



## **Little Moor Lane Farm ditch: response to question and petition**

**Local Committee for Woking  
26 April 2004**

### **KEY ISSUE:**

The Committee needs to respond to a question put by Mr J D Mitchell on 22nd October 2003, and to a petition signed by 111 residents presented on 28th January 2004, which was supported by a letter from Mr Mitchell dated 21st January 2004. These complain about the cleaning of the ditch running along the western and northern boundary of the Council's tenanted smallholdings at Little Moor Lane Farm, Woking, in October 2000.

### **SUMMARY:**

To prove liability against the Council in law, a householder would have to show that the Council was responsible for carrying out the work, that the work was carried out incorrectly, and that as a result, damage was caused to their properties. None of these has been shown to be the case.

## **OFFICER RECOMMENDATIONS:**

The Committee is asked to reply to Mr Mitchell's question and the petition by saying that

- the ditch cleaning was not done by Surrey County Council but by contractors, Land & Water Ltd, on instructions from the Council's property consultants, BK (Bruton Knowles).
- The fact that the Council paid for the work does not mean that the Council takes responsibility for the manner in which the work was carried out, or for any consequences of the work.
- The Council does not accept that the dredging work was carried out improperly, or that it led to the consequences complained of.
- Even if it that were the case, the Council is not responsible for the negligence of its contractors. If the work was not carried out properly, and if properties have suffered damage as a consequence of work improperly carried out, householders have a remedy in law, but legal action should not be directed towards the Council.
- In the circumstances, the Committee does not recommend that the Council should initiate the remedial action urged by Mr Mitchell or act in the way requested by the petitioners.

## Introduction and background

1. On 22nd October 2003 Mr J D Mitchell asked a formal question of the Local Committee for Woking, and a petition signed by 111 residents was presented on 28th January 2004, supported by a letter from Mr Mitchell dated 21st January 2004. A copy of the letter and the wording of the petition are attached as annex 1.
2. In summary, they complain that the cleaning of the ditch running along the western and northern boundary of the Council's tenanted smallholdings at Little Moor Lane Farm, Woking, in October 2000 caused damage to their properties adjoining the ditch.
3. The Local Committee has taken detailed legal advice. A copy is attached as annex 2 (with residents names removed). This states that to prove liability against the Council in law, a householder would have to show that the Council was responsible for carrying out the work, that the work was carried out incorrectly, and that as a result, damage was caused to their properties. None of these has been shown to be the case.
4. They have been advised on several occasions, including by the Ombudsman, about the legal remedies open to them, but have chosen not to pursue these.
5. It is therefore recommended that the Committee reject the request of Mr Mitchell and the petitioners.

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BACKGROUND PAPERS: a) the Council's title deeds  
b) the files relating to 4 claims in respect of this matter received by the Head of Risk Management and Insurance  
c) the management file for the ditch of BK (Bruton Knowles).

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Version No: 1

Date: 10.04.04

Initials: CH

No of annexes: 2

## Annex 1

### **Mr J D Mitchell asked this formal question of the Local Committee for Woking on 22nd October 2003:**

The land at Little Moor Lane Farm is owned by Surrey County Council, and managed by Messrs Bruton Knowles at Leatherhead. These water-meadows are let to a Tenant Farmer. They are also used for the admission and holding of flood water from the River Wey.

In October 2000 the ditch at Little Moor Lane Farm was dredged. There was no notification to homeowners along the bank. Operatives crossed the ditch without permission and trees were cut on owners' properties without notice or permission.

It has now been established through the Environment Agency that, in addition, the dredging work was incorrectly done. The ditch was dug too deep, and banks were left in an unstable condition.

The specification for this work made available by SCC indicates that the bank sides should have been left with a batter (or slope) of 40-45 degrees. In fact banks were left close to the vertical, or were undermined.

Spoil (mainly sand) taken from the ditch still lines the bank on the SCC side in an unsightly pile about 2km long. The specification asked that this be removed.

Many properties in Westfield, Kingfield and Old Woking are affected, with the undermining of sheds, walls, summerhouses and paths.

Two in particular, Nos 10 and 11 Riverdale Drive, Kingfield, are at risk because the house buildings stand as close as 10-12ft to the ditch. Flooding causes the unstable banks to subside within a few feet of the house buildings, and land is being lost to the ditch. Trees and shrubs have lurched into or across the ditch or are leaning far towards the other side.

