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24 February 2015

To: Chairman – Councillor Lynda Harford  
Vice-Chairman – Councillor Brian Burling  
All Members of the Planning Committee - Councillors David Bard,  
Anna Bradnam, Pippa Corney, Kevin Cuffley, Tumi Hawkins, Caroline Hunt,  
Sebastian Kindersley, David McCraith, Deborah Roberts, Tim Scott, Ben Shelton,  
Robert Turner and Aidan Van de Weyer

Quorum: 4

Dear Councillor

You are invited to attend the next meeting of **PLANNING COMMITTEE**, which will be held in the **COUNCIL CHAMBER, FIRST FLOOR** at South Cambridgeshire Hall on **WEDNESDAY, 4 MARCH 2015 at 10.00 a.m.**

Members are respectfully reminded that when substituting on committees, subcommittees, and outside or joint bodies, Democratic Services must be advised of the substitution *in advance of* the meeting. It is not possible to accept a substitute once the meeting has started. Council Standing Order 4.3 refers.

Yours faithfully  
**JEAN HUNTER**  
Chief Executive

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## AGENDA

## PAGES

### **PUBLIC SEATING AND SPEAKING**

Public seating is available both in the Council Chamber (First Floor) and the Public Gallery / Balcony (Second Floor). Those not on the Committee but wishing to speak at the meeting should first read the Public Speaking Protocol (revised May 2013) attached to the electronic version of the agenda on the Council's website.

### **PROCEDURAL ITEMS**

#### **1. Apologies**

Councillors Dr. Tumi Hawkins and Robert Turner have sent Apologies. To receive apologies for absence from other committee members.

#### **2. Declarations of Interest**

**1 - 2**

**3. Minutes of Previous Meeting**

To authorise the Chairman to sign the Minutes of the meeting held on 4 February 2015 as a correct record. The minutes are available on the Council's website.

**PLANNING APPLICATIONS AND OTHER DECISION ITEMS**

4.	<b>S/1344/14/FL - Great Eversden (Site known as OSP, 148 Church Street)</b>	<b>3 - 22</b>
5.	<b>S/2216/14/FL - Steeple Morden (48 Station Road)</b>	<b>23 - 30</b>
6.	<b>S/2046/14/FL - Gamlingay (Land at 12 Potton Road)</b>	<b>31 - 38</b>
7.	<b>S/1504/13/FL - Caxton (Ermine Street)</b>	<b>39 - 50</b>
8.	<b>S/2186/14/FL - Caldecote (115 Highfields Road)</b>	<b>51 - 58</b>
9.	<b>S/2646/14/FL - Girton (65 Cambridge Road)</b>	<b>59 - 66</b>
10.	<b>S/3038/14/FL - Great Abington (23 South Road)</b>	<b>67 - 76</b>
11.	<b>S/2268/14/PO West Wratting (Camgrain)</b>	<b>77 - 88</b>
12.	<b>Changes to Planning Obligations for Smaller Residential Developments</b>	<b>89 - 92</b>

**INFORMATION ITEMS**

13.	<b>Appeals against Planning Decisions and Enforcement Action</b>	<b>93 - 96</b>
14.	<b>Enforcement Report</b>	<b>97 - 100</b>

**OTHER REPORT**

15.	<b>Smithy Fen Cottenham (5 to 11 Orchard Drive and 14 to 18 Water Lane) - Proposed Variation of 2006 Injunction in Light of May 2014 Appeal Outcome (App/W0530/A/12/2181439 arising from Refusal S/0041/12/Ful)</b>	<b>101 - 174</b>
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**OUR LONG-TERM VISION**

South Cambridgeshire will continue to be the best place to live, work and study in the country. Our district will demonstrate impressive and sustainable economic growth. Our residents will have a superb quality of life in an exceptionally beautiful, rural and green environment.

**OUR VALUES**

We will demonstrate our corporate values in all our actions. These are:

- Working Together
- Integrity
- Dynamism
- Innovation

## **GUIDANCE NOTES FOR VISITORS TO SOUTH CAMBRIDGESHIRE HALL**

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#### **Disturbance by Public**

If a member of the public interrupts proceedings at a meeting, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room. If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared. The meeting will be suspended until order has been restored.

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## **EXCLUSION OF PRESS AND PUBLIC**

The law allows Councils to consider a limited range of issues in private session without members of the Press and public being present. Typically, such issues relate to personal details, financial and business affairs, legal privilege and so on. In every case, the public interest in excluding the Press and Public from the meeting room must outweigh the public interest in having the information disclosed to them. The following statement will be proposed, seconded and voted upon.

