

9 DCSE2004/1847/F - RETENTION OF CONSERVATION POND (AMENDED DESIGN) AT LAND AT DARNELLS FARM, LINTON, NR ROSS-ON-WYE, HEREFORDSHIRE.**For: Mr. G. Chapman per Hamiltons, Chartered Surveyors, Overton Farm, Maisemore, Gloucester, GL2 8HR****Date Received: 7th June, 2004****Ward: Penyard****Grid Ref: 67491, 24597****Expiry Date: 2nd August, 2004**

Local Member: Councillor H. Bramer

1. Site Description and Proposal

- 1.1 The application is retrospective. If the application had been made prior to the works being commenced it is likely that the project would have been permitted development, but those rights do not now apply.
- 1.2 A roughly oval lake, approximately 75m x 30m has been created for "conservation" purposes on the applicant's eastern property boundary at the foot of a sloping field and is contained by embankments approximately 1.5m high along the downslope margins. There are several properties situated to the east at a distance of between 300m and 350m.
- 1.3 The site lies in wooded hilly country approximately 7 kilometres east of Ross-on-Wye at Linton and is close to the Gloucestershire border, to the south of Dymock Forest. It is just visible from an unclassified highway that is a no through road ending in a public right of way at Darnells Farm itself.
- 1.4 The adjoining land, outside the applicant's ownership, is a Special Wildlife Site and designated as Ancient or Semi-natural Woodland.

2. Policies**2.1 Planning Policy Guidance**

Note 1 - General Policy and Principles.

Note 7 - The countryside, environmental quality and economic and social development

2.2 Hereford and Worcester County Structure Plan

Policy CTC6	Landscape Features
Policy CTC11	Trees and Woodlands
Policy CTC12	Improving Wildlife Value
Policy A1	Development on Agricultural Land
Policy A2	Diversification

2.3 South Herefordshire District Local Plan

Policy GD1	General Development Criteria
Policy C1	Development in Open Countryside
Policy C9	Landscape Features
Policy C11	Protection of Best Agricultural Land
Policy C13	Protection of Local Nature Conservation Sites
Policy C15	Creation of New Sites of Nature Conservation Importance
Policy C17	Trees/Management
Policy C18	New Tree Planting
Policy C19	Ancient and Semi-Natural Woodlands
Policy C45	Drainage
Policy C46	Water Abstraction

2.4 UDP Revised Deposit Draft

Policy S1	Sustainable Development
Policy S2	Development Requirements
Policy DR1	Design
Policy DR6	Water Resources

3. Planning History

- 3.1 SE2004/0132/F first retrospective application for the lake - withdrawn 16th March 2004

4. Consultation Summary

Statutory Consultations

- 4.1 The Environment Agency - no objection,
4.2 Forestry Commission - no objection,.

Internal Council Advice

- 4.3 The Head of Engineering and Transportation has no objection on either highway or drainage grounds.
- 4.4 The Chief conservation Officer has no objection on archaeological grounds, but still has concerns on landscape grounds with further remodelling being recommended.

5. Representations

- 5.1 Mr. B. Davies of Baldwins Wood, Kilcot, Newent, has objected as the adjoining neighbour. The main points raised are as follows:

- The lake is too close to Baldwins Wood land.
- The embankment is leaking onto his land.
- Groundwater runs directly onto his land and no longer goes into the existing ditch as it formerly did.
- The embanked soil will affect trees on his land.
- Winter water levels could seriously affect Baldwins Wood and Yew tree Cottage.

- 5.2 Mr. M. Price, NFU Group Secretary for the area, has made representation on behalf of the above objector as an NFU member. He is not making an objection himself, but reiterates the points raised by Mr. Davies.

5.3 Mr. & Mrs. A. Thomas of Yew Tree Cottage, Newent have also objected, and the main points they raise are:

- It is sited in the incorrect position.
- Water is seeping out over the length of the walls of the lake.
- We do not believe it has been constructed for conservation reasons.

5.4 Aston Ingham Parish Council raises no objection.

5.4 Linton Parish Council does not support the application and has commented that concerns have been expressed with regard to the method use to construct the pond, its position relative to the property boundary, that the pond had been leaking along the length of the retaining dam into the neighbour's farmland, and that the natural drainage of the site had been altered.

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.

5.5 An email was received at 11.25 am on 23rd July, 2004 from B. Atherton, Clerk to Linton Parish Council.

This email is summarised as follows:

The Chairman of the Parish Council had seen the leakage along the dam and damage to neighbouring grazing land.

When the second, revised application was made Parish Councillors visited the neighbouring land and felt that the revisions to the design were not sufficient to overcome the perceived problems.