We have been informed that the work was paid for by a one-off payment made by Surrey County Council.

All attempts to get the County Council to accept liability have failed. They have also declined to send engineers to inspect the sites most at risk or the ditch as a whole. Instead they have merely recommended that householders should take action against the sub-contractors through the courts.

Would the Committee take urgent steps:

1) to see that the stability of the banks is reinstated along the whole of its length where properties line the bank; and

to secure the banks of Nos 10 and 11 Riverdale Drive from further erosion as the house-buildings stand so close to the water?

**A petition signed by 111 residents was presented to the Local Committee on 28th January 2004, saying:**

We the undersigned urge that Surrey County Council accept full responsibility for the repercussions of the mishandled and mismanaged dredging of Little Moor Lane Farm ditch in October 2000 and then commission such work as is necessary to stabilise the banks and make good any damage to property caused by this operation.

## Annex 2

### Report - Moor Lane Farm Ditch 26<sup>th</sup> April 2004

#### Introduction

1. This report has been prepared by the Council's legal representative at the request of the Local Director and Chairman.
2. The Committee has been asked to respond to a question put by Mr J D Mitchell on 22nd October 2003, and to a petition signed by 111 residents presented on 28th January 2004, which was supported by a letter from Mr Mitchell dated 21st January 2004. The letter summarises the matters of complaint arising from the cleaning of the ditch running along the western and northern boundary of the Council's tenanted smallholdings at Little Moor Lane Farm, Woking, in October 2000.
3. Mr Mitchell asks whether the Committee will take steps to ensure that the stability of the banks is reinstated and secured against further erosion; the petition urges Surrey County Council (SCC) to take responsibility for the effects of the works, and to commission the reinstatement and making good of damage caused to properties.
4. Mr Mitchell suggests that SCC should accept responsibility for the work, because the Environment Agency considered it had been incorrectly carried out, and because SCC paid for the work.
5. The legal officer has undertaken a full review of the matter by reference to
  - (a) the Council's title deeds
  - (b) the files relating to 4 claims received by the Head of Risk Management and Insurance, and
  - (c) the consultants' management file.

### The Ditch – Title

6. A full title investigation has been carried out, since questions of ownership of the ditch have been raised.
7. Title to the ditch is not registered at HM Land Registry. It is shown on plans going back to at least 1855 and was one of a network of watercourses providing drainage for several parcels of farmland, which were subsequently amalgamated in much larger parcels conveyed to the Council in 1911 for smallholding purposes.
8. The ditch forms the boundary to the north and west of the Council's land. The conveyance plan, and an earlier 1906 conveyance plan, show the ditch outside the boundary edging. The land to the west of the ditch was open land. There is no indication from the Council's deeds that the ditch belonged to the adjoining owners.
9. By section 62 of the Law of Property Act 1925 a conveyance of land is deemed to include waters and watercourses appertaining to the land or at the time of the conveyance occupied or enjoyed with or appurtenant to the land. Section 62 has retrospective effect, and applies to all conveyances of land since 1882. The pattern of the ditches shown on the 1855 plan seems to suggest that ownership of the boundary ditch could well have passed to the Council under s.62, together with the other ditches which expressly did pass by virtue of being within the edging.
10. If the Council does not own the ditch, then it seems that the usual presumption of riparian ownership (i.e. ownership up to the halfway point) would apply.
11. In any event, the ditch does not form part of the agricultural tenancies and any maintenance responsibility appears to have been assumed by the Council, and carried out (since 1992) by its consultants or their contractors.
12. The ditch, and surrounding land, lies within the River Wey flood plain and is subject to periodic flooding. A letter from Woking Borough Council dated 22<sup>nd</sup> November 2000 [which requested Council's property consultants, BK (Bruton Knowles) to inspect and carry out any necessary maintenance work) confirms that there was flooding in October 2000, shortly before the clearance work was carried out.

### The Cleaning Work

13. The ditch cleaning was carried out by contractors, Land & Water Ltd, on instructions from the Council's property consultants, BK (Bruton Knowles). The work had been tendered on the basis of a specification prepared by BK, which was in almost identical terms to a specification prepared by their predecessors, W S Atkins Property Services, in 1995, when the ditch was last cleaned out. The specification included a requirement that the final ditch profile should be 1.2 metres deep X 2.0 to 2.4 metres top diameter, with a 45-degree batter.
14. An official order for the work was given to Land & Water Ltd in September 2000; the work was completed by 6<sup>th</sup> November 2000, when BK confirmed to Land & Water that the work had been inspected and was found to have been carried out to a satisfactory standard. The Council paid Land & Water's invoice upon certification by BK.
15. There is evidence of some prior consultation between BK and adjoining householders – a file note indicates that Mr Mitchell telephoned BK on 22<sup>nd</sup> August 2000, requesting that care be taken when passing his property, and asking for some spoil to be heaped on his side of the ditch to reinforce the bank; there is also a file note of a site meeting on 3<sup>rd</sup> October 2000, when Mr & Mrs C expressed concern about the height of trees along the ditch, which the contractors would be asked to deal with; also, on 5<sup>th</sup> October 2000 BK wrote to the Mrs A, advising that the work was to be carried out and that a willow tree adjoining their property needed to be pollarded.

### The Complaints

16. A number of complaints have been made about the effects of the dredging work, which are summarised as follows:

#### 1. Mrs A, The Moorlands

On 11<sup>th</sup> October 2000 Mrs A telephoned BK expressing concern about excavation of her bank; BK referred the matter to Land & Water the same day

#### 2. Mr Mitchell, 11 Riverdale Drive

Mr Mitchell's concerns are summarised in his letter of 21<sup>st</sup> January 2004:

- (a) the cleaning was done incorrectly and without prior consultation,
- (b) it has left banks undermined and unstable,
- (c) there has been consequent erosion,
- (d) properties have been blighted,
- (e) there has been environmental damage caused by spoil; and
- (f) further dredging will further undermine properties.



Mr Mitchell first raised concerns in about June 2001 with Woking Borough Council; he was wrongly directed towards Thames Water, then the Environment Agency, before meeting with BK's surveyor on 12<sup>th</sup> July 2001; on 7<sup>th</sup> August 2001 the surveyor wrote to Mr Mitchell expressing the opinion that the clearing work was not the cause of the problems.

Mr Mitchell subsequently took the matter up with the Council's Head of Estates Strategy, whose representative wrote denying liability in September 2001. Mr Mitchell complained to the Chief Executive who replied on 29<sup>th</sup> September 2001, pointing out that the work had not been commissioned by the Council, who therefore had no liability for it; and that he should refer to the contractors, whose details were supplied by the Head of Insurance on 12<sup>th</sup> November 2001. In December 2001, Mr Mitchell asked BK to reconsider their position. BK formally denied liability on 18<sup>th</sup> December 2001. On 19<sup>th</sup> February 2002 Mr Mitchell complained to the Ombudsman, who declined jurisdiction and suggested Mr Mitchell should make an insurance claim, or take legal proceedings.

### 3. Mr B, The Moorlands

Mr B expressed concern at a meeting with BK's surveyor on 12<sup>th</sup> July 2001; the surveyor wrote to him on 7<sup>th</sup> August 2001 in similar terms as the letter to Mr Mitchell, i.e. giving his opinion that the work was not the cause of the problems.

### 4. Mr & Mrs C, Riverdale Drive

Mr & Mrs C also met BK's surveyor on 12<sup>th</sup> July 2001, who also wrote to them on 7<sup>th</sup> August 2001 in similar terms.

On 2<sup>nd</sup> September 2001 Mr C wrote to the Head of Estates Strategy complaining of slippage and erosion, and mentioning that his property had been underpinned in October 1998 due to subsidence; the Head of Estates replied on 12<sup>th</sup> September 2001, denying liability.

### 5. Mr D, St Martha's Avenue, Westfield

Mr D met BK's surveyor on 13<sup>th</sup> September 2001 to express concerns about subsidence apparent since July 2001. BK's surveyor replied on 27<sup>th</sup> September 2001, expressing the opinion that the cleaning work was not the cause of the problems.

Mr D wrote to the Council on 26<sup>th</sup> November 2001, requesting a meeting to discuss; the matter was referred to the Head of Insurance, who replied on 2<sup>nd</sup> January 2002 that the work had not been commissioned by the Council, and suggesting Mr D directed his comments to the contractors, Land & Water.