"I propose that the Press and public be excluded from the meeting during the consideration of the following item number(s) ..... in accordance with Section 100(A) (4) of the Local Government Act 1972 on the grounds that, if present, there would be disclosure to them of exempt information as defined in paragraph(s) ..... of Part 1 of Schedule 12A of the Act."

If exempt (confidential) information has been provided as part of the agenda, the Press and public will not be able to view it. There will be an explanation on the website however as to why the information is exempt.

### **Notes**

- (1) Some development control matters in this Agenda where the periods of consultation and representation may not have quite expired are reported to Committee to save time in the decision making process. Decisions on these applications will only be made at the end of the consultation periods after taking into account all material representations made within the full consultation period. The final decisions may be delegated to the Corporate Manager (Planning and Sustainable Communities).
- (2) The Council considers every planning application on its merits and in the context of national, regional and local planning policy. As part of the Council's customer service standards, Councillors and officers aim to put customers first, deliver outstanding service and provide easy access to services and information. At all times, we will treat customers with respect and will be polite, patient and honest. The Council is also committed to treat everyone fairly and justly, and to promote equality. This applies to all residents and customers, planning applicants and those people against whom the Council is taking, or proposing to take, planning enforcement action. More details can be found on the Council's website under 'Council and Democracy'.

# Agenda Item 2

## Planning Committee

### Declarations of Interest

#### 1. Disclosable pecuniary interests (“DPI”)

A DPI is where a committee member or his/her spouse or partner has any kind of beneficial interest in the land under consideration at the meeting.

#### 2. Non-disclosable pecuniary interests

These are interests that are pecuniary involving a personal financial benefit or detriment but do not come within the definition of a DPI. An example would be where a member of their family/close friend (who is not their spouse or partner) has such an interest.

#### 3. Non-pecuniary interests

Where the interest is not one which involves any personal financial benefit or detriment to the Councillor but arises out of a close connection with someone or some body /association. An example would be membership of a sports committee/ membership of another council which is involved in the matter under consideration.

I have the following interest(s) (\* delete where inapplicable) as follows:

Agenda no.	Application Ref.	Village	Interest type	Nature of Interest
	S/		1* 2* 3*	
	S/		1* 2* 3*	
	S/		1* 2* 3*	

Address/ Location of land where applicable

Signature: .....

Name ..... Date .....

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# Agenda Item 4

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

14 January 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/1344/14/FL
<b>Parish(es):</b>	Great Eversden
<b>Proposal:</b>	Proposed development of 10 affordable dwellings
<b>Site address:</b>	Site known as OSP 148, Church Street, Great Eversden
<b>Applicant(s):</b>	Accent Nene Ltd
<b>Recommendation:</b>	Refuse
<b>Key material considerations:</b>	Principle of development/Green Belt; Landscape character; Heritage Assets; Highway Safety; Ecology; Archaeology; and Other considerations
<b>Committee Site Visit:</b>	Yes
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	Andrew Fillmore
<b>Application brought to Committee because:</b>	The application site is owned by South Cambridgeshire District Council
<b>Date by which decision due:</b>	6 <sup>th</sup> March 2015

### Planning History

1. **S/1044/11** - 10 affordable dwellings. Approved by SCDC, after which the decision was subject to a successful application for 'judicial review' on grounds the Local Planning Authority failed in its duty to undertake a 'Screening Opinion' as required under the Environmental Impact Assessment Regulations. The decision was quashed and the application later withdrawn.
2. **S/3202/88/F** - 16 flats and garages. Refused, dismissed at appeal and by the Secretary of State. The Secretary of State concluded the need for the affordable houses did not outweigh the harm to the Green Belt and significant harm to the character and appearance of Great Eversden.
3. **S/1174/81/O** for residential development, **S/1657/81/O** for residential development, **S/0735/86/O** for local authority housing, and **S/1205/86** for

Council housing for the elderly were all withdrawn.