Every precaution should be made to ensure that leakage and subsequent failure of the dam does not occur, otherwise Herefordshire Council could be held culpable for any damage to the adjacent land.

6. Officers Appraisal

6.1 The site lies in landscape described as "forest smallholdings and dwellings" typified by small enclosed fields and relatively dense but scattered settlement, although hedgerows are being progressively lost. The lake has been formed in a damp field corner with a background of sparse woodland. Although Officers consider the specific design requires some amendment, there are no policies that would prevent the siting in principle of a lake at this location.

6.2 Public footpath LTR 24 skirts the outside of the western edge of the same large field that the lake is sited in, and the lake would be distantly visible from the path.

6.3 The site comprises grade 3 agricultural land but due to being very wet its use as a lake would be unlikely to constitute a significant loss of valuable agricultural land and therefore would not conflict with South Herefordshire District Local Plan policy C11. Appropriately designed, the lake could enhance wildlife habitat in line with policy C15 and Structure Plan policy CTC12

- 6.4 There were several matters of concern in the earlier application, notably that the embankment might be unstable and likely to affect the health of mature trees on the neighbouring property, and that the design of the lake does not sit naturally in the landscape.
- 6.5 Following the withdrawal of the earlier application, a detailed letter was sent to the applicant's agent outlining the revisions and remodelling necessary to ensure an acceptable design for the lake. The revised drawings submitted with this new application go some way to satisfying these requirements but some amendment would still be necessary. In particular, as currently proposed the embankment would need to be pulled still further far away from the canopy of the mature trees on the neighbouring property.
- 6.6 The neighbouring objector has repeatedly drawn attention to alleged damage from some discernable leakage and seepage of water from the lake onto his land and to the fact that run-off from the field above the site now drains onto his land instead of into the ditch between the two properties as it formerly did. Although material, this is largely a civil matter outside of the control of the local authority and would not justify refusal in itself at this site.
- 6.7 The applicant has submitted a letter detailing further amendments he would be willing to undertake including moving the embankment further away from the tree canopies and capping an old land drain located under the newly-installed overflow, that he believes is responsible for the seepage. The letter also explains that no remedial works have been undertaken to address the drainage problems while the works were unauthorised and there was no planning permission to rely on.
- 6.8 It is considered that the mitigations detailed in the suggested amendments to the submitted plans would sufficiently address the concerns such as to satisfy South Herefordshire District Local Plan policies C44A and C45 and that this could be imposed through conditions. Members should be aware that should the application be refused, the Council would need to consider the expediency of proceeding with enforcement action and it is possible that neither a refusal nor an enforcement notice could be defended successfully at appeal.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1 Notwithstanding the submitted plans the lake hereby permitted shall be remodelled in accordance with the details stated in the applicant's letter dated 5th July 2004, such that:**
- **no part of the embankment on the western margin of the lake shall be beneath the canopy of the existing trees, and**
 - **the ground beneath that tree canopy shall be restored to the original levels.**
 - **The gradient of the northern end of the lake shall not exceed 1 in 7 (14%), being widened if necessary in a westerly direction to accommodate this.**
 - **The embankment to the southern end of the lake shall not be more than 1 metre in height above the highest adjoining original ground level.**
 - **The proposed stock-proof fence shall be located so as to establish a margin of at least 1.5m between it and the edge of the cut to the lake bank.**
 - **Measures shall be taken to ensure that all excess water from the lake shall be directed into the existing adjacent watercourse ditch.**

Reason: to ensure a satisfactory form of development and to preserve and enhance the quality of the environment.

- 2 No further development shall take place until there has been submitted to and approved in writing by the local planning authority a planting scheme giving the location, species, sizes and planting numbers. The scheme shall include at least 2 native wetland tree species

Reason: to ensure a satisfactory form of development and to preserve and enhance the quality of the environment.

- 3 All planting comprised in the details approved under condition 2 shall be carried out in the first planting season following the completion of the engineering works as specified by condition 1, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.

Reason: In order to protect the amenities of the area.

- 4 The pool shall be used for the quiet private enjoyment of the owner and for wildlife conservation or agriculture and for no other purpose.

Reason: The local planning authority wish to control the specific use of the pool in the interests of local amenity as any other use could have adverse environmental effects which would need further assessment.

Informative:

- 1 N15 - Reason(s) for the Grant of Planning Permission
- 2 The Council is concerned that the design of the lake could have a detrimental effect on the health and stability of the mature trees on the adjoining land. The applicant is strongly advised to seek professional advice on this matter.

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.