

REPORT SUMMARY

REFERENCE NO - 21/500117/HEDGE			
APPLICATION PROPOSAL Hedgerow Removal Notice - Temporarily fully remove a 6m section of hedgerow, partly adjacent to the southern side of Marden Road and partly from an adjoining track with associated peripheral hedgerow plants to enable temporary construction access.			
ADDRESS Land South Of Marden Rd - Staplehurst Marden Road Staplehurst Kent TN12 0PE			
RECOMMENDATION Raise no objection			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The hedgerow is considered to satisfy the criteria for importance, but it is considered that there are circumstances that justify the temporary removal of parts of the hedge and it is therefore recommended that the Council raise no objection to the proposal and do not issue a Hedgerow Retention Notice			
REASON FOR REFERRAL TO COMMITTEE The application has been called in by Staplehurst Parish Council			
WARD Staplehurst	PARISH/TOWN COUNCIL Staplehurst	APPLICANT Mr Alistair Halcrow AGENT	
DECISION DUE DATE 05/03/21	PUBLICITY EXPIRY DATE 02/02/21	OFFICER SITE VISIT DATE 25/03/20	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
20/503956/HEDGE	Hedgerow Removal Notice - Temporarily fully remove a 6m section of hedgerow, partly adjacent to the southern side of Marden Road and partly from an adjoining track with associated peripheral hedgerow plants to enable temporary construction access.	Withdrawn	26/11/2020
<i>Summarise Reasons</i> This application was withdrawn by the applicant from the Planning Committee Agenda on 26 November 2020, pending a review of alternative foul drainage solutions to the scheme proposed.			
20/501035/HEDGE	Hedgerow removal notice -To establish access and working area for southern water sewer connection for a development.	Hedgerow Retention Notice Issued	03/07/2020
<i>Summarise Reasons</i> The Committee considered that by designating the hedge as important, a less damaging approach to achieving the sewer connection can be progressed.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The hedge is adjacent to the northern boundary of a large field fronting Marden Road. The length of the frontage is approximately 160m.
- 1.02 The proposal itself is to temporarily remove one section of this hedgerow of approximately 6m length (approximately 38m² of vegetation), plus an additional area of 18m² of immature vegetation adjacent to the hedge at the eastern end and an area of 12m² of immature vegetation adjacent to the hedge at the western end. All areas of vegetation to be removed are shown on the submitted Temporary Hedgerow Removal Plan in light grey shading.
- 1.03 The hedge does not appear to have been subject to recent management as a stockproof hedge and as such now resembles a line of small trees and understorey plants of up to approximately 10m in height, with further naturally regenerating vegetation peripheral to the main hedge line.

2.0 PROPOSAL

- 2.01 This proposal is a resubmission of the withdrawn Hedgerow Removal Notification 20/503956/HEDGE and Hedgerow Removal Notification 20/501035/HEDGE, previously considered by the Planning Committee meeting on 25th June 2020. A Hedgerow Retention Notice was issued in response to 20/501035/HEDGE and a decision notice issued with the following informative:

The Committee considered that by designating the hedge as important, a less damaging approach to achieving the sewer connection can be progressed.

The proposed works in 20/501035/HEDGE were the removal of one section of approximately 24m length at the western end (parallel to the road) and one section of approximately 30m length at the eastern end (perpendicular to the road).

The effect of the Hedgerow Retention Notice issued is to prevent the works notified from being carried out.

- 2.02 This proposal, as stated on the application form, is to temporarily fully remove a 6m section of hedgerow, partly adjacent to the southern side of Marden Road and partly from an adjoining track with associated peripheral hedgerow plants, to allow entry of large vehicle (particularly box culvert section deliveries) directly into the working area off Marden Road. 6m is the minimum safe width required to facilitate access for the culvert storage tank section delivery vehicles. Existing gaps in the hedgerow on the adjoining track further to the south have been reviewed but cannot be used for access, as the track is not wide enough to allow the size of delivery vehicle required to pass and manoeuvre. The section requiring removal will also allow new connection pipework to be laid, avoiding effects on other areas.

Works required for connection at the western end of the tank have been reviewed. The revised design requires only peripheral hedge plants to be removed, preserving the integrity of the hedge at this location and the screening it provides to properties immediately to the north. Refer to "Hen and Duckhurst hedgerow map" to view current proposals in more detail.

Review of the design has ensured that impact on the hedgerow has been minimised while still allowing the works the necessary access safely.

All hedgerow will be fully reinstated upon completion of the works by replanting using appropriate species. Reinstatement works will be supervised by a suitably qualified ecologist with the necessary knowledge of the native woody species which are to be planted as well as an understanding on how these species should be planted and maintained for growth. Clancy Docwra will also contract a two year maintenance programme to their vegetation specialist or seek agreement with the council for a two year maintenance programme to facilitate successful re-establishment. Refer to "670601 Hen and Duckhurst EclA Rev 1" to view the ecological assessments undertaken and mitigation that will be in place to ensure ecological value is suitably protected.

- 2.03 Note that the proposal for consideration is the hedgerow removal only. The associated foul drainage works which the hedgerow removal will facilitate do not require planning permission and are not, therefore, directly under consideration.

3.0 SUMMARY INFORMATION

- 3.01 The proposal before the Council is a 'Hedgerow Removal Notice' under the Hedgerow Regulations 1997 ('the regulations'). It is considered that the hedge is subject to the regulations, being a hedgerow growing in, or adjacent to, any common land, protected land, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys, and having a continuous length of, or exceeding, 20 metres.
- 3.02 For the purposes of section 97 (hedgerows) of the Environment Act 1995 and the regulations, a hedgerow is "important" if it, or the hedgerow of which it is a stretch,—
(a) has existed for 30 years or more; **and**
(b) satisfies at least one of the criteria listed in Part II of Schedule 1.
- 3.03 The Local Planning Authority may either raise no objection to the Hedgerow Removal Notice, or give notice that the work must not be carried out by issuing a 'Hedgerow Retention Notice'. A Hedgerow Retention Notice must be issued within six weeks of receiving a hedgerow Removal Notice, or within such longer period as may be agreed between the person who gave the notice and the authority. In this case, the applicant has agreed to an extension of time to allow for the proposal to be considered by the Planning Committee.
- 3.04 A Hedgerow Retention Notice may not be issued for a hedgerow that is not "important".
- 3.05 The Local Planning Authority should issue a Hedgerow Retention Notice for a hedgerow that is considered important "unless satisfied, having regard in particular to the reasons given for its proposed removal in the hedgerow removal notice, that there are circumstances which justify the hedgerow's removal."
- 3.06 The regulations allow certain Permitted Work to a hedgerow to which the regulations apply if it is required in certain circumstances. In this case, it was suggested to the applicant that, in their capacity as a Statutory Undertaker, that one of the Permitted Work categories may apply.

The applicant did not think that any of the categories fully applied in this case and therefore proceeded with the submission of a Hedgerow Removal Notice.

4.0 PLANNING CONSTRAINTS

None relevant.

5.0 POLICY AND OTHER CONSIDERATIONS

The Hedgerow Regulations 1997

6.0 LOCAL REPRESENTATIONS

6.01 5 representations from 3 neighbouring residents were received in support of the application. The main points raised in the representations include:

- Detailed accounts of further multiple recent foul drainage flooding incidents.
- The intervention of Southern Water is required to resolve the flooding issues resulting from insufficient sewerage capacity. The proposed attenuation tank cannot be built unless this application is passed, allowing access to the field.
- Concerns over flora and fauna associated with the hedgerow have now been resolved

7.0 CONSULTATIONS

7.01 KCC Biodiversity Officer

“We have reviewed the ecological information submitted in support of this application and advise that sufficient information has been provided.

Whilst both hedgerows to be affected are considered ‘important’ according to the Hedgerow Regulation Assessment, we are satisfied that only small sections of hedgerow will be removed and that these sections can be adequately replaced.

We are satisfied with the proposed mitigation measures for protected species (identified as potentially present) and that adequate consideration has been given to presence of invasive species on-site.

