

**WIDENING OF EXISTING BANK BY IMPORTATION OF WASTE SOIL
(RETROSPECTIVE)**

AT: Manor Farm, Low Road, Fenstanton, PE28 9HU

APPLICANT: A M Behagg Farms

LPA NO: H/5003/14/CM

To: **Planning Committee**

Date: **11 February 2016**

From: **Head of Growth & Economy**

Electoral division(s): **The Hemingfords & Fenstanton**

Purpose: **To consider the above planning application**

Recommendation: **That planning permission is granted subject to the condition set out in paragraph 9.1**

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1.0 INTRODUCTION

- 1.1 This is a retrospective planning application for the importation and deposit of waste soil on to an existing bank to widen it. The work was carried out in the summer of 2013 under a permit exemption for the importation of inert waste, issued by the Environment Agency. The applicant claims not to have been aware that planning permission was also required for the development.
- 1.2 The development came to the attention of the County Council in September 2013, by which time works were almost complete. At the same time the matter was being investigated by the Environment Agency's Flood Risk Team (as opposed to the Permitting Team that had granted the waste exemption). They ultimately decided that they were satisfied with the works and decided to take no action.
- 1.3 The landowner was invited, without prejudice, to submit a planning application to seek to regularise the situation. After a number of reminders, an application was submitted on the 21 May 2014. However, it was not valid upon initial receipt due to the inadequacy of information (notably the absence of a flood risk assessment). It was not until October 2014 that the application was validly made and registered.
- 1.4 There is no record of planning permission having been granted for the original bank.

2.0 THE SITE AND SURROUNDINGS

- 2.1 The bank is situated in the south east corner of a field on the western edge of Fenstanton and is parallel to Huntingdon Road to the south. There is a ditch which is an ordinary watercourse (see Appendix 1 for definition) between the bank and the road. The eastern end of the bank lies close to Low Road, which runs northwards from Fenstanton. The distance from the bank to Huntingdon Road is about 8 metres. The A14 lies slightly further to the south, 25 metres from the bank. The closest residential properties are approximately 50 metres to the east. The ditch is connected to Hall Green Brook by a culvert under Low Road.
- 2.2 Hall Green Brook is classified by the Environment Agency as a main river (see Appendix 1 for definition) and flows from the south east in a generally north westerly direction to join the River Great Ouse between Fenstanton and St Ives. It passes under the A14 and then Huntingdon Road approximately 25 metres from the eastern end of the bank. The bank lies within Flood Zone 3 which covers all of the land to the west of Fenstanton, both north and south of the A14.

3.0 THE DEVELOPMENT

- 3.1 The bank (as widened) is approximately 100 metres long, 10 metres wide at the base and 4 metres wide at the top. It is approximately 1m above the level of the field. The application is not clear as to the amount of waste soil imported, but the bank appears to have been widened to no more than twice its original width. It is stated by the applicant that the height had not changed. This appeared to the County Council's Principal Enforcement and Monitoring Officer to be the case when he inspected the site on 13 September 2013. Over 40 loads of waste were observed at that site inspection although a third party has reported that the development involved the importation of 71 20 tonne loads. The waste came from S R Harradine Haulage Ltd, a local licensed waste carrier.
- 3.2 The reason given for widening the bank was to allow vehicular access to the top of the bank in order to maintain the adjacent drainage ditch. A shallow ditch has been dug on the northern side of the bank with the intention of providing compensation for the loss of flood capacity as a result of the widening of the bank within the flood plain.
- 3.3 In response to advice from the Environment Agency, a low point has been created near the centre of the bank, 300mm deep and between 1 and 2 metres wide, which will act as a weir that will allow discharge of water at a high level from the roadside ditch into the flood plain. The application is also supported by a programme of ditch clearance works.

4.0 CONSULTATIONS

- 4.1 Huntingdonshire District Council: No objection.
- 4.2 Fenstanton Parish Council (17 November 2014): Recommend approval subject to approval of the scheme by the Environment Agency and acknowledgment of Mr Barnett's concerns. The Environment Agency is strongly urged to clean overgrown ditches and install a two-way flap on an outfall which may reduce the perceived risk of flooding to land and property south of the bank.
- 4.3 Environment Agency:
(20 November 2014)

The principle of widening the bank to allow for improved maintenance of the ordinary watercourse is acceptable in terms of flood risk, but the works should not disconnect the watercourse from its floodplain. Whilst prior consent was not obtained under the Water Resources Act, enforcement action to remove the works was not considered necessary.

4.4 The outfall referred to by Fenstanton Parish Council is not an EA owned or maintained asset, therefore a double hung flap valve would need to be discussed with the structure owner and subject to prior consent under the Water Resources Act. The EA does not have any responsibility to undertake maintenance works on the ordinary watercourse that runs west to east and joins the Hall Green Brook immediately downstream of Turnpike Bridge. The main river, Hall Green Brook, is subject to a maintenance regime of twice yearly weed spraying the channel.

4.5 (9 December 2014)

i) The applicant needs to satisfy the Environment Agency and the County Council that the current works as built provide a connection to the flood plain, Flood Zone 3. They do not appear to connect. Prior to the current works there was a low spot at the Turnpike Bridge/Low Road providing a release point for flood waters into the applicant's field from the ordinary water course. The new bank has been extended up to Low Road and possibly also at the northern end (the A14 culvert) thus potentially blocking any flood flows.

ii) Re-introducing a low spot at either or both the Low Road and the A14 ends of the new bank to match the current ground level of the adjacent field may address the above issue.

iii) The EA cannot comment on the original level of the Low Road "connection" as there was a partial existing bank which covered the original shorter length of culvert connection. The issue of the extended, or new culverting, is a matter for the county council as the Lead Local Flood Authority (LLFA).

iv) The culvert is within, and connects only to ordinary water courses and not the Environment Agency's Main River (Hall Green Brook). During a site visit the Environment Agency had no cause to comment on that element of the proposal and accordingly referred it and the applicant to the county council as the LLFA. No comment on its suitability or otherwise was made by the Environment Agency to the applicant.

4.6 (7 December 2015)

The Environment Agency's Enforcement Officer visited the site to determine whether the overspill has been put in place. Following vegetation clearance on the landowner's [applicant's] side, the overspill was visible. The overspill has been set 300mm below the level of the crest of the bank and Huntingdon Road so the field to the north should flood before the road. The overspill will need to be maintained by the applicant as well as maintenance of the watercourse. As this is an ordinary watercourse the LLFA should be consulted to approve the detail.

4.7 (18 January 2015 – in response to local landowner comment on supplementary information)

i) Maintenance of the watercourse

It is our understanding that the applicant could not carry out the in-channel maintenance due to the presence of concrete markers that imply that Cambridgeshire Highways are the riparian landowners. Therefore it is assumed that Cambridgeshire County Council (CCC) has responsibility to carry out the works. During the site meeting on 19 November 2015 it was observed that applicant had stripped all vegetation from the outward face of the bank, the top surface and part of the inward face. The Environment Agency and CCC had requested that the crest of the bank be cleared so that the spill point could be inspected. A clearly defined “notch” was seen in the centre of the bund which would allow connection back into the flood plain (the applicant’s field to the outward side of the bund). There is also a lower spot towards the Low Road end of the bank through which the applicant has installed a small culvert. It may be prudent for CCC to revisit the size and function of that culvert; it may be possible to consider increasing its size to improve its conveyance to and from the flood plain under the applicant’s control.

ii) Overall design of the bank, spillway and culvert

It is recommended that the operation of the culvert and the spillway is monitored while the watercourse is in flood. If inadequate flow is carried by these structures and the neighbouring land is affected, the design should be reviewed. It may be that the spillway’s invert level could be lowered and the culvert enlarged. This should be done in consultation with CCC as they are the permitting authority (LLFA).

iii) Flood Events

In respect of historic or anticipated flooding events, Environment Agency modelling predicts that flood waters would appear to back up from the River Great Ouse downstream of the bank. Those flood waters therefore would make their way across the applicant’s fields to the far side of Low Road before reaching this particular area. It is known that Low Road itself is frequently closed during flood events or high flows.

