

<b>Parish:</b>	<b>King's Lynn</b>	
<b>Proposal:</b>	<b>The culverting of approximately 34 metres of a riparian watercourse using a 900 mm diameter pipe on the northern boundary of the site</b>	
<b>Location:</b>	<b>Mars Foods Ltd Hansa Road Hardwick Industrial Estate King's Lynn</b>	
<b>Applicant:</b>	<b>Mars Foods Ltd</b>	
<b>Case No:</b>	<b>20/00634/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Mrs H Morris</b>	<b>Date for Determination: 14 July 2020 Extension of Time Expiry Date: 6 November 2020</b>

**Reason for Referral to Planning Committee** – Called in by Cllr Hudson

**Neighbourhood Plan:** No

**Case Summary**

The application site is situated on the south side of King's Avenue, King's Lynn, and comprises a drainage ditch and part of the compound of an industrial building.

The application seeks full planning permission to culvert a 34m stretch of ditch which runs along part of the northern boundary of land owned by Mars Food (UK) Limited. The proposed culverting is required because settlement of the north bank of the ditch is causing the neighbouring residential property immediately to the north (No.48 Kings Avenue) to experience settlement of its external hard and soft landscape.

The application site is set within the development boundary of King's Lynn.

**Key Issues**

The key issues in the consideration of this application are:

- \* Principle of development;
- \* Form and character;
- \* Impact on amenity;
- \* Ecological impact; and
- \* Other considerations.

**Recommendation**

**APPROVE**

## **THE APPLICATION**

The application site is situated on the south side of King's Avenue, King's Lynn, and comprises a section of drainage ditch and part of the compound of an industrial building.

The application site is set within the development boundary.

The application seeks full planning permission to culvert approximately 34 metres of the drainage ditch between King's Avenue, King's Lynn and the Middleton Stop Drain using a 900 mm diameter pipe. The agent has submitted a structural survey which has identified subsidence at the edge of the garden adjacent to the stream which has been caused by the passage of water over time slowly eroding the north bank of the ditch.

There is an existing footpath / cycleway to the south of the ditch which is outside the application site red line area.

## **SUPPORTING CASE**

The works for planning application reference, 20/00634/F, relate to culverting a 34m stretch of ditch which runs along part of the northern boundary of the land owned by Mars Food (UK) Limited. The property immediately north of this stretch of ditch has experienced settlement of its external hard and soft landscape and it has been determined that the cause is related to settlement of the north bank of the ditch which separates the property at No. 48 Kings Avenue Kings Lynn and the Mars Food (UK) Limited site.

Having been brought to the attention of Mars, an independent survey of the property was initiated in February 2019, which confirmed that various issues were evident along its southern boundary. There is progressive movement/settlement of paved surfaces along this elevation of the property with block paving and concrete surfacing having suffered settlement by an estimated 200-250mm. A brickwork pier and gate in this location have also been rebuilt and rehung twice, prior to the survey taking place. Similarly, a timber fence along the boundary has been rebuilt on at least 2 occasions. There is a hedge to the southern boundary of the property in very poor condition; the ditch and slippage of the bank having exposed the roots of the hedge.

Review of the cause of the settlement suggests that maintenance works to clear the ditch has gradually caused a loss of soil between the water in the ditch and the narrow stretch of land adjacent to the property.

As a result, passage of water over time has slowly eroded the bank adjacent to the property. There is very little space between the top of the north bank and the boundary to the property, less than 3m.

Mars consulted with the Kings Lynn Drainage Board to determine a suitable method for stabilizing the bank. It was concluded that the most suitable method would be to culvert the stretch of ditch adjacent to the property, running 34m between headwalls at each end of this section. The Drainage Board advised that a consent would be needed under their byelaws and Peter Dann Limited were engaged to agree the technical aspects of the works and make an application for consent. A consent was granted by the Drainage Board on 2nd December 2019.

Peter Dann approached the Borough of Kings Lynn and West Norfolk Planning Department early this year to establish whether the culverting works would require a planning application to be submitted. This was confirmed as a requirement and a planning application was

submitted on 30 April 2020. During the consultation period, the Planning Officer advised that an ecology report should be sought to support the application and duly, Mars appointed Norfolk Wildlife Services (NWS) to undertake this work. NWS have supported Mars in recent years with previous ecological work at their site in Kings Lynn and data was available from those surveys to support and target the survey required for this application. NWS surveyed this stretch of ditch for Mars as part of a wider ecological assessment of their site back in 2017.

The survey report was submitted to the Planning Department in August 2020. The report found the ecological impact of the work to not be significant and the residual impacts with mitigation were anticipated to be neutral. However, a water vole presence was discovered along the ditch, albeit only 1 or 2 water voles using the southern bank. The works would result in the disturbance to water voles and would need to be completed under a water vole disturbance licence (CL31) which is issued by Natural England.

