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Mr A Walker
Marston Parish Council
Kilindini
Plough Lane
Marston
Devizes
Wiltshire SN10 5SR

Our ref CLI 172

Date 25 January 2005

Dear Mr Walker

**LAW OF PROPERTY ACT 1925: SECTION 194
PROPOSED CONSTRUCTION OF A POND ON MARSTON GREEN, MARSTON,
WILTSHIRE**

The Application

1. Thank you for your application, dated 8 December 2004, for consent under section 194 of the Law of Property Act 1925, for the construction of a wildlife pond on 400 square metres or thereabouts of Marston Green, Marston, Wiltshire.

The Site

2. Marston Green, which is approximately 10.15 hectares in area, is registered as common land (CL85) under the Commons Registration Act 1965. The common is owned by Marston Parish Council and rights of common of pasture are registered in respect of the land. You said that none of these rights were currently exercised and had not been for over 10 years.

The Case

3. In support of your application, you explained that the proposal was to create a triangular pond 15m by 35m at its maximum. Silting and spoil would be removed to a depth of 1 metre below current levels. You further explained that:

- The restoration of the pond would enhance the appeal of the Green and provide a habitat for lost species to colonise;

- Most of the marshy areas on the Green and on the land surrounding it had been infilled over the last 30 years, resulting in a loss of wildlife habitat and biodiversity;
- It would be a natural pond and rely for its water on drainage from existing ditches, springs and rain run-off;
- There would be no artificial lining and, once excavated, the graded sides would be seeded with natural grasses and planted with entirely native species and shrubs to help stabilise the banks;
- No animal species would be introduced but it was expected that the pond would be fully populated and stabilised within 3-5 years;
- Spoil was to be taken from the site to landfill by a contractor.

Responses to the Proposal

4. In response to the published notice giving details of the proposal, which appeared in the Wiltshire Gazette and Herald on 2 December 2004, the Department received no letters of objection.

5. The Open Spaces Society, which was consulted by the Department, did not object to the proposals, as it considered that the proposed pond would enhance the common and therefore be of benefit to the neighbourhood.

Consideration

6. In deciding whether to give consent under section 194 of the Law of Property Act 1925, consideration must be given to the “benefit of the neighbourhood” as well as to “private interests” in the land. The “benefit of the neighbourhood” is defined as including the health, comfort and convenience of the inhabitants of any populated places in or near any parish in which the land is situated in the context of the enjoyment of the common as an open space, and the “private interests” are defined as including the advantage of the persons interested in the common, i.e. the soil owner and persons entitled to common rights.

7. Your application has been considered in light of the above. It is noted that the purpose of the proposal is to construct a pond on an area of land that already attracts standing water, to create a wildlife habitat and to enhance the appeal of the area. It is also noted that Kennet District Council, the Environment Agency, the Wiltshire Wildlife Trust and those with common rights have all consented to the proposal. It is further noted that the project was discussed on a number of occasions at parish meetings and that no objections were received in response to the published notice.

8. Having regard to the considerations set out in paragraph 6 above, the conclusion reached is that the works will not adversely affect the health, comfort and convenience of the local inhabitants, and that it is expedient that consent should be given.

Decision

9. Accordingly, in exercise of the powers conferred by section 194 of the Law of Property Act 1925, and of all other enabling powers, consent is hereby given to the works described in paragraph 1 above. For the purposes of identification only, the location of the works is shown as a red dot on the attached plan.

Supplementary

10. This letter does not convey any consent or approval which may be required under any enactment (including byelaws, orders or regulations) other than section 194 of the Law of Property Act 1925.

11. Once an application has been determined, the Secretary of State has no further role in relation to the case and the Department cannot comment further on the terms of the decision. There is no statutory provision for appeal against the decision but it can be challenged in the Courts within 3 months of the date of the decision letter. The procedure for this involves an application to the High Court for permission to apply for judicial review under the Supreme Court Rules.

12. Copies of this letter are being sent to Wiltshire County Council and the Open Spaces Society.

Yours sincerely

Gina Warman

Acting on behalf of the Secretary of State

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