

S
809

Confidential Filing



Limpennoe and Halvergate Marshes
The Case of Mr David Archer, a
farmer, concerning land drainage

ENVIRONMENTAL
AFFAIRS

JUNE 1984

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
25.6.84 3.7.84							
PREM 19/12/8							

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Lords HANSARD, 3 July 1984, columns 155 to 161:
Halvergate Marshes

Signed _____

J. Gray

Date _____

16/9/2013

PREM Records Team

R. B.
PRIME MINISTER

pa
DMS
4/7

ms

HALVERGATE MARSHES

The Secretary of State for the Environment had a difficult time when answering Dr. Cunningham's PNQ on Halvergate Marshes.

The main concern was not about the land owned by Mr. Archer, which you will recall was the subject of a Section 4 order made by Mr. Jenkin last weekend. The Opposition instead concentrated on the adjacent land owned by Mr. Wright, which he is proposing to drain - Mr. Jenkin has refused to intervene in the absence of a request to do so from the Broads Authority.

There was predictable criticism of the Common Agricultural Policy, which encourages farmers to plough up grazing land to grow cereals, and of the apparent ineffectiveness of the Wild Life and Countryside Act. But the real discomfort arose from an assurance which Mr. Waldegrave gave in April in the House, to the effect that the Marshes would be "safe for a year". Mr. Peter Shore, on a Point of Order, made much of the fact that this assurance had not been fulfilled, and that furthermore the Secretary of State had the power to fulfil it but was refusing to do so. In response, Mr. Jenkin was able to point out that the assurance was retracted by way of written answer as soon as it became clear that the Marshes could not be saved in their entirety. But this failed to satisfy his critics.

DMS

ms

3 July 1984



file 888

10 DOWNING STREET

From the Private Secretary

25 June 1984

Limpenhoe Marshes

The Prime Minister considered over the weekend your Secretary of State's minute of 22 June about Limpenhoe Marshes, together with the Minister of Agriculture's letter on this subject of the same date.

As we told you on Saturday morning the Prime Minister was content for your Secretary of State to proceed as proposed in his minute.

I am sending a copy of this letter to Ivor Llewelyn (MAFF).

David Barclay

John Ballard, Esq.,
Department of the Environment

vsc

MR BARCLAY

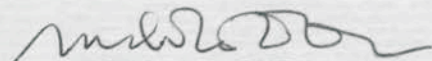
22 June 1984

DRAINING THE HALVERGATE MARSHES

We understand that Patrick Jenkin intends to tell Michael Jopling this evening that, unless restrained by the Prime Minister, he will issue the Direction to preserve the 100 acres of threatened landscape.

We recommend that Patrick Jenkin proceeds. He has proposed a solution which averts a damaging conservationist controversy and buys time to sort out the defects of the 1981 Act. The agricultural Department's main objection is that an article 4 Direction would erode the voluntary principle enshrined in the 1981 Act and "drive a wedge" between farmer and conservationist. They foresee a situation where farmers drain land without telling the planning authorities, and the latter responding by applying Directions to large stretches of land. These fears seem greatly exaggerated. There is a precedent for applying a Direction. Wrangle Outmarsh was protected two years ago because the relevant section of the 1981 Act was not in force at that time. More generally, statutory measures applied to other parts of the economy, irksome though they can be, do not "drive wedges" between owners of buildings on the one hand and conservationists on the other.

There is no question of Mr Archer being hard done-by under the Article 4 procedure, MAFF would expect him to get fair compensation, subject to arbitration.


NICHOLAS OWEN

Prime Minister (1)

The "voluntary approach" only works because it is backed up by legal sanctions. If these are not used in such a blatant case, respect for the conservation policy among farmers will evaporate.

DAUABE

CONFIDENTIAL

The power to make the order lies with the SofS for the Environment.

Yes Agree not to intervene?

Emb
22/6



Prime Minister

LIMPENHOE MARSHES: MR DAVID ARCHER

1. I have considered carefully the argument set out by Michael Jopling in his reply to my letter on this subject. Of course I am at one with him in seeking wherever possible to uphold the voluntary approach. I also agree that we need to seek a more durable basis for the conservation of landscape in areas like the Broads, and I welcome his recognition that the Wildlife and Countryside Act may not provide sufficient cover in this particular type of area. We are I think agreed that we will need to look at it carefully in the coming weeks.

2. However none of this relieves me of the need to take urgent action if we are to head off what will be seen as a failure of the Government to protect an important area of countryside. The area of land Mr Archer seeks to drain and plough is in a particularly crucial spot, on the edge of the river in the midst of a large area of grazing land, and only a short way from the Halvergate Marshes themselves which have been the subject of so much publicity recently, and over which voluntary agreements have been established. It is essential that we safeguard the area with which Mr Archer is concerned, as well as the Halvergate site, while we settle the framework for the future.

3. I believe that it has been common ground throughout that there will be cases where the voluntary principle does not guarantee the protection of areas of land. That is why the Wildlife and Countryside Act provides for special measures in the shape of Conservation Orders under Section 29 of the Act for Sites of Special Scientific Interest exposed to damaging



action, and over which voluntary agreement cannot be reached swiftly. It has repeatedly been made clear that the voluntary principle generally is durable only so long as it is upheld by the farming community, and I believe that it would be weakened more by allowing Mr Archer to destroy this particular site than by constraining him as I propose for one year only while we work out a new approach.

4. I do not see that the action I propose would establish a precedent that could be followed by all local authorities, because I intend not to confirm the direction which the Broads Authority proposed to make, but to substitute one of my own, for the one year period. We can defend our action by stressing that there has been a very serious effort to reach voluntary agreement in this area, as has been confirmed by the success of this approach on the Halvergate sites. I am therefore satisfied that the best course is for me to make the order and I must do so forthwith because we have good reason to believe that Mr Archer intends to begin his operations within the next 48 hours.

5. You asked me yesterday whether he would get a drainage grant. The answer is that he may well be entitled to a grant paid retrospectively upon application. Mr Jopling has power to withhold a grant on conservation grounds. I am advised however that the increase in profits from ploughing for barley are so great that drainage grants are hardly relevant. Mr Archer will go ahead whether or not he gets a grant.

6. Naturally I have made every effort to resolve my difference with Michael Jopling before bringing the matter back to you, and I telephoned him this evening, but I regret to say that



we are not able to reach a common position. In these circumstances I feel, unless you indicate that you wish me not to do so, that I should make the order in the terms I outlined in my earlier letter.

JH Gallard

f P J
22 June 1984

*Approved by the Secretary of State
and signed on his behalf.*



MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

The Rt Hon Patrick Jenkin MP
Secretary of State for the Environment
2 Marsham Street
London
SW1P 3EB

22 June 1984

Dear Secretary of State

Thank you for your letter of yesterday about the Norfolk Broads and your proposal to make an Article 4 Direction which would withdraw deemed planning permission for field drainage from 100 acres of land owned by Mr David Archer.

This is a matter with extremely wide implications for the Government's conservation policy which I do not believe are sufficiently reflected in your letter and I am bound to say I am distinctly unhappy about the course of action which you propose. Above all we risk being bulldozed into taking measures which we might have cause to regret later.

I need hardly remind you that the Government is deeply committed to the voluntary approach to conservation and in the Wildlife and Countryside Act deliberately set out to use compulsory measures only in extreme circumstances. As a Party we are committed to respect and uphold the rights of private property and we have consistently rejected the Opposition's alternative approach of trying to manage the countryside through planning controls. I am of course deeply disturbed at the prospect of Mr Archer converting his grazing marsh to arable production. I am also prepared to acknowledge that the Wildlife and Countryside Act may not provide sufficient safeguards as far as landscape conservation is concerned. But I do question the wisdom of initiating what is in effect a major change of policy as a hasty response to one difficult case, particularly where the landscape is only of Grade II quality. It has all the appearances of a panic measure.

Making an Article 4 Direction at Limpenhoe would undoubtedly be widely seen as signalling a departure from the voluntary basis of the Government's policy towards conservation. However much the decision may be qualified by statements to the contrary, both farmers

/and conservationists ...

and conservationists will see that Government is unwilling to adhere to its principles and we shall be seen to be vulnerable to pressure from unco-operative local authorities influenced by bodies such as the Friends of the Earth.

If we were to go ahead with this measure, I fail to see how we shall be able to resist using Article 4 Directions elsewhere in the Broads and in the wider countryside. We shall lose the co-operation of the farming community, which in general has been readily forthcoming in the Broads, and we shall encourage local authorities to use such Directions as a device for escaping their responsibilities as we had envisaged them under the 1981 Act.

Moreover, it is important to realise that your proposal has considerable cost implications. We need to think these through before making a decision and must not assume that the use of Article 4 Directions will reduce the call on public funds.

As far as the case proposed for an Article 4 Direction is concerned, I think it would be disingenuous to convey any impression that we have in mind a new policy for the Broads which would impose greater constraints on Mr Archer's freedom of action as a landowner than he currently enjoys. As you no doubt know we are intending to establish an experimental scheme to provide new incentives to the retention of traditional grassland practices in the Broads, but there is no intention of this scheme being other than voluntary.

What is more, I remain to be convinced that the Broads Authority has tried hard enough to reach some accommodation with Mr Archer. I know that Mr Archer is reluctant to hold back, but the £20 per acre (or thereabouts) which the Authority has offered is clearly well short of the likely profit he could earn from proceeding with his land improvements. In the light of the £160 per acre offered to a neighbouring farmer who had similarly rejected an offer of £20 per acre, the Authority's approach with Mr Archer has certainly not been helpful.

For all these reasons I cannot agree to the course of action that you are proposing. If Mr Archer cannot be prevailed upon to accept a management agreement, we should of course openly deplore this. At the same time we must be prepared to defend stoutly the voluntary principles on which our conservation policies are based and concede that from time to time there will be isolated and highly regrettable instances of this nature.

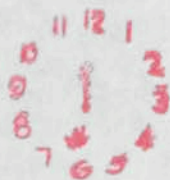
I am copying this letter to the Prime Minister.

Yours sincerely

David Dawson

for MICHAEL JOPLING

22 JUN 1984





NEW FILE
Await MAFF reply.

NO

216 2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

21 June 1984

Dear Michael,

I discussed with you over the telephone yesterday the "Article 4" Direction which the Broads Authority have submitted to me for approval which would withdraw planning authorisation for land drainage works from 100 acres of land on the Broads owned by Mr David Archer. You expressed your reluctance to agree to approval of this Direction, and your office later told mine that Mr Archer had in the event agreed to meet the Authority next Monday to see if a management agreement could be made which would achieve the same result. In these circumstances I naturally deferred a decision.

I fear that the contacts which my officials had last night and today with officials of the Broads Authority do not bear out the impression that there is any further negotiation in prospect with Mr Archer. The Chief Adviser to the Authority has told Mr Critchley here that he has at midday today telephoned Mr Archer and that Mr Archer has made absolutely clear that he has no desire now to discuss with the Authority the possibility of a management agreement, and that he intends on Monday next to start substantive works in the form of damming dykes. He has also confirmed his firm intention thereafter to plough.

There does appear to have been a misunderstanding of the latest position, but I doubt whether it is profitable to pursue now how that occurred. What is common ground between us is that Mr Archer did at an earlier stage say he was unwilling to consider an offer of a one year management agreement at £20 an acre even though it was accompanied by a firm prospect of a longer term agreement after that under the Financial Guidelines. What appears to be still in doubt is whether he was ever really interested in an agreement at all. The Authority do not think he was; the impression of your ADAS officer who contacted Mr Archer was that he would have been willing to consider a long term agreement. As the Authority explained to Mr Archer, their reason for seeking a one year agreement was that they did not want to enter into longer term commitments before longer term arrangements had been settled for financing conservation in the Broads. All the agreements made with other owners in this area are for one year only, and I am bound to say that I sympathise with their reason for seeking one year agreements at this stage and I would not have felt justified

in seeking to dissuade them.

I am therefore back with the urgent need to take a decision on the Article 4 Direction. I quite take your point that local authorities should do their best to settle these sorts of problems through management agreements, but we have a situation here where (whatever the situation may have been in the past) the farmer is plainly not now interested. I suppose it is conceivable that an offer of a greatly increased price might break the deadlock, but it would be quite wrong to bring pressure on the Authority to make such an offer; moreover, this makes the "voluntary" approach look like an invitation to blackmail.

We therefore face the prospect that in the absence of either a management agreement or an Article 4 Direction the farmer will go ahead and drain a site of high landscape value forming part of a wider area of traditional landscape in the Broads. We will have an outcry from the conservationists and we will be faced with the charge that we are allowing the ground to be taken from under us even while we are considering the report of the joint working party which put forward options for long term arrangements for financing conservation of landscape in the Broads.

I appreciate your fear that issue of a Direction could be seen as signalling a departure from the voluntary approach embodied in the Wildlife and Countryside Act. What I therefore propose as a compromise is that instead of approving the Direction submitted to me by the Authority I make one myself instead with the same effect but limited to a period of one year. I could say in doing so that this was being done in the particular circumstances of the area so as to allow time for effective voluntary arrangements to be made for conserving landscape in and around Halvergate in the light of the working party's report. (I am advised incidentally that it would not be legally open to me simply to amend the Authority's direction).

I very much hope that you will agree to me proceeding on these lines and I would be grateful if I could hear from you by close of play tomorrow so that a decision can be affected by Monday morning.

I am copying this letter to the Prime Minister.

Your ever
Patrick

PATRICK JENKIN

