



North Devon Council

Title of Decision Requested: Bulldog Fish Farm Enforcement Notice 12996

Decision requested by decision maker: Agreement to issue Enforcement Notice (Breach of Condition Enforcement Notice) for Bulldog Fish Farm, Snapper, Barnstaple, EX32 7JX

1. BACKGROUND / REASONS FOR THE DECISION REQUEST/BREACH OF PLANNING CONTROL ALLEGED

- 1.1. The breach of planning control alleged that is within the last 10 years development and works in breach of a condition attached to planning permission reference 70751.
- 1.2. A Breach of Condition Enforcement Notice should be issued to remedy the alleged breach of planning control. The Council considers it expedient to issue this notice for the following reasons:
- 1.3. The development of the pond and storage of spoil on site and no provision of ground level reduction on the site has resulted in increased flood risk elsewhere contrary to Policy ST03 of the adopted North Devon and Torridge Local Plan and Paragraph 173 of the National Planning Policy Framework (December 2023). Furthermore the use of the site by members of the public has resulted in an increase in the volume of traffic entering and leaving the county road through an access that does not provide adequate visibility from and of emerging vehicles, with consequent risk of additional danger to all users of that road and interference with the free flow of traffic, contrary to Policy DM05 (1) of the joint North Devon and Torridge Local Plan 2011 - 2031 (2018) and Paragraphs 114 (b) and 115 of the National Planning Policy Framework (December 2023).

2. FINANCIAL IMPLICATIONS

- 2.1. There are no immediate financial costs involved with this action. Should the owner not comply with the Notice served, there may be cost involved with taking prosecution action for non-compliance with the Notice or direct action, but this is a decision which can be made at a later time and will only occur if the owner does not comply.

3. ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED?

3.1. There are no other actions the Council can take to remedy this breach of planning control. The owner has not willingly complied with requests to remedy the breaches. No planning application has been submitted to regularise the breach.

4. ANY CONFLICT OF INTEREST DECLARED?

4.1. None

5. DISPENSATION IF GRANTED

5.1. Not applicable

6. BACKGROUND PAPERS

The following background papers were used in the preparation of this request (The background papers are available for inspection and kept by the author):

6.1. The enforcement case was opened on 24 June 2021 for the allegation that the works on site connected with the pond were not in accordance with planning permission ref 70751.

6.2. A site visit was carried out on 4 August 2021 and photos taken by an Officer at the Council. A further site visit was carried out with the Environment Agency (EA) on 28 September 2021. On 13 October 2021 the Council received the EAs observations on the breaches of planning control at the site. There were 6 observations from the EA Officer in total and these were:

- The approved plan required a 14m gap between 'existing pond A' and proposed pond B. I observed that this does not appear to be the case. Photo1 below suggest a much smaller gap was built, in the region of 8-10m, perhaps smaller.
- The water level of pond B was approved to be 18.1m, lower than the existing Pond A at 18.29. My onsite observation suggests that pond water level is far higher than pond A, in the order of 0.6-0.7m higher than approved.
- The height of the pond B embankment should be in the region of 0.6m above the height of the track – This is based upon the approved water level, plus a small height above the water level, minus the original track level. Water level approved at 18.1m, 0.2m to the top of the bank = approved top of bank - approximately 18.3m. I observed that the bank is in the order of 1.2-1.5m above the existing track/lane. The track appears to have not been altered (raised or lowered), as its height above the field to the south appears to be the same. This would appear to suggest a top of embankment height of 19m. (17.5m + 1.5m). The current ponds footpath is level around the pond, and using the land

level in the north western end (approved drawing contour), is approximately 19m.

- The approved planning permission required the field to the south west of the track to be substantially lowered to compensate for the loss of floodplain by the pond's construction. The land was to be lowered between 1.1 and -0.35m below existing field heights, and which created an additional volume for flood water to enter, of approximately 10900 cubic metres. I observed that the land had not be lowered in any manner that can be observed.
- The approved design also required that all materials excavated from the site except what is needed to form the build-up (the ponds embankment) to be removed from the site. I observed a large mound of earth in the north western corner of the field, which appears to have come from the construction of the pond. This is within the functional floodplain of the River Yeo. This should have been removed from the site outside of the flood risk area.
- There should be a gap of 9m between the leat and pond along the northern edge. Flood waters needed to travel along/around the northern edge. I observed that this does not appear to be the case, and a small earth bund has been created preventing any flood corridor functioning.

6.3. On 5 November 2021 the Planning Officer advised the Planning Enforcement Officer to proceed with serving an Enforcement Notice. On 8 November 2021 a letter was sent to the owner requesting that the recommended remedial works be completed by 10 January 2021 (typing error it was meant to state 2022).

6.4. On 3 December 2021 the owner requested a site meeting and on 20 January 2022 a site meeting with the owner, the Council and the EA took place. During this meeting the EA stated they wished for this work to be completed within 3 months and the agent confirmed that it will be at least a month before they could get a survey on the site. The Council agreed to continue to monitor the site and allow 3 months for the survey and subsequent actions to be completed and that they would liaise with the EA as to whether any further action was required.

6.5. On 20 January 2022 the EA sent a letter to the owner requesting:

- "1) By 28 February 2022 – the existing pond embankment and therefore the water level of the pond are lowered to that approved in Planning Application 70751 and that you are therefore create the

required flood corridor between the pond and leat as per the approval. Level survey's will be needed before this to establish the embankment's current unpermitted height and by how much it is required to be lowered. We would suggest that the stability of the embankment is checked whilst this is taking place.