Subsequently, a review of the ecology was undertaken with the Planning Department to address several matters which arose out of the report. A summary of those points and NWS's response is as follows:

- The potential impacts to water voles have been assessed against the standing advice from Natural England (NE), in relation to their protection under Schedule 5 of the Wildlife & Countryside Act 1981.
- The Natural England advice is firstly to avoid works to areas where there are water voles. It is not possible for the works to avoid where water voles are present unless the works to stabilise the bank are not carried out. Otherwise, any works to stabilise the bank will likely have some impact to water voles using the drain. Not carrying out the works is also likely to impact on the quality of the drain, with long term implications for water voles. The survey found there were no water vole signs opposite an area of bank which had collapsed.
- Natural England advice is secondly to avoid habitat fragmentation and isolation. No habitat fragmentation is anticipated, as there were no signs of water voles beyond the section to be culverted. The water will still flow through the culvert, and so it will not be a barrier to aquatic species, and the hedge will be retained to provide terrestrial connectivity. The loss of this short section of drain does not, in the opinion of NWS, lead to any significant habitat fragmentation for water voles, as they will still be able to move through the landscape along the main drain network.
- Natural England advice is thirdly to limit damage to water vole habitat. The proposed method is the preferred option by the IDB. The works will only impact on the section of drain to be stabilised. Water voles were only found to be using one of the banks within the targeted section of drain. There will be displacement, but it is anticipated to affect only 1 or 2 water voles, and this displacement will be back to within their existing territories (not onto unfamiliar habitat). The loss of this section of drain is predicted to have a minor impact as water voles will still be able to use the main drain. The loss of this drain is deemed as not significant.
- Works to displace the water voles will need to be completed under a mitigation licence. The applicant will need to demonstrate that the mitigation measures ensure a favourable conservation status for water voles after the conclusion of works. Due to the restrictions on site, it is not possible to implement mitigation adjacent to the drain. Proposed mitigation is a suitable financial contribution to the local mink control project, which will benefit water voles throughout the district. Natural England will not issue the licence unless the applicant can demonstrate the mitigation will benefit the conservation status of water voles; it is assured that a suitable mitigation strategy will be agreed before the works commence.

It is concluded that the displacement of the water voles to facilitate work to culvert the ditch and stabilise the external landscape of the property at No.48 Kings Avenue is reasonable and appropriate without significant impact to the local water vole population.

## **PLANNING HISTORY**

16/00862/F: Application Permitted: 30/06/16 - Variation of condition 2 of planning permission 14/01390/FM to change approved drawings

14/01390/FM: Application Permitted: 23/12/14 - Single storey extension to the main building

10/01540/F: Application Permitted: 05/11/10 - Extension of existing production facility and relocation of the cold store

10/01183/F: Application Withdrawn: 27/08/10 - Extension of existing production facility to increase working space and relocation of cold store

10/01540/DISC\_A: Discharge of Condition final letter: 26/11/10 - DISCHARGE OF CONDITION NUMBERS 3, 4 AND 5: Extension of existing production facility and relocation of the cold store

07/02617/F: Application Permitted: 13/02/08 - Additional pallisade fencing & gates

2/03/1396/F: Application Permitted: 01/09/03 - Additional security fencing 1.8 metres & 2.1 metres high

11/00940/F: Application Permitted: 22/07/11 - Extension of existing production facility and relocation of the cold store - Variation of condition 2 of planning permission 10/01540/F

2/01/1774/F: Application Permitted: 04/01/02 - Extension to create production storage and distribution areas

## **CONSULTATIONS**

**Local Highway Authority: NO OBJECTION.**

**Water Management Alliance (IDB): NO OBJECTION.**

**Natural England: NO OBJECTION.** Natural England agree that the proposal is unlikely to result in a significant effect to designated sites, specifically the River Nar which is situated approximately 1.3km from the development boundary.

## **REPRESENTATIONS**

No letters of representation have been received in relation to this application.

## **LDF CORE STRATEGY POLICIES**

**CS01 - Spatial Strategy**

**CS02** - The Settlement Hierarchy

**CS08** - Sustainable Development

**CS12** - Environmental Assets

**CS03** - King's Lynn Area

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM1** – Presumption in Favour of Sustainable Development

**DM2** – Development Boundaries

**DM15** – Environment, Design and Amenity

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Planning Policy Framework – sets out the Government's planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

The key issues in the consideration of this application are:

- Principle of development;
- Form and character;
- Impact on amenity;
- Ecological impact; and
- Other considerations.

### **Principle of Development**

The application site lies within the development boundary for King's Lynn and seeks full planning permission to culvert a 34m stretch of drainage ditch which runs along part of the northern boundary of land owned by Mars Food (UK) Limited. The proposed culverting is required because settlement of the north bank of the ditch is causing the neighbouring residential property immediately to the north (No.48 Kings Avenue) to experience settlement of its external hard and soft landscape.

The principle of development is generally considered acceptable in this case provided the proposal complies with all relevant planning policies.

### **Form and Character**

Although the proposal would have some visual impact by virtue of the backfilling of the ditch, the dug material would be compacted and laid to match existing ground levels with a top soil

finish to match existing landscaping. The existing hedgerow along the northern bank of the drainage ditch will be retained. It is therefore considered that there would be minimal visual harm as a result of the proposal.

### **Impact on Amenity:**

The only immediate adjoining residential property is No.48 Kings Avenue which is the property currently experiencing settlement of its external hard and soft landscape due to the settlement of the north bank of the ditch. The proposed development would therefore have no detrimental impact on the amenity of residential properties. On the contrary, the culverting is proposed in order to rectify the current situation for No.48 Kings Avenue and would therefore result in a benefit for this property.

### **Ecological Impact**

The applicant has submitted an Ecological Report prepared by Norfolk Wildlife Services that identifies water voles within the section of drain to be culverted between the Middleton Stop Drain and footbridges. No signs were found along the adjacent section of drain beyond the proposed works area. Water vole signs, including two adult water voles, were seen on the Middleton Stop Drain.

In order to carry out the proposal, a licence will be required from Natural England to displace water voles for development works.

Water voles and their habitat are protected by Schedule 5 of the Wildlife & Countryside Act 1981, and Natural England Standing Advice states that any development proposal affecting water voles should avoid negative effects by:

- avoiding works to areas where there are water voles;
- avoiding habitat fragmentation and isolation by ensuring connectivity of habitat; and
- limiting damage to water vole habitat.

If this isn't possible, mitigation measures should be used to reduce the impacts by habitat manipulation – encouraging them to move to a connected habitat.

In relation to the above points referred to in the standing advice, in this case it is not possible to avoid any impact on water voles. Water voles are only currently using the one bank, that is there are only burrows on the southern side, there are none on the northern bank that is slipping. The alternative to the proposed culverting would be to do nothing but not only is this not an option given the current impact on the neighbouring residential property, doing nothing could also lead to continued deterioration of the ditch and the potential loss of the drain which would likely have a more significant impact on the water vole habitat.

The proposed culverting won't result in fragmentation of the water vole habitat given that the other side of the bridge is less suitable for them and there is not sufficient suitable vegetation. There will be displacement but this will only affect 1 or 2 water voles and they will only be displaced to another part of their existing habitat i.e. they will be moved from the edge of their existing habitat into the middle of the main drain. Furthermore, although 34m of drain is proposed to be culverted, it is only 17m of existing water vole habitat that would be affected by the proposal. The culvert will still have water flowing through therefore the ecologist has advised this is still a habitat of sorts, particularly given it is already a heavily disturbed area adjacent to a footpath / cycleway.

A licence from Natural England will be required to displace the water voles and due to the confines of the site, it would not be possible to provide new or compensatory habitat on site

for them. It is therefore proposed that the mitigation requirement for the licence would be achieved through a donation to the Norfolk Mink Control Project, of which the King's Lynn Drainage Board is a partner. It has been advised within the submitted Ecology Report that the size of this donation will be equivalent to the costs associated with digging the 34m replacement section of drain. This is considered an appropriate approach as impacts are only to part of a territory and there is no fragmentation of the water vole population. This sponsoring of the Norfolk Mink Control Project should provide a sufficient conservation gain for water voles and will be a requirement of the Natural England licensing process. Further mitigation measures are set out within the submitted Ecology Report which include the timing of works and a wildlife-sensitive lighting scheme during construction.

Planning permission is required before the applicant can apply for the Natural England licence and it is under the licence process that any donation to the Norfolk Mink Control Project would be secured. It is therefore not considered necessary in this case for the local planning authority to secure the donation, particularly given Natural England have raised no objection to the application and have not specified any requirement for a financial contribution. It is however recommended that a more general condition is imposed requiring the development to be carried out in accordance with the mitigation measures set out in paragraph 5.2 of the submitted Ecological Report which includes the timings of works and the wildlife-sensitive lighting scheme.

Overall this application seeks to propose the best solution with least ecological impact. Any works to stabilise the bank will affect water voles to some degree and as advised previously, given the current impact on the neighbouring residential property, doing nothing really isn't an option in this case and would also be likely to lead to more significant impacts on the water vole habitat. It is therefore considered that the proposal is acceptable in terms of its impact on protected species.

#### **Other Considerations:**

There are no other material considerations relevant to this application.

#### **CONCLUSION**

The proposed culverting is required in order to stop further subsidence to the residential property to the north of the drainage ditch. The proposal would have minimal visual impact and although there will be some impact on the existing water vole habitat, this can be suitably mitigated. It is therefore considered overall that the scheme put forward is the best solution for the site with the least ecological impact. The proposal is therefore considered to comply with all relevant national and local planning policies and guidance.

#### **RECOMMENDATION:**

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 1 Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
- 2 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:

ZZ-DR-C1000 Rev PL2  
ZZ-DR-D2000 Rev PL1  
ZZ-DR-D2030 Rev PL1

- 2 Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 Condition: The development hereby permitted shall be carried out in accordance with the recommendations and mitigation measures set out in section 5.2 of the submitted Ecological Report prepared by Norfolk Wildlife Services dated 17th June 2020.
- 3 Reason: In the interests of protected species and to accord with the provisions of the NPPF (2019).