

WEST OXFORDSHIRE DISTRICT COUNCIL
UPLANDS AREA PLANNING SUB-COMMITTEE
MONDAY 3RD OCTOBER 2016

FORMATION OF UNAUTHORISED LAKE, LAND EAST OF THE DRIVE,
ENSTONE

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

(Contact: Michael Kemp, Tel: (01993) 861663)

(The decision on this matter will be a resolution)

1. PURPOSE

To enable Members to consider whether it is expedient to authorise enforcement action to reinstate the land to its former condition.

2. RECOMMENDATIONS

That Members resolve to take no formal action in relation to the development.

3. BACKGROUND

- 3.1 Following a complaint it has come to light that an area of land to the East of The Drive, Enstone formerly consisting of marshland has been excavated during 2013/2014 to form a lake. The lake is located to the east of the site currently subject of Planning Application 16/01776/OUT and to the east of a public right of way running between Bicester Road and The Drive. The River Glyme runs adjacent to the west of the site area.
- 3.2 Officers consider it likely that the removal of the reed bed/swamp/fen land which occupied the site prior to the excavation would have amounted to ecological harm at the time of development as this is a priority habitat which is rare nationally. The formation of a lake in other circumstances, for example on land of low ecological value such as agriculturally improved grassland would ordinarily be considered a biodiversity enhancement. The existing lake has been in place for a period of 2/3 years and is now likely to be used by otters, water voles and other riparian wildlife.
- 3.3 The Councils consultant ecologist has advised that reinstatement of the land to its former habitat is likely to be difficult due to the unlikelihood that a suitable infill material would be available to fill the area of land occupied by the lake. It is also considered that works to infill the lake would probably cause further damage to the remaining swamp/fen/reedbed habitat which still exists around the lake. Given that the existing lake is established and the likelihood of the land being returned successfully to its former condition is low, officers are of the opinion that the remediation of the land to its former condition would not be a realistic or appropriate course of action.
- 3.4 The Councils drainage engineers have separately advised that excess water entering and then exiting the lake would, due to the site topography flow back towards the river, rather than threatening residential property. Unless evidence can be found of an increased flood

risk, or actual damage occurring that caused a hazard or damage then it is unlikely that the development could be objected to on flood risk grounds.

- 3.5 Officers have given consideration to the landscape and visual impact of the lake and conclude that the development would not cause harm to the immediate landscape character and setting. The lake is visible from the nearby public right of way and the immediate setting is sensitive. Officers have viewed photographs and aerial images of the sites former condition. Notwithstanding the limited ecological harm officers consider that the formation of the lake has not caused harm to the character and setting of this site and there is an argument that the lake has added to the immediate setting and is a feature of visual interest in the landscape.
- 3.6 The National Planning Policy Framework states that ‘effective enforcement is important as a means of maintaining confidence in the planning system’. Paragraph 10 of the Governments Planning Practice Guidance states that addressing breaches of planning control without taking formal enforcement action can be the quickest and most cost effective way of achieving a satisfactory and lasting remedy to a planning breach. Paragraph 11 of the PPG states that enforcement action should be proportionate to the breach of planning control and should be taken only where it is expedient to do so. Paragraph 11 of the PPG states where development is acceptable on its planning merits local authorities should avoid taking enforcement action solely to regularise the development unless it is required that conditions should be imposed. In light of the above assessment and the government guidance in respect of planning enforcement your officers do not consider that it is expedient to initiate formal enforcement action to remedy the breach of planning control. In taking this action it is likely that further ecological harm to the retained swamp habitat will be avoided.

4. ALTERNATIVES/OPTIONS

Members may consider that harm is significant enough that it is expedient to take formal enforcement action.

5. FINANCIAL IMPLICATIONS

None at this stage.

6. RISKS

None at this stage.

7. REASONS

See Section 3 above.

Giles Hughes
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Background Papers:
None