- 2) By the 31 May 2022 – to allow works to be carried in the non-winter conditions when the ground is too waterlogged – the ground in the field to the south of the track is lowered as was approved in Planning Application 70751 from 2019.”

6.6. Between March 2022 and May 2022 the owner and EA were in discussions about the technical details about what needed to be done.

6.7. Unfortunately due to staffing and resourcing issues no further action was taken by the Council until the current Planning Enforcement Officer came to post. On 22 November 2023 the Planning Enforcement Officer called the owner to arrange a meeting. This site meeting took place on 24 January 2024 and photos were taken of the site.

6.8. An email was sent to the owner on 25 January 2024 requesting a planning application be submitted to regularise the situation. On 11 February 2024 an email was received by the owner's agent confirming an application would be submitted. The Planning Enforcement Officer chased the agent in March, April and May 2024 and no application has been submitted to date. The owner has not carried out the remedial works or complied with the approved drawings to planning permission ref 70751. The breaches of planning control as set out in the EA's 6 observations remain unresolved and outstanding.

6.9. It is considered if the owner wishes to retain the pond as built (which is not in line with the approved planning permission ref 70751) 'required' flood compensation works need to be carried out. Proposed works have been submitted to, and accepted by, the EA, back in May 2023. These works are required for the EA to be satisfied in flood risk terms should the current situation remain (ie the unauthorised works remain and are not changed to that approved under the planning permission ref 70751).

6.10. The original planning approval conditioned flood compensation works of a similar nature to what is now required (in terms of size, depths etc). To satisfy the EA in terms of flood risk, the owner also needs to remove all excess material from the floodplain (included that in original planning permission) offsite. This must comply with Waste Exemption licenses/exemptions and the owner must use a registered carrier.

- 6.11. The 'flood compensation plan' is relevant – this shows the land to be lowered by between 2.5m & 0.5m, depending on the position in the field. The design is to drain to the South West Corner, not to create a bowl. There is no other space within the current owner's control that could be used, as either it's not big enough or at the right point along the river. The full details of what has been agreed by the EA can be found in an email to the owner dated 29 January 2024 but in summary are shown on the following documents:
- Proposed Flood Compensation Plan 1443/SK01/PS dated July 2022
 - Drainage Technical Note Report Ref 1443w0002 (29th September 2022) which in turn includes the drawing set out in No 1 but also
 - Section through as built pond 1443/SK03/P1 dated July 2022
 - Cut and fill analysis of proposed flood compensation 1443/SK02/P2 dated July 2022
- 6.12. In this instance, rather than require in the "steps for compliance" on the Breach of Condition Enforcement Notice to fully remove the unauthorised pond and reinstate the land to its previous condition and level before the unauthorised works were carried out (which would be excessive and unnecessary) the Council can under-enforce. In the Notice the Council can require the flood compensation works set out above and shown in the submitted drawings and document detailed in no 1-2 above, to be completed within a specified period. This will ensure the flood risk impact is reduced enough to make the development acceptable on its planning merits.
- 6.13. The other matter and outstanding breach relates to the use of the settlement pond. Planning permission ref 70751 approved the formation of a settlement pond of approximately 0.6ha and associated compensation land level alterations, to the south west. The purpose of the settlement pond was to clean the water quality from the existing fish farm before it is discharged in to the river, to address discharge conditions imposed by the Environment Agency. It was proposed that the pond would be stocked for use in conjunction with the existing Fish Farm business. It appears the current use of the pond is that for leisure carp fishing and the pond is now a carp fishing lake with associated walkways and platforms. Condition 3 attached to permission ref 70751 states,
- "3. The pond hereby approved shall not be used by members of the public for fishing. Reason: In the interests of amenity and having regard to highway safety, vehicle access and parking facilities and sustainability as considered in the adopted North Devon and Torridge Local Plan and the National Planning Policy Framework."***

6.14. Therefore it is considered necessary due to possible highway and amenity reasons to require cessation of the use of the pond for leisure fishing. One of the proposed steps in the Notice will be to cease use of the pond for fishing by members of the public as restricted by Condition 3.

6.15. The Highway Authority have confirmed that in consideration of the highway matters, the following objection is identified for inclusion within the issuing of an Enforcement Notice. This follows on from earlier concerns regarding limited visibility at the site access and, on the basis inadequate land is available along the road frontage, to address the visibility shortfall: ***“1) The proposed development will result in an increase in the volume of traffic entering and leaving the county road through an access that does not provide adequate visibility from and of emerging vehicles, with consequent risk of additional danger to all users of that road and interference with the free flow of traffic, contrary to Policy DM05 (1) of the joint North Devon and Torrington Local Plan 2011 - 2031 (2018) and Paragraphs 114 (b) and 115 of the National Planning Policy Framework (December 2023).”***

7. CONSULTATION UNDERTAKEN

7.1. The Lead Planning Officer Matthew Brown has instructed the Planning Enforcement Officer to serve a Notice and drafted the reasons for doing so.

8. OFFICER REQUESTING DECISION TO BE TAKEN: Stacey Salter, Planning Enforcement Officer

9. NAME OF DECISION TAKER: Tracey Blackmore Service Manager (Development Management): Head of Planning, Housing and Health

10. DATE DECISION TAKEN: 12th July 2024

11. APPROVED BY DECISION TAKER: Yes /

12. DECISION TAKER'S COMMENTS: