

REPORT SUMMARY

REFERENCE NO - 20/503956/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 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 Southern Water AGENT Clancy Docwra	
DECISION DUE DATE 03/07/20	PUBLICITY EXPIRY DATE 30/03/20	OFFICER SITE VISIT DATE 25/03/2020	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
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

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 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 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. 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.

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.

- 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 in front of 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 No formal objections from local residents were received in response to this revised notification, but note that four neighbour objections were received in response to the previous notification 20/501035/HEDGE

7.0 CONSULTATIONS

- 7.01 KCC Biodiversity Officer

"We have reviewed the ecological information submitted in support of this application and advise that additional information is sought.

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 also 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. However, we highlight concern over the presence and lack of associated mitigation proposals regarding True Fox Sedge (*Carex vulpina*).

True Fox Sedge

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.

Although the seeding of True Fox Sedge has been proposed as an enhancement (which we are supportive of), no methodology for the acquisition of wild seed and associated sowing/establishment of this species has been proposed. In the first instance, the area of True Fox Sedge should be protected. For example, turf removal/relaying and translocation are options if the current area containing True Fox Sedge cannot be retained during works. Any re-seeding should derive from native (preferably locally-sourced) populations of this species so as not to compromise genetic integrity.

Its loss from site would be incongruous to the above policy aims and contravene both section 40 of the NERC Act (2006) and policies within section 15 of the National Planning Policy Framework (2019). For these reasons, we advise that mitigation measures/further details are provided for True Fox Sedge prior to determination of the application."

7.02 Staplehurst Parish Council:

Staplehurst Parish Council made the following comments:

"Councillors recommend REFUSAL and referral to MBC Planning Committee were the Planning Officer minded to approve the application. Councillors commented that a hedge retention notice was in place and that the hedgerow represented an important habitat for wildlife. They supported the comments of the KCC Biodiversity Officer about the need to protect True Fox Sedge of which the loss would contravene both section 40 of the NERC Act (2006) and policies within section 15 of the National Planning Policy Framework (2019). They wished to draw MBC Planning Committee's attention to their continuing concerns about the drainage project related to the hedge application, which had deviated from the initially submitted plan to drain foul water away to the north of Hen & Duckhurst Farm. They observed that the direction of flow of water from the storage tank at Jeffery Close-Marden Road needed to be ascertained. They stated that Councillor Bowden's report for the Parish Council, compiled following discussions with Southern Water, must be essential reading for all involved in evaluating or making decisions on the proposal."

8.0 BACKGROUND PAPERS AND PLANS

8.01 Submitted documents:

- Temporary Hedgerow Removal Plan
- Hedgerow Land Entry Notice Plan 01 – Drawing No. 670601-LE01
- Hedgerow Regulations Assessment
- Ecological Impact Assessment 670601 Hen and Duckhurst

8.02 Additional information submitted by the applicant:

- True Fox Sedge Mitigation Plane 670601 Hen and Duckhurst
- 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

- 8.03 Additional information provided on request by Staplehurst Parish Council:
- Staplehurst Parish Council Report on Hen and Duckhurst Foul Drainage (14/09/2020)

9.0 APPRAISAL

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. 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 Officer's response to the revised proposals and supporting information is generally positive ("*we are satisfied that only small sections of hedgerow will be removed and that these sections can be adequately replaced. We are also 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.*") except for a lack of associated mitigation proposals regarding True Fox Sedge (*Carex vulpina*). The applicant has provided further information to address this concern and this has been sent to the Biodiversity Officer for further comment. Any response received will be reported via Urgent Update.
- 9.06 It is clear that there is 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 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 of the applicant as the Statutory Undertaker with regulatory obligation to provide access to the Waste Water system.
- 9.08 The issuing of a Hedgerow Retention Notice would prevent the implementation of the applicant's preferred option, as it would prevent access to the site. Whilst there is clear opposition to the scheme, a Hedgerow Retention Notice should not be issued on the sole basis that it would prevent a foul drainage scheme from being implemented, on the grounds that the Statutory Undertaker's preferred option is not agreed with. The issues of how the foul drainage system is designed and operated are a separate matter beyond the considerations of this application and are currently under discussion elsewhere.
- 9.09 In practice, the hedgerow removal proposed would only be carried out in the event that the preferred option went ahead. The applicant has redesigned the working methodology to minimise the extent of hedgerow removal necessary, with detailed consideration of the ecological impacts. Mitigation measures and reinstatement of the hedgerow following completion of works are clearly set out and are to the satisfaction of the Biodiversity Officer. Subject to confirmation by the Biodiversity Officer that the proposed mitigation measures for the protection and reestablishment of True Fox Sedge are appropriate, the extent of harm resulting from the proposed hedgerow removal is considered low, and suitably mitigated against.

10.0 CONCLUSION

- 10.01 The Statutory Undertaker advises that the works are necessary to carry out their obligation to provide access to the waste water system. It is demonstrated that the proposed temporary hedgerow removal will be adequately replaced, with appropriate measures for the protection of protected species during works. It is therefore considered that there are circumstances that justify the hedgerow's removal and it is recommended that the Council raise no objection to the proposal and do not issue a Hedgerow Retention Notice.

11.0 RECOMMENDATION – Raise no objection:

CONDITIONS

Cannot be applied to decisions of this application type.

INFORMATIVES

- (1) The Council's decision does not override the need to obtain the landowner's consent for works on land which you do not own.

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(2) Works to hedgerows 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.

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.