High flows and levels in the Ouse would slow or stop the discharge from Hall Green Brook, which in turn would slow or stop the discharge from the ordinary watercourse between the bank and the highway. The same effect would occur during a non-event high flow in Hall Green Brook.

In summary the Environment Agency believes that the works undertaken to date will, based on the retrospective nature of the

development and the available information, return the bank and adjacent land parcels to the original status quo. As stated above it may be that the LLFA choose to monitor the site during periods of flooding to ensure that the culvert and spillway are functioning satisfactorily.

- 4.8 CCC Highways development engineer: No objection. The works are complete and there is no evidence of damage to or access from the highway so it is assumed that access was gained from private land.
- 4.9 Highways England: No objection.
- 4.10 CCC Floods & Water: Were not a statutory consultee in October 2014 [when the application was submitted]. Works to the watercourse and/or culvert as suggested by the Environment Agency [4.7 (ii) above] would need Land Drainage Consent from CCC as the LLFA. The LLFA does not monitor watercourses and if flood events are notified, prioritises for investigation those where houses are at risk. It has the power to enforce remedial works on unapproved construction work within ordinary watercourses or those not undertaking their landowner (riparian) responsibilities.
- 4.11 The application does not have any surface water/SuDS implications in planning terms. The only potential future interest from the consenting side would be to see how the culvert responds to any future high rainfall events. If there were any issues in future then the LLFA would write to the landowner to request that the culvert is increased in size. However there is no evidence at this stage of a need to do this.
- 4.12 CCC Historic Environment Team: No objection.

5.0 REPRESENTATIONS

- 5.1 Objections have been received on behalf of a local landowner who farms land to the south of the A14. A copy of his agent's letters and emails will be placed in the Members' Lounge one week before the meeting. His key concerns are:

(Comments on the original application October 2014)

- The bank has been increased in height and not simply widened as stated in the application.
- The bank has been extended to cut off the ditch adjacent to Low Road and a culvert installed at low level to prevent flood water accessing the said ditch.
- A drainage ditch on the north side of the bund existed (on a slightly different line) previously and the new one does not therefore achieve the stated objective of compensating for loss of floodplain.
- The bank is not accessible to vehicles, due to being overgrown and cut off by the new ditch on its northern side, and does not therefore

satisfy the stated objective of facilitating access to the watercourse for maintenance purposes.

- Flood water is no longer able to reach the floodplain behind the bank, thereby causing water to back up and flood land on the south side of the A14.

5.2 Comments on the supplementary information (December 2015)

- The cut out half way along the ditch is totally inadequate to take the flows of water in flood conditions. Its level is set at +6.39 metres which is higher than the Low Road and therefore flood water will dispense onto the Low Road rather than on the land behind which at one end it is at +5.50 metres and the other end at +5.82 metres. The bank needs to be reduced to the same levels as the land at either end and the ditch reinstated parallel to the Low Road with the minimal sized culvert removed.
- These proposals are totally inadequate and inaccurate. A formal flood risk assessment should be prepared and submitted.
- Works should be carried out to the bank and the infill ditch plus dredging to reinstate the flood bank to as it was before these latest engineering works.

5.3 Comments on Environment Agency response of 18 January 2016 (29 January 2016)

- Maintains that the recommendations contained in the Environment Agency's first letter (9 December 2014) should be followed.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The relevant development plan policies are set out in paragraphs 6.3 to 6.6 below.

6.2 The National Planning Policy Framework (March 2012) (NPPF) is also a material planning consideration.

6.3 Cambridgeshire and Peterborough Minerals and Waste Development Plan Core Strategy Development Plan Document (adopted July 2011) (the Core Strategy)

CS33 Protection of Landscape Character

CS34 Protecting Surrounding Uses

CS39 Water Resources and Water Pollution Prevention

6.4 Huntingdonshire Local Plan (1995) (the LP1995)

CS 9 Flood water management

6.5 Huntingdonshire District Council Core Strategy (2009) (CS2009)

CS1 Sustainable Development in Huntingdonshire

6.6 Draft Huntingdonshire Local Plan to 2036: Stage 3 (2013) (LP2013)

Huntingdonshire District Council's new local plan is currently at the pre-submission stage but can hold some weight in the decision making process.