## **Planning Policies**

### **4. National**

National Planning Policy Framework  
National Planning Practice Guidance

### **5. South Cambridgeshire LDF Core Strategy DPD 2007**

ST/1 Green Belt  
ST/2 Housing Provision  
ST/7 Infill Villages

### **6. Local Development Framework, Development Control Policies DPD 2007**

DP/1 Sustainable Development  
DP/2 Design of New Development  
DP/3 Development Criteria  
DP/4 Infrastructure and new development  
DP/7 Development Frameworks  
GB/1 Development within the Green Belt  
GB/2 Mitigating the impact of development in the Green Belt  
HG/1 Housing Density  
HG/3 Affordable Housing  
HG/5 Exceptions sites for affordable housing  
SF/6 Public Art and New Development  
SF/10 Outdoor Playspace, Informal Open Space and New Developments  
SF/11 Open Space Standards  
NE/1 Energy Efficiency  
NE/3 Renewable Energy Technologies in New Development  
NE/4 Landscape Character Areas  
NE/6 Biodiversity  
NE/7 Sites of Geological Importance  
NE/9 Water and Drainage Infrastructure  
NE/10 Foul Drainage – Alternative Drainage Systems  
NE/11 Flood Risk  
NE/12 Water Conservation  
NE/14 Lighting Proposals  
NE/15 Noise Pollution  
NE/16 Emissions  
CH/4 Development within the curtilage or setting of a Listed Building  
SF/10 – Outdoor Play Space, Informal Open Space and New Developments  
SF/11 – Open Space Standards  
TR/1 Planning for More Sustainable Travel  
TR/2 - Car and Cycle Parking Standards  
TR/3 Mitigating Travel Impact  
TR/4 Non-motorised Transport

### **7. Supplementary Planning Document(s)**

District Design Guide SPD – adopted 2010  
Affordable Housing SPD – adopted March 2010  
Listed Buildings: Works to or affecting the setting of SPD – Adopted July 2009

## 8. Emerging Local Plan

S/1 Vision  
S/2 Objectives of the Local Plan  
S/3 Presumption in favour of sustainable development  
S/4 Cambridge Green Belt  
S/5 Provision of jobs and homes  
S/7 Development Frameworks  
S/11 Infill villages  
CC/1 Mitigation and adaption to climate change  
CC/3 Renewable and low carbon energy in new development  
CC/4 Sustainable design and construction  
CC/6 Construction Methods  
CC/7 Water quality  
HQ/1 Design principles  
NH/2 Protecting and enhancing landscape character  
NH/4 Biodiversity  
MH/8 Mitigating the impact of development in and adjoining the Green Belt  
NH/14 Heritage Assets  
H/10 Rural exception sites for affordable housing

### Consultations

9. **Eversden Parish Council** – Approve. The provision of additional guest parking spaces in the south west corner of the development is highly desirable. Lighting for the site should be low pollution as in Low Close, Little Eversden. We are not at all happy with the proposed red brick boundary wall.
10. **Councillor Page** – (Local Member) - (Full comments set out in Appendix A) The reasons for continued refusal on this site are simple. OSP148 is an open space in the Green Belt and outside the village envelope, and once lost is lost forever. In the context of nearby listed buildings and the church it is a very significant open space. The site should have two further protections – the hedge along the frontage should be declared an ‘Important Countryside Frontage’, with the site a ‘Local Green Space’. No serious attempt has been made to find an alternative site. There is local opposition to the scheme with 53 signatories to a petition against the development.
11. **Councillor Howell** (Housing Portfolio Holder) – (Full comments set out in Appendix B). As Housing Portfolio Holder I felt it was important to write to provide my support for this planning application, which is seeking to secure 10 units of affordable housing on a rural exception site, which is in the ownership of this authority.
12. I understand that there is a need for small development to help meet the local housing needs of this village. It is important that as a strategic enabling authority where housing demand is high that we try and use any assets that we hold to help in meeting this increasing need.
13. Since 2007 this authority has provided over 486 new homes on rural exception sites. Policy HG/5 has delivered more affordable housing for this district than policy HG/3 (with the exception of the strategic growth sites) and it is important that we provide much needed affordable housing to our parishes. We also have a

commitment through the City Deal to provide an additional 1000 homes on exception sites over the next 10 years.

14. I am aware of the Low Close Little Eversden scheme which was completed approximately 4 years ago and this has been well received by the parish and local community. I am advised that the development was able to accommodate residents who had a local connections to either Great or Little Eversden and I would like to ensure that the same allocation criteria is applied to this scheme too. Whilst our policy asks us to consider just the local need to the particular parish. Given the size of some of our villages we are at serious risk of not being able to provide any more affordable homes in smaller parishes where the needs of others cannot be accommodated.
15. The changes to the way affordable housing is funded and managed now and in the future presents a real threat to the success of projects such as this, we should ensure that as an authority we embrace projects such as these where we have willing partners who would fund such projects.
16. **SCDC Housing** – Support. A housing needs survey was carried out in January 2014 which identified 12 households as being in need of housing and who had a local connection to the Eversdens. The proposed housing mix is in accordance with the housing needs survey.
17. **SCDC Landscape** - Object. Much of the area has a relatively tranquil rural character. Great Eversden is a historic village with small paddocks around its perimeter creating a buffer between the village and large arable fields, and the development in one of these paddocks will have a harmful effect in its own right. When viewed from the footpath the development would have a harmful effect on the specific views and general amenity. The layout would not be appropriate within this well-defined village edge and be harmful to the character of Great Eversden
18. **SCDC Ecology** – The application is supported on ecology grounds due to the environmental enhancements proposed from the layout – primarily the provision of the community orchard and retained tree belt at the front of the development.
19. **SCDC Historic Buildings** – Adopted policy CH/4 advises permission will not be granted which adversely affects the wider setting of a listed building. English Heritage define setting as ‘the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve’. The immediate area to the site has been subject of very little change and a previous proposal for low cost housing as an exception site was dismissed at appeal primarily on the likely effect on the character and appearance of the village and making reference to the concept of Guardian Fields. In line with English Heritages precautionary principle, where there is any doubt decision makers should err on the side of caution and recommend refusal.
20. **Highways Authority** – No objection.
21. **Anglian Water** – The foul drainage and sewerage system has available capacity to cope with the flows.
22. **Environmental Health (Contamination)** – No conditions are required.

23. **Police Architectural Liaison Officer** – No issues in terms of layout and design but raise the following issues; surveillance for the car parking for plots 1 and 5 is not spectacular, with little surveillance of the parking for plots 4 and 10. The semi-private nature of what is proposed means that for this application this won't actually be too much of an issue. The site is non-permeable which reduces considerably the risk of crime.
24. **English Heritage** – Object. The proposed development would cause harm to the setting of the grade 2\* listed Church of St Mary and other designated heritage assets in the vicinity and is therefore contrary to policies 131, 134 and 137 of the NPPF.
25. **County Archaeology** – No objection. Recommend a condition requiring a programme of archaeological work prior to commencement of development.
26. **Campaign for the Preservation of Rural England** – Object. An estate of 10 dwellings would be out of keeping with this rural area. Result in a loss of rural landscape. Encourage the identified need to be found elsewhere with every effort to locate such developments in villages which have facilities.

### Representations

27. Two representations have been received supporting the application citing the following reasons;
- Most residents regard the recent project at Low Close a success and so would this development proposal
  - Few houses have been built in the village in recent years
  - The site is central to the village with the dwellings attractive
  - The village desperately needs more affordable housing
28. Eight representations have been received opposing the application for the following reasons;
- Harmful to the character of the village
  - Harmful to the church and other heritage assets
  - Located in the Green Belt and contrary to Green Belt policy
  - Lack of local services in the village
  - The need for affordable housing is in Little Eversden where the development should be located
  - The site is only under consideration as the land is owned by SCDC
  - The building materials are out of keeping with the village
  - Loss of green space
  - Vehicular access is dangerous as is the nearby S-bend
  - Sewerage will not be able to cope
  - Surface water drainage concerns
  - There is a lack of community support for the development
  - No attempt has been made by the applicant to identify other suitable locations
  - Great and Little Eversden are separate parishes and the need should be provided in each individual parish in accordance with the adopted Affordable Housing SPD
  - Harmful to bats, through the loss of the hedge
  - There is no need for the development
  - Harmful to the landscape character

- Site is not sustainable
29. A petition signed by 63 residents objecting to the development has been received. The grounds of objection can be summarised as: unsafe vehicular access, out of character with rural village, disproportionate for a village of 100 dwellings, inappropriate in the Green Belt, cause harm to the setting of historic buildings, removal of elm hedge undermines character of street scene, lack of services in the village and there is no evidence the applicant has researched more sustainable sites with better services.

### **Planning Comments**

30. The site which is broadly rectangular in shape is located to the east of the village of Great Eversden immediately north of Church Street, and is presently used for livestock grazing. A mature hedgerow forms the southern boundary extending parallel with Church Street.
31. Full planning consent is sought for the construction of 10 affordable dwellings comprising 2no. two bed houses for shared ownership, 1no. two bed bungalow for rent, 6no. two bed house for rent and 1no. three bed house for rent.
32. The site lies outside the village framework and in the Green Belt.
33. Great and Little Eversden are two separate administrative parishes, although they share a Parish Council.

### **Principle of development/Green Belt**

34. