary Closure Order.

- 4.7 The Chief Conservation Officer requested a survey of the site to assess its importance for protected species and what mitigation measures might be necessary. Requests enhancement of the site through the use of pre-seeded jute or corn mats and a plan for post-construction management before work starts, but has no objection in principle.

5. Representations

- 5.1 Parish Council - no objection.
- 5.2 Three letters of objection have been received from:

Mr. B. L. S. Wells, Stone House, Ewyas Harold, Hereford, HR2 0EU
Fr. Matthew Carney, Belmont Abbey, Hereford, HR2 9RZ
Arkwright Owens, Surveyors, 2 St. Nicholas Street, Hereford, HR4 0BQ (on behalf of
Fr. Carney of St. John Kemble's Church)

The principle points made are:

- that the proposal would create an imbalance in the water/environmental management of Dulas Brook
- would effectively result in a potential destruction of the riparian boundary of Stone House, which includes a group of mature trees. The destabilisation of these would create a physical hazard
- to question whether the applicants have appraised these works, and request a joint consultation with the Environment Agency and affected owners
- question why the Church was not consulted
- that any erosional flood damage arising from the development would necessitate similar stabilisation in time to safeguard the church boundary
- that if erosion were to be inflicted on church land that any necessary stabilisation should be affected at the cost of the Housing Association.

The full text of these letters can be inspected at Planning Services: Minerals & Waste, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 Rivers are dynamic systems subject to constant change. The erosion and deposition of materials are natural processes which are difficult to control. This proposal is to stabilise the banks of the Brook and to prevent further erosion along one of its sections. There were indications that the banks on and adjacent to the application area have eroded in the past and have been shored up by a variety of means. Officers consider that if permitted it is likely that this proposal would be successful in defending the bank adjoining Horsecroft more effectively than has been the case in the past. The proposed gabions are conventional in appearance and in practice are likely to be largely invisible from most public viewpoints. They do not consider that the proposal would affect the Area of Great Landscape Value adversely or have any significant effect on the character of the adjoining landscape.
- 6.2 The Local Plan states that the Brook has flooded the area in the past but that effective protection is unlikely to be achieved in the foreseeable future. It also includes specific policies which recognise the potential value of flood alleviation measures, subject to there being no increased risk or adverse effect on other land or property. None of the statutory consultees have objected to the proposal and in general officers consider that

subject to the imposition of conditions, it could be acceptable. However the application needs to be considered in light of both the development plan policies and a number of other significant material considerations, notably its potential effects on:

- protected species and their habitats
- the statutory right of way
- adjoining properties
- land drainage and related issues

Protected Species

Officers have been advised orally by English Nature of the need to ensure that no protected species or their habitats would be adversely affected by this proposal. At officers' request therefore the applicant has submitted a survey of protected species and their habitats. In summary the survey found no evidence of water voles or their activity on site or that otters were present along the section of the brook within the application area. It found that the brook could however be used as a corridor by these species but that the proposed works should have little or no impact on any such use. Officers advice is therefore that there are no reasons to refuse this proposal on the grounds that it may adversely affect protected species or their habitats.

Rights of Way

Officers must emphasise that the following comments should only be read in the light of the current application and should not be interpreted as having any bearing on the existence or otherwise of the right of way. Given that proviso however, Members should be aware that the right of way adjoining the application area appears to exist more as a concept than a usable path and in places appears to have either been lost through bank erosion or encroachment by households. It could not be described as either clear on the ground or easily usable throughout its length along this section of the brook. For a purely planning, as opposed to a statutory highways perspective, officers believe that the proposed gabions would create a more stable, clearly identifiable and usable footway along this section of the bank than is currently the case and that the grant of planning permission would enhance rather than diminish access to the brook. The Council's Rights of Way Manager has been informed of this opinion and any subsequent responses will be reported orally.

Effects on Adjacent Properties

Members should be aware that the fears of local people, as expressed in objections to the proposal, are material considerations in themselves apart from any substance there might be to those fears. They should also be aware that there could be some substance to them, in the sense that any reduction in erosion at one point in a watercourse might be transferred elsewhere – but that officers have no evidence that any such transfer would take place here or of the extent of any such transfer. Similar works to those proposed have already been undertaken along both sides of the brook, including works to the waterside boundaries of both Stone House and the Church and there is no suggestion by the expert consultees that these have had significant effects.

PPG.25 states that “the primary responsibility for safeguarding land and other property against natural hazards, such as flooding, remains with the owner. There is no statutory duty ... to protect land or property against flooding ...” The PPG stresses that (in essence) the planning authority needs to be satisfied that any flood or other risk arising from development will be successfully managed with the minimal

environmental effects and that the Environment Agency's advice is of considerable importance in this regard.

The Environment Agency have advised that the proposal would need Land Drainage Consent from them before it could be constructed. It is Government advice that local planning authorities should not seek to duplicate regulatory controls imposed by other bodies or to substitute their own controls for those of such bodies. The Head of Legal Services' advice is that the applicant and objectors have other rights which they could exercise to protect their interests in this matter and that the Council should not seek to intervene in what is a civil matter. Officers' advice is therefore that Members should be aware that in the absence of any specific information, any attempt to refuse this application on the grounds of the need to protect other parties from possible consequential erosion might be impossible to defend at appeal. That advice does not, however, prevent Members from refusing permission on land use grounds, e.g. that the appearance of the gabions was unacceptable, etc, if they felt appropriate.

Land Drainage and Related Issues

As indicated above, these issues are more properly the concern of the Environment Agency. The Council has discretionary powers with regard to watercourses under the Land Drainage Act but it should be noted that the Council's Drainage Engineer had no comments to make on this proposal and that the Environment Agency have no objections to it. There are therefore no suggestions that the application should be refused on the grounds of non-compliance with Policies C.44, C.45, C.46 or C.47.

- 6.3 In conclusion, officers consider that subject to the imposition of conditions this proposal is a relatively simple development which should prevent further erosion of the riverbank adjacent to Horsecroft. Its effects on the wider landscape of the Area of Great Landscape Value would be insignificant and those on the immediate landscape acceptable, both visually and in nature conservation terms. The right of way would be affected but would, if anything, be improved, in that if the statutory line exists it will be protected, if it has been lost the gabions would provide a secure alternative for at least part of the length alongside the brook. There is no evidence that the effects on land drainage would be significant and would, if anything, be controlled by the Environment Agency's issue or refusal of Land Drainage Consent. The objectors' concerns are material but there is no evidence that they are well founded. In the circumstances, and in recognition that other regulatory regimes exist, officers do not consider that these objections can be given much weight, or that permission should be refused.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. A01 (Time limit for commencement (full permission))**

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.

- 2. A07 (Development in accordance with approved plans)**

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development.

- 3. The development shall not be commenced unless and until:
 - a) a plan for post-construction management designed to increase the nature conservation potential of the development, and
 - b) details of pre-seeded matting covers to the gabions,

have been submitted to and approved in writing by the local planning authority, and both the plan and scheme shall be implemented as approved.

Reason: In the interests of the landscape and nature conservation.

- 4. E05 (Restriction on hours of use (industrial))

Reason: In order to protect the amenity of occupiers of nearby properties.

- 5. During the process of constructing the development hereby permitted, no materials capable of trapping or injuring otters shall be left overnight within three metres of the bank of the Dulas Brook.

Reason: In the interests of protecting otters, a statutorily protected species.

INFORMATIVE

- 1. N15 – Reason(s) for the Grant of Planning Permission

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.