LP6 Flood Risk and Water Management

7.0 PLANNING CONSIDERATIONS

7.1 The NPPF sets out the Government's planning policies and how these are expected to be applied. It is a material consideration in planning decisions and at its heart is a presumption in favour of sustainable development (para 14). It states that:

- Proposed development that accords with the development plan should be approved without delay;
- Where the development plan is absent, silent or relevant policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted; and
- Proposed development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise.

7.2 Given that the application is retrospective, any concerns in relation to construction impacts are no longer relevant; the scale of the proposal was in any case relatively small. It is accepted that a bank existed in this location prior to the deposit of waste soils taking place in 2013. It is only the additional waste soil deposited that is the subject of this application. The resultant bank does not have a significant visual impact and there is no clear landscape justification that would support a requirement to remove the soils that have been added to the original bank. Nor is a survey available showing the height and dimensions of the bund prior to the commencement of this development. The development complies with Core Strategy policies CS33 and CS34. The Environment Agency issued a permit exemption for the importation of inert waste. There is no reason to believe that the imported material is a pollution risk to groundwater. The development therefore complies with Core Strategy policy CS39.

- 7.3 The only potential for refusing the application would be if the bund were considered to have a significant adverse impact on the floodplain. Paragraph 113 of the NPPF requires that:

'When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment.'

- 7.4 Whilst the flood risk assessment submitted with this application was fairly basic, this approach is consistent with planning guidance which advises that the level of detail needs to be proportionate to the development. Furthermore the assessment is considered acceptable by the Environment Agency.
- 7.5 Consideration has been given to the comments made on behalf of the local landowner which are summarised in paragraphs 5.1 and 5.2 above. Whether or not the height of the bank has been raised is difficult to say, but the Environment Agency has assessed the development as it is now and following the creation of the low point is of the opinion that the applicant's field to the north will flood before Huntingdon Road to the south. The creation of the low point was based on the Environment Agency's advice given at a site meeting on 25 March 2015. It therefore supersedes the measures suggested on 9 December 2014 (see paragraph 4.5 (ii) above) and referred to by the local landowner (paragraph 5.2, first bullet point).
- 7.6 The Environment Agency also advised that the section of the watercourse between Huntingdon Road and the bank should be kept free of obstruction and the applicant has provided an Annual Drain Maintenance Schedule. In December 2015 the applicant cut the vegetation and moved it from the ditch and placed it on the adjacent field where it will be cut up. The channel of the ditch has been cleared.
- 7.7 Photographs appear to show a ditch to the north of the original bank, which would have been filled in when the bank was widened. In that case, it is acknowledged that the new ditch that has been dug as 'compensation' for loss of floodplain may not actually be achieving that purpose, albeit that the volumes being considered here are fairly small given the size of the floodplain. Again, the Environment Agency has not raised an objection.
- 7.8 The Environment Agency has advised the County Council on the potential impacts of this development and has provided practical advice which the applicant has, eventually, taken on board. The Environment Agency has concluded that in terms of flood risk, there is no case for requiring the removal of the additional part of the bank. The development therefore complies with LP1995 policy CS 9 and CS 2009 policy CS1. The Environment Agency is the appropriate authority to advise on this matter and has not objected to the retention of this work.

Nor has it considered it appropriate to taken action under its own legislation. In the opinion of officers, there is no adequate justification that would support a refusal of the application upon drainage and/or flood risk grounds that could be robustly defended if challenged.

- 7.9 It should be borne in mind that even if Members are minded to refuse planning permission and the County Council takes enforcement action specifying removal of the bank, this decision could only relate to the “new” 2013 part of the bank and could not require the removal of the pre-existing bank. There would therefore be no material difference to its effect on the objector’s land to the south of the A14.

