

**APPEAL AGAINST ENFORCEMENT NOTICE EN/2018/002759/ZZ ISSUED
BY HEREFORDSHIRE COUNCIL**

LAND AT THE BAGE FARM, MADLEY, HEREFORDSHIRE HR2 9JP

PINS REFERENCE 3201142

STATEMENT ON BEHALF OF THE APPELLANT

Introduction

1. My name is Peter Weavers. I live at Romans, Bronllys Road, Talgarth, Powys, LD3 0HH, from where I also operate a business as a sole trader under the title Peter Weavers Business Services. [REDACTED]
2. I offer Town and Country Planning and general business advice to a range of individuals and undertakings in mid and South Wales and in mid and South-West England.
3. Since the mid 1980's I have been involved in general management with specific responsibility for Town and Country Planning issues and for over fifteen years I have acted as a self-employed planning agent. I have over thirty years' experience of the Planning system encompassing the preparation and submission of applications (including those with Environmental Statements), and appearances as witness at Public Inquiries and Hearings pursuant to s78 appeals against decisions made by Local Planning Authorities, at Enforcement Appeals and at many and various development plan hearings.

Background

4. In December 2014, I attended The Bage Farm with a client who, I was informed, had reached an agreement with the landowner to level pasture by filling ponds with material arising from a contract undertaken by my client in the vicinity and then landscaping the area. The landowner's objective was to create a much-improved access to new 'feeding pads'. It was clear that the work required either the prior approval of the LPA or full planning consent and, whilst I was informed that all work had stopped as a result of the intervention of the Planning Authority (LPA) and the Environment Agency (EA), I cautioned against carrying out any work unless and until planning consent (any opportunity to treat the works as 'Permitted Development' having been lost) or other agreement with the LPA was forthcoming. My client agreed and instructed me to submit a

planning application in large part for retrospective consent but also for ongoing consent to complete the works.

5. I consulted with the LPA explaining that I had nothing by way of 'baseline survey' of either the topography or the nature and wildlife value of the area affected. Nonetheless, it was agreed that I would submit the application which was downloaded on 5 January 2015, following which the LPA requested sections through the ponds (again somewhat 'speculative' as I had no survey data) which were submitted, the application being validated on 23 January 2015. During December and January I met the land owner, Mr Harding, several times and over the succeeding months came to know him quite well. I believe that Mr Harding saw me as an 'honest broker' between the various parties, one who could help him get back to the point where he could farm his land without impediment.
6. The application was refused on 30 April 2015. I advised my client that I saw little if any prospect of an appeal being successful and that a more constructive way forward was to liaise with the land owner, the LPA and EA with a view to agreeing a way forward whatever form that may take. My client accepted that advice and instructed me to embark upon that process.
7. During the summer and autumn of 2015 I made several attempts to engage the LPA in identifying a way forward but, in part due to staff absences at the LPA, I made little progress until a meeting of the LPA, EA my client and myself was convened, at my request, on 6 January 2016. The main matter arising from that meeting was that I would commission a survey of the land concerned by a suitably qualified ecological consultancy acceptable to the LPA and the EA. I did this, appointing Just Mammals and agreeing the scope of their work with the LPA's Ecology Officer, with, I understood, input from the EA. The study was conducted during the spring and early summer of 2016, at my client's cost, culminating in a report (Appendix 1 herewith) submitted to me in 2016. I submitted the report to the LPA and requested a meeting to establish the next steps.
8. I continued to call and email the LPA during the latter part of 2016 and into early 2017 but received few replies and certainly no indication that the LPA were intent upon finding a solution to what was clearly an unsatisfactory state of affairs. In the face of this apparent disinterest I 'closed my file' and until March of 2018 heard nothing more of The Bage Farm, indeed I am no longer retained by my then client.
9. Late on 27 March 2018, I received a call from the owner of The Bage Farm, Mr Harding. He explained that he had a letter from the Council which covered what I deduced to be an Enforcement Notice. Mr Harding asked for my input as he knew that I was aware of the circumstances and felt that I may be able to advise him. I attended The Bage Farm the next day, met Mr Harding and agreed to act for him as I was not retained by my former client but had, as I had provided a statement of fact in another, associated, issue, some knowledge of other issues which may help Mr Harding respond to the Notice. I took away and copied the

Enforcement Notice and now act for Mr Harding in appealing against the Notice.

The Notice

10. The Notice issued by Herefordshire Council dated 20 March 2018, sets out at paragraph 4 its basis for concluding that breaches of planning control related to the use of land at The Bage Farm, Madley, Herefordshire HR2 9JP have taken place. The Council's reference is N/2018/002759/ZZ.
11. The Planning Inspectorate's Procedural Guide to enforcement appeals in England stresses (at paragraph 1.6.1) that the LPA '... should have constructive discussions with people whom it considers to have breached planning control.' It is disappointing to learn in this case that the LPA has had no discussions whatsoever with the appellant. Even when the matter involved a third party (the contractor who carried out the work) the LPA's approach to the issue was occasional and low key, ceasing altogether in February 2017. This put the appellant at a considerable disadvantage in having to respond to a Notice presented without prior consultation or discussion.
12. Even now the LPA has not furnished the appellant with the full suite of documents relating to the case with its Appeal Questionnaire. We do not know what we are missing, but we do know, for instance, that the LPA consulted The Environment Agency in the matter of the Enforcement Notice and we also know that, based upon the list of 'interested parties' notified of the appeal that it is highly likely that at least some of those parties have submitted documents to the LPA. This statement is therefore written without the benefit of information upon which the LPA base the Notice, disadvantaging the appellant.

The Appeal

13. The appeal is brought on ground (f) from those listed in s174(2) of the Act in that the steps required to be taken by the Notice do not remedy any injury to amenity which has been caused by any breach of planning control. In practice the 'remedy' may cause considerable harm and involve criminal actions as I explain below.
14. Notwithstanding the LPA's apparent indifference to the matter until March 2018, they rely in terms of a suggested 'remedy' upon a document commissioned by me and financed by a third party (the Just Mammals report that is Appendix 1) and until earlier this year not even seen by the appellant, placing him at further disadvantage.
15. The Just Mammals report was commissioned solely to address the possible presence of the Great Crested Newt. That is abundantly clear from the

report itself which concentrates almost entirely on the animal. It is not a report that describes a method of remediating the area at all and was not intended to be. I assume that the LPA will retain Just Mammals to give evidence at the Hearing. In that case they will describe their experience and areas of expertise but in advance of that, given my lengthy association with the practice, I suggest that the surveyors and their colleagues are not expert in land restoration, were not commissioned for that purpose and would not promote themselves as such. Notwithstanding all of that, the report is now entirely out of date and is superseded by contemporary evidence.

16. It is worth re-producing the paragraph which the LPA rely by way of remedy in full here:

10.1 Due to this being a potential enforcement case, making adequate recommendations at this point in the process is difficult. The best case scenario is for the ponds to be reinstated in a similar form, but at least partly protected from the grazing efforts of the livestock, and allowed to become more vegetated in order to facilitate breeding efforts. Deeper sections, in order to avoid failed breeding efforts due to drying out, are also desirable. Habitat enhancement can take place on a smaller scale than the removed ponds, with quality habitat being favoured over quantity.

The authors of paragraph 10.1 admit to the inadequacy of their recommendation. That is no criticism of them. They were not commissioned to examine the habitat for its wider value, they had no remit as to landscape impact, drainage issues, wider ecology or bio-security and they were not asked to consider the impacts of re-instating the ponds 'in a similar form.' That the LPA now require the appellant to implement a remedy without any information on the impact of such action or any real direction for the appellant beyond the very vague wording of paragraph 10.1 does not offer a remedy to any breach, rather it risks jeopardising environment, amenity and biodiversity further.

17. More explicitly, the appellant is privy to a letter of 1 February 2018, (Appendix 2) written by Mr Baker, Managing Director of Baker Consultancy Limited, who was commissioned by my former client to undertake an ecological study of the site as part of his case in defending a potential prosecution by The Environment Agency. I have the permission of my former client's solicitor to release the letter.
18. Mr Baker highlights the existence and importance of the extensive presence of *Crassula helmsii*, (Stonecrop, Australian Swamp or New Zealand Pigmyweed) an invasive plant listed in The 1981 Wildlife and Countryside Act as being one that if spread, would cause those that aid such spread to be guilty of an offence under the Act. Mr Baker makes clear that the weed can be spread inadvertently on boots and tyres, etc. Just Mammals were not tasked with identifying flora and did not do so, but it is clear that a more extensive knowledge of the site renders the idea

of the type of vague remedy proposed by the LPA as simply dangerous and potentially the basis of criminal action.

19. The appellant was made aware of the presence of *Crassula helmsii* by Mr Baker prior to the letter of 1 February 2018. He was hugely concerned to the extent that he commissioned his own study carried out by Native Landscapes from Lowestoft in Suffolk. This study confirmed the presence of the noxious weed and recommended that the remedy lies in filling the ponds along the lines suggested by Mr Baker. I attach the Native Landscapes Report and summary as Appendices 3 and 4.
20. The work involved in filling the two ponds was done without appropriate planning consent or permit from The Environment Agency (EA). The EA has taken action against the contractor involved (though not against the appellant) and that matter was heard in The Hereford Magistrates Court in the last year. Neither my client nor myself were party to that action but I have obtained copies of a small number of the documents submitted to the Court by The EA, these including a witness statement prepared by Dr Ian Fairclough, Principal Ecologist of BSG Ecology. Dr Fairclough first visited the site in late April 2018, after issue of the Enforcement Notice. I include Dr Fairclough's report as Appendix 5.
21. Dr Fairclough, like Mr Baker, draws attention to the presence of *Crassula helmsii* and cautions against the re-excavation of the ponds as the LPA suggest is appropriate. There is real concern that such excavation would aid the spread on the noxious weed, an action that would render the operator liable to a charge/charges under The Wildlife and Countryside legislation.
22. Dr Fairclough suggests a remedy that involves treatment and burial of the weed together with creation of a 'compensatory receptor area' that would be prepared to receive the licensed transfer of the Great Crested Newt (and other species) from the ponds affected by the infill/weed. Whilst readily recognising that the planning application submitted in early 2015 was not informed by proper baseline information (though it was submitted in a form agreed with LPA officers) and was properly refused, it did propose in broad terms just what Dr Fairclough recommends; creation of a new receptor pond and backfilling, restoration and rehabilitation of the ponds that we now know are infested by *Crassula helmsii*. I append the Site Proposals plan (Appendix 6) submitted with the planning application and showing the 'receptor pond area' and the planning statement (Appendix 7) describing the proposals. In broad terms it foreshadows Dr Fairclough's recommendations, these commissioned by a third party (The EA) not by the appellant.
23. I note in various documents reference to a Mr Will Watson. Mr Watson accompanied officers of The Environment Agency and the police to site in 2015 and suggested that the ponds may be the habitat of the Great

Crested Newt, a protected species. Mr Watson subsequently acted as witness in the trial of the contractor involved in depositing the material in the ponds at The Bage Farm. Mr Watson did not make reference to the presence of *Crassula helmsii* in his evidence. However, we do know by reference to a paper in 'Froglife' published in 2014 (Appendix 8) that Mr Watson wrote an article in 1999 suggesting that the presence of the weed was severely detrimental to newt populations.

RECOMMENDED ALTERNATIVE RESOLUTION

24. The presence of *Crassula helmsii* (and maybe many other species of virtue or detriment, we simply do not know) demands a measured and co-ordinated approach to the re-instatement of the land. The work commissioned by my former client and by The Environment Agency has gone some considerable way towards offering detail that informs strategy and practical implementation. However, there is much to do that is assisted by neither the vaguest 'remedy' apparently plucked out of the air by the LPA or the equally vague suggestion at section 6 of the Notice that the Time for Compliance is '12 months' – from when and what compliance means is simply ignored but what is absolutely certain is that the work eventually agreed will require much longer than twelve months if the chances of success are to be optimised.
25. A detailed scheme based upon proper topographic and ecological studies (scoping to be agreed with the LPA) should be drawn up by the appellant for submission to the LPA. The scheme would include baseline information, volumes, detailed method statements, final restoration profiles, short and medium-term land rehabilitation methods, management of restored land and liaison/reporting arrangements, all underpinned by realistic timetables having regard to the merits of carrying out work according to the season.
26. Whilst not definitive, I accept, a case study published in *Conservation Evidence* in 2016 (Appendix 9) by Mr and Mrs Sims of Native Landscapes offers both experience and very useful guidance as to the approach to remediation in cases of the type involved here. Not definitive, but I respectfully suggest far less likely to cause harm and far more likely to be successful than the LPA's proposal which is based upon the flimsiest comment by a consultant who was neither commissioned to advise on remediation nor claims to be expert in such matters.

Conclusion

27. I have done my best to persuade the LPA that to serve the Enforcement Notice in the form presented was prejudicial to the appellant (and maybe to others) and to a constructive solution to what is an admittedly unsatisfactory situation. I have suggested to the LPA that the Notice should be withdrawn pending discussion (my letter of 28 March 2018 at Appendix 10 refers). In response the LPA Enforcement Officer sent an email (Appendix 11) on 10 April 2018, in which it was disclosed that The Environment Agency had been consulted about my letter and were instrumental in urging pursuit of the Planning case. I was surprised by this as I was (and am still not) clear what part the Agency played in a Planning Enforcement Notice. I therefore wrote to the LPA again on 13 April 2018, (Appendix 12) requesting details of the Agency staff involved and the nature of that involvement. I received a partial reply by email on 17 April 2018, (Appendix 13) but no details of the Agency's involvement in the issue of the Enforcement Notice. I schedule these documents by way of illustration of the LPA's unwillingness to engage with the appellant. Quite what part the Agency played in encouraging the LPA to stand away from debate is not clear. However, what is clear is that the LPA's unwillingness to engage in constructive debate has delayed remediation for what will be, by the time we have the Inspector's decision, over four years.
28. None of the Baker/Native Landscapes/Fairclough remedies are definitive. They demand further constructive discussion with all parties as the Planning Inspectorate Guidance advocates. In a parallel court case surrounding the site and the ponds the District Judge sitting at a preliminary Hearing suggested just that course of action. What is clear, however, is that the remedy (such as it is) proposed by the LPA (para 10.1 of the Just Mammals report) is ill-informed, ill-defined, potentially dangerous and could involve anyone involved in delivering the remedy in a criminal action. The Notice itself is grossly deficient, based upon scant (and clearly incomplete) information, itself a function of the LPA's unwillingness to engage and disinterest in the matter save only now that the four-year deadline for enforcement approached.
29. To compound the facile nature of the 'remedy' suggested, the LPA say that Compliance must be complete in '12 months'. Anyone familiar with land remediation and associated aftercare would recognise that, even were we to have some idea when the LPA envisage the 12 months commencing, the work involved will not be complete in 12 months, rather it will demand monitoring, reaction to circumstance, successive treatment and remedial work upon remedial work. It would not be right to place any bland deadline upon the work. It should be the subject of constructive dialogue and agreement of the type that should have been entered by the LPA over the last three years.

30. I have written to the LPA requesting copies of a full suite of the documents that advise their decision to issue the Enforcement Notice (Appendix 14). Whilst I have had no response, it is accepted that the Enforcement Notice was issued in a belated attempt to regularise the use of the site. However, given the issues highlighted above it is argued that the steps by way of remedy and timetable proposed in the Enforcement Notice are not appropriate and are indeed counter to what may be necessary to arrive at any remedy.
31. In the light of the above the Inspector is respectfully invited to allow the appeal and to encourage the dialogue and agreement suggested in this appeal or otherwise to specify a way forward that does not threaten jeopardy of the site (and wider area) as does the 'remedy' proposed by the LPA in the Enforcement Notice.

July 2018