HCPRE Complaint To Herefordshire Council.

That: (1) one or more officers in the Planning Department of Herefordshire Council failed to issue a Decision Notice as required during a specified time-frame. As a result two hedgerows that had legally Protected status under the Hedgerow Regulations (1997) were removed by the landowner. **(P220064/H**)

That: (2) Officers failed to recognize that two inextricably linked operations fell under two different Planning Control Regimes.

HCPRE also considers that there will be further damage to an area of land unless the current situation is rectified.

The details of our complaint are detailed in the following two sections.

1. **Re Application P20064/H**

**P220064/H** was posted on the Council website on **17.01.22**, with a deadline of **07.02.22** for public comments and a **Determination date of 21/02/22.** The Application was forpermission to remove two hedgerows to *“facilitate construction of two winter fill reservoirs as approved by Application P213927/PA7”*.

HCPRE (Virginia Morgan) initially sent in a ‘holding letter’ on **06/02/22** notifying the case officer that our comments would be sent after 07.02.22, but well before the Determination date.

HCPRE’s (VM) comments were submitted on **18.02.22** We objected to the application , submitting evidence that the two hedgerows should be retained because they satisfied sufficient criteria of the Hedgerow Regulations (1997).

**On 22.02.22 a Decision Notice** was issued by the case officer , with a **Hedgerow Retention** **Notice.**

The case officer ‘s reasons for the Decision were in line with those of HCPRE that the hedgerows were **Important** under the terms of the Hedgerow Regulations, being

a) more than 30 years old, and

b) were recorded as an integral part of a strip -field system, pre-dating the Enclosure Acts.

(HCPRE had pointed out in their submission that aerial maps show that both hedgerows had been more than twice their current length and were adjacent to lines of other similar hedgerows that had been removed at some time.)

The Refusal by the Council to allow the hedgerows to be removed was the subject of an article in the Ross Gazette, mentioning the objection from HCPRE.

As a result a member of the public contacted HCPRE **on 17.03.22** to say that they had seen the hedgerows being removed.

On **23.03 22** VM went to the site to check and found that both hedgerows had been removed, with a large pile of debris heaped to one side; she also saw the diggers leaving as she walked on the nearby footpath and took photographs.

VM alerted the case officer for 220064/H who had issued the Retention Notice about what she had seen, but received no response.

On **30.03 22 HCPRE** (Ros Bradbury) wrote to the case officer about our concern at the hedgerow removals despite the issue of the Retention Notice. The letter was copied to Enforcement also. Our letter also raised a concern that the reason for the removals was understood to be that the landowner wished to excavate the land between the two hedges and construct two winter fill reservoirs identified in an Application for Prior Approval, **213927**/**PA7** in December 2021.

On **19.04.22** the Case Officer responded, apologizing for a delay and stating that she was investigating the removals; she also asked for confirmation of the dates on which we had notified her of the removals.

On **20.04.22** RB replied to the case officer with the information requested and also expressed concern that apparently no action had been taken by Herefordshire Council on what seemed to be an illegal hedgerow removal.

On **05.05.22** RB received an email from an Enforcement Officer saying that the hedgerows were removed “…*prior to application decision 220064/H and any limited earthworks undertaken on* *site are allowable under prior approval P213927?PA7, therefore no planning breach has occurred and I have now closed the enforcement case”.*

On **10.05.22** RB responded to the Enforcement Officer’s note (copied to the case officer) expressing disappointment at the Decision to close the case and also questioning why an extension of the time to Determine the Application had not been made by the Planning Department as is allowed for by Reg 5 (6) of the Hedgerow Regulations 1997

On 02.06.22 RB received a note from the case officer in which she said *“It is regrettable that* *the deadline was missed…”* and continued by describing an under-resourced department so that *”… unfortunate incidences such as these do inevitably occur.”*

HCPRE appreciate the problem of heavy work-loads, however no explanation has been offered for a failure to seek extra time in which to determine the Application.

It appears to us that there is **a system failure in the management of the Department** if there is no means by which case officers are warned that some necessary action is required urgently within x hours. We assume that the Department has a record of the number of similar “..unfortunate incidences” that have occurred during the last 5 years but we have been unable to find it on the Council’s website.

1. **Re Application P213927** seeking Prior Approval for the construction of 2 winter fill, water storge reservoir for irrigation.

The Application was submitted on **22.10.21,** the Decision Notice was issued on **09.12.21.**

The Decision Notice states that “…PRIOR APPROVAL IS NOT REQUIRED…” subject to several conditions.

HCPRE did not offer comments on the Application; there are no comments recorded on the Council website.

When HCPRE (RB)studied the Application documents submitted to support the Hedgerow Removals Application it became clear that the documents and procedures used in the 213927 Appliction were very relevant.

One of the documents is a drawing of the two proposed reservoirs to be located in the narrow strip of land lying in between the two 220064 hedgerows. It obvious from the drawing that because of their width the reservoirs would intrude upon at least some parts of the hedges. Furthermore no access route was drawn or can be seen on any map that would allow construction vehicles to excavate the specified piece of land; it was very obvious that an access route would be needed and that would be impossible without removing at least some large parts of the hedgerows. HCPRE is concerned that such a problem was not apparently spotted by the case officer who made the determination.

**Condition 1** attached to that decision drew the applicants attention that if hedgerows

need to be removed or relocated an application to do so is required.

We assume that consequentially the landowner submitted 220064..

**However, it is obvious that the construction of the two reservoirs on the specified strip of land was a two stage process, the parts of which are subject to different approval regimes**.

Consequently, the construction of the reservoirs are **NOT** permitted development, and if they are constructed it will be a breach of planning control; the reservoirs cannot be constructed in the assigned strip of land without the removal of the hedgerows as there is no existing feasible access route for the excavation and construction work to be undertaken on the strip of land, and none was drawn on the sketch plan submitted.

That there would be a two-stage process is confirmed by the case of West Bowers Farm Products v Essex County Council (1985) 50 P & CR 368, in which the Court of Appeal held that the construction of a reservoir, which also entailed the export of sand and gravel, constituted more than a single operation and was not, therefore permitted development.

And, by the case of Westminster Council v The Secretary of State for Housing, Communities and Local Government & Ors (2019) EWHC 176 (Admin), in which the Court of Appeal held that “.. *a proposed development falls outside the GPDO if part of it falls outside the GPDO*.”

**Therefore, to excavate and construct the reservoirs would be unauthorized development.**

It is HCPRE’s contention that this should have been recognized by the qualified staff in the Council’s Planning Department.

On **10.05.22** RB wrote to the Enforcement Officer who had decided to close the case of the hedgerow removals, drawing his attention to the points detailed above.

RB suggested that if no excavations have so far taken place the Council should advise the landowner to submit a Planning Application for two reservoirs and if the Application were to be allowed it could be conditioned requiring biodiversity improvements that might compensate to some extent the destructive removal of the two hedgerows.

No response has yet been received.