8.0 CONCLUSION

- 8.1 The local landowner’s concerns about flooding on his land are appreciated. However, the land is itself floodplain and there is no clear evidence to show that the bank constructed at Manor Farm and the subject of the current planning application is influencing that situation. This appears to be a long running dispute between neighbouring land owners and, if the objector considers that there is evidence to demonstrate his case, this would be more appropriately addressed by way of a civil action between the parties concerned.
- 8.2 With regard to drainage improvements suggested by the Parish Council, the Environment Agency advises that it has no responsibility for this. The maintenance and improvement of ordinary water courses is a matter for riparian landowners (explained at Appendix 1). The Environment Agency document “Living on the Edge” sets out the rights and responsibilities of those who own land next to a river. The relevant points are summarised at Appendix 1.

9.0 RECOMMENDATION

- 9.1 It is recommended that planning permission be granted, subject to the following condition:
1. The approved drawings are:
- 2014-11-1 Location Plan dated April 14
 - 2014-11-2 Rev B Flood Bank Levels dated April 14 (stamped received by Cambs County Council 04 Nov 2015)

Reason: To maintain a connection to the flood plain to the north of the bank and minimise the risk of exacerbating flooding on Huntingdon Road in accordance with the Huntingdonshire Local Plan (1995) policy CS 9 and Huntingdonshire District Council Core Strategy (2009) policy CS1.

Appendix 1:

from “Living on the Edge” (Environment Agency - 5th edition 2014)

Ordinary watercourses - every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage through which water flows, but which does not form part of a main river. The local authority or Internal Drainage Board has powers on ordinary watercourses similar to the Environment Agency’s powers on main rivers.

Main rivers - are usually larger streams and rivers, but some of them are smaller watercourses of local significance. In England Defra decides which watercourses are the main rivers. Main rivers can include any structure that controls or regulates the flow of water in, into or out of the channel.

The Environment Agency has powers allowing it to do work on main rivers. However, it does not have to maintain or construct new works on main rivers or the sea. It is unlikely to maintain a watercourse to improve the amenity of the river or to stop erosion that does not increase flood risk.

Flood risk management works can include:

- constructing and maintaining flood risk management assets, for example flood banks, and works on main rivers to manage water levels and make sure flood water can flow freely.
- operating flood risk management assets during a flood.
- dredging the river. The Environment Agency can dispose of the material on land within reach of the dredging machine’s boom.
- issuing flood warnings.

The Environment Agency can also do work to prevent environmental damage to watercourses, or to restore conditions where damage has already been done. It has the power to make byelaws.

The Environment Agency can serve notice on you if you have not maintained a watercourse on your land that is causing problems, such as increasing flood risk.

Riparian landowner rights

- If your land boundary is next to a watercourse it is assumed you own the land up to the centre of the watercourse, unless it is owned by someone else.
- Water should flow onto or under your land in its natural quantity and quality.

- You have the right to protect your property from flooding, and your land from erosion. However, you must get your plans agreed with the risk management authority before you start work.

Riparian landowner responsibilities

- You must let water flow through your land without any obstruction, pollution or diversion which affects the rights of others. Others also have the right to receive water in its natural quantity and quality. All riparian owners have the same rights and responsibilities.
- You must accept flood flows through your land, even if these are caused by inadequate capacity downstream. A landowner has no duty in common law to improve the drainage capacity of a watercourse he/she owns.
- You should keep the banks clear of anything that could cause an obstruction and increase flood risk, either on your land or downstream if it is washed away. You are responsible for maintaining the bed and banks of the watercourse and the trees and shrubs growing on the banks.
- You must keep any structures, such as culverts, trash screens, weirs and mill gates, clear of debris.
- Your property may include a watercourse that runs in a culvert. You have the same responsibilities for the upkeep of the culvert as if it was an open watercourse.

Source Documents	Location
<p>Link to Cambridgeshire and Peterborough Minerals and Waste Core Strategy:</p> <p>http://www.cambridgeshire.gov.uk/info/20099/planning_and_development/49/water_minerals_and_waste/7</p> <p>Living on the Edge – Environment Agency 2014</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454562/LIT_7114.pdf</p>	