True sedge has been recorded on site and it is listed under Schedule 8 of the Wildlife and Countryside Act (1981), considered a priority species under the NERC Act (2006) and described as ‘very rare’ within the Collins Wildflower Guide (2009), True Fox Sedge is of high conservation concern in the UK. This species has been identified in an area to be directly impacted by the proposed development.

A True Fox Sedge Mitigation Plan has been provided, which features details of translocation if the plants cannot be retained in-situ and an appropriate reseeded/establishment methodology. As such, we are satisfied that this species can be retained on-site if the proposed measures are strictly adhered to.

If permission is granted we recommend that the following condition is included:

The works detailed within True Fox Sedge Mitigation Plan (Rev 1) (Southern Water. November 2020.), the Hedgerow Regulation Assessment (Rev 1). (Southern Water. July 2020.) Ecological Impact Assessment (Rev 1). (Southern Water. August 2020.) must be implemented as detailed prior to, during and on completion of the hedgerow removal works.”

7.02 Staplehurst Parish Council

The following comments were received from the Parish Council on 3 February 2021:

“Councillors recommend that the application be REFUSED and request the application be referred to MBC Planning Committee. Councillors strongly support the Hedge Retention Order and unequivocally feel that it should remain in place. Councillors expressed robust views that the ecological impact of removing and then replacing the hedge could not be a temporary change. They believe that the ecology would be impacted for many years to come and could not simply be replaced. Additionally they noted that the reason for the application was for ‘temporary construction access’, which when looking at the originally approved plans, there seems no requirement for.”

8.0 BACKGROUND PAPERS AND PLANS

Submitted documents:

- Temporary Hedgerow Removal Plan
- Land Entry Notice Plan 01 – Drawing No. 670601-LE01 Rev E
- Hedgerow Regulations Assessment July 2020 Rev 1
- Ecological Impact Assessment 670601 Hen and Duckhurst August 2020 Rev 1
- True Fox Sedge Mitigation Plan 670601 Hen and Duckhurst November 2020 Rev 01
- Southern Water Report to Staplehurst Parish Council – August 2020
- Copy of Staplehurst Parish Council Report on Hen and Duckhurst Foul Drainage (14/09/2020) with Southern Water’s responses to Staplehurst Parish Council feedback on the report
- Southern Water Covering Letter/Report 7 January 2021 – Hen and Duckhurst

9.0 APPRAISAL

The key issues are whether the hedgerow satisfies the criteria in the regulation to be considered ‘important’ and if so, whether a Hedgerow Retention Notice should be issued.

Criteria for “Importance”

- 9.01 This application is supported by a comprehensive ‘Hedgerow Regulations Assessment’ carried out by an ecologist on behalf of the applicant. It concludes that the hedgerow(s) are considered ‘important’ in the non-technical summary of the document:

It was determined that the both the hedgerow along the north of the proposed works area (Hedgerow 1) and the hedgerow along the east of the proposed works area (Hedgerow 2) are ‘important’ under Criteria 6 by containing great crested newt and red listed birds (linnet and house sparrow). Hedgerow 1 also supported one vascular plant species listed as vulnerable on the red data list (true fox sedge) making it ‘important’ under Criteria 7. Neither hedgerow meets the ‘important’ classification under Criteria 8.

- 9.02 This conclusion is not challenged by the KCC Biodiversity Officer or the case officer. The hedgerow(s) are therefore considered to meet the criteria for importance.

Whether a Hedgerow Removal Notice should be issued

- 9.03 The Hedgerow Regulations state that the Local Planning Authority should issue a Hedgerow Retention Notice for a hedgerow that is considered important *“unless satisfied, having regard in particular to the reasons given for its proposed removal in the hedgerow removal notice, that there are circumstances which justify the hedgerow’s removal.”*
- 9.04 The applicant has sought to demonstrate that this hedgerow removal proposal is significantly less harmful in terms of a greatly reduced amount of proposed hedgerow removal in comparison to the previous proposal 20/501035/HEDGE, in response to the Planning Committee request that less damaging approach to achieving the sewer connection can be progressed. In addition, the Hedgerow Regulations Assessment and Ecological Impact Assessment seek to demonstrate that harmful impacts will be minimised and mitigated as far as possible, with mitigation measures to ensure successful reinstatement following completion of works.
- 9.05 The KCC Biodiversity Officers’ response to the revised proposals and supporting information is generally positive, being satisfied that only small sections of hedgerow will be removed and that these sections can be adequately replaced.
- 9.06 The Biodiversity Officer is also satisfied with the proposed mitigation measures for protected species and that adequate consideration has been given to presence of invasive species on-site. With regard to the presence of True Fox Sedge (*Carex vulpina*) on the site, the Biodiversity Officer is are satisfied that this species can be retained on-site if the proposed measures are strictly adhered to. An appropriate condition is recommended, but conditions cannot be placed on this application type. It is therefore recommended that it is added as an informative.
- 9.07 The issuing of a Hedgerow Retention Notice would effectively prevent the implementation of foul drainage scheme, as it would prevent access to the site. A Hedgerow Retention Notice should not be issued on the sole basis that it would prevent a foul drainage scheme from being implemented, simply because the Statutory Undertaker’s preferred option is not agreed with.
- 9.08 It is clear that there has been some local concern and disagreement with the approach being taken by Southern Water in providing a foul sewer connection to the Hen and Duckhurst development. The merits of the foul drainage scheme proposed by Southern Water are not being directly considered in the determination of this Hedgerow Removal Notice, but they become relevant due to the need for the Council to be satisfied that there are circumstances which justify the hedgerow’s removal, if a decision not to issue a Hedgerow Retention Notice is made.
- 9.07 The proposed hedgerow removal is necessary for Southern Water to be able to access the field to construct a large, below ground attenuation tank and to be able to connect this to the Hen and Duckhurst development. The submitted report to Staplehurst Parish Council and the copy of Staplehurst Parish Council Report on Hen and Duckhurst Foul Drainage (14/09/2020) with Southern Water’s responses to Staplehurst Parish Council feedback on the report set out the reasoning behind why this is the preferred option.
- 9.08 The Southern Water letter dated 7 January 2021 details why Southern Water, as the Statutory Undertaker with regulatory obligation to provide access to the Waste Water system consider the foul drainage Scheme necessary. This follows contact with the MP and the Parish Council and a review of the options. In the absence of evidence to

the contrary, it is considered that the foul drainage scheme will provide a permanent solution to the flooding problems in the area and is therefore necessary.

10.0 CONCLUSION

10.01 For the reasons set out above, it is considered that the circumstances justify the proposed hedgerow removal. The Statutory Undertaker has demonstrated that the Foul Drainage scheme is necessary and that it cannot be implemented without the proposed hedgerow removal. The working methodology has been redesigned to minimise the extent of harm and demonstrated that it can be suitably mitigated against to the satisfaction of the Biodiversity Officer, with the hedgerow being reinstated on completion of works.

11.0 RECOMMENDATION – RAISE NO OBJECTION Subject to the following informatives:

CONDITIONS

Not applicable/ Cannot be applied to this application type.

INFORMATIVES

(1) The Council's decision does not override the need to obtain the land owner's consent for works beyond your boundary.

(2) Works to trees could result in disturbance to wild animals, plants and important wildlife sites protected by law. Therefore, the works hereby permitted should be carried out in a manner and at such times to avoid disturbance. Further advice can be sought from Natural England and/or Kent Wildlife Trust.

(3) Following completion of works, the hedgerow sections removed shall be reinstated in accordance with the details set out in the submitted documents.

(4) The works detailed within True Fox Sedge Mitigation Plan (Rev 1) (Southern Water. November 2020.), the Hedgerow Regulation Assessment (Rev 1). (Southern Water. July 2020.) Ecological Impact Assessment (Rev 1). (Southern Water. August 2020.) must be implemented as detailed prior to, during and on completion of the hedgerow removal works.

Case Officer: Nick Gallavin

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.