## 6. Mrs E, The Moorlands

Mrs E phoned Estates Strategy on 18<sup>th</sup> February 2002 to complain about erosion, and wrote to BK on 25<sup>th</sup> February 2002.

The matter was referred to the Head of Insurance, who wrote on 22<sup>nd</sup> April 2002, explaining that if Mrs E considered work was done negligently then any action should be directed to the contractor.

In October 2002 Mrs E asked the Head of Estates Strategy and the Head of Insurance to meet with County Councillor Mrs Gruselle, Mr Mitchell and herself. The Head of Insurance explained that this would not be appropriate in view of a prospective insurance claim against the Council. He subsequently explained the Council's position in correspondence with Mr Humfrey Malins MP, whose assistance Mrs E had sought.

On 21<sup>st</sup> September 2003 Mrs E forwarded copies of letters written by the Environment Agency, who it is understood had inspected the ditch in June or July 2003 and who thought the ditch had been overdredged, and that the Council was responsible because it had employed the contractors. Mr Mitchell subsequently adopted the Agency's views in his question to the Local Committee on 22<sup>nd</sup> October 2003 and in his letter of 21<sup>st</sup> January 2004.

## 7. Ms F, High Street, Old Woking

Ms F wrote to the Council and BK in April 2002, complaining of subsidence. The matter was referred to the Head of Insurance, who replied on 30<sup>th</sup> April 2002, explaining that the work was done by sub-contractors on BK's instructions. He gave the contractor's details and explained that the Council had not acted negligently and had no liability.

## The Legal Position

17. To prove liability against the Council in law, each householder would have to show that the Council was responsible for carrying out the work, that the work was carried out incorrectly, and that as a result, damage was caused to their properties.
18. In general, a person is not liable for the consequence of his agents' negligent acts unless he authorised or ratified them. An employer is not liable for his contractors' negligence, subject to the same proviso. Thus, assuming there was fault on the part of Land & Water (and BK does not accept this to be the case) the Council could only be held liable for the consequences if the fault had been negligently authorised or ratified by BK, and the Council had in turn ratified BK's negligence in so doing. BK has denied any negligence in the handling of the commission; the Council has done nothing to indicate that, had there been any such negligence on BK's part, it had been ratified by the Council.

19. On the facts, there appears to be no evidence of negligence on the Council's part which would entitle any of the householders to claim against it. The Council's rejection of the claims for compensation, based on the view that any complaints as to workmanship should have been directed to the contractors, appears to have been fully justified in the circumstances.
20. The Environment Agency's views appear to be misinformed, based on an inspection of the ditch many months after the event, and without an appreciation of the management arrangements as between the Council and BK, the contractual arrangements as between BK and Land and Water, and the legal liabilities arising from negligent acts of contractors.

### Recommendations

As a result of the above review, it is suggested the following replies be considered by the Committee:

1. In reply to Mr Mitchell's question put to the Committee on 22<sup>nd</sup> October 2003:
  - The Council is advised by its consultants that the dredging work was carried out properly and was not the cause of the damage complained of
  - The Environment Agency's views cannot be relied on
  - The fact that the Council paid for the work does not of itself involve any assumption of responsibility for the manner in which the work was carried out, or for any adverse consequences of the work
  - Householders have a remedy in law if their properties have suffered damage as a consequence of work improperly carried out by the contractors, but such action should not be directed towards the Council
  - In the circumstances, the Committee is not in a position to recommend that the Council should take steps to initiate the remedial action urged by Mr Mitchell
2. In response to the Petition put to the Committee on 28<sup>th</sup> January 2004:
  - For the reasons outlined above, the Council does not accept that the dredging work was carried out improperly, or that it led to the consequences complained of; and even if it that were the case, the Council is not responsible for the negligence of its contractors
  - In the circumstances, the Committee cannot recommend the Council to act in the way requested by the Petitioners

3. As to objectives 4) and 5) mentioned in Mr Mitchell's letter dated 21<sup>st</sup> January 2004 in support of the petition - the removal of spoil, and guarantees as to the conduct of future dredging work - these are estate management issues which have been brought to the attention of the Head of Estate Strategy for further consideration.

Head of Legal Services (ref.LPE/PA/32984)  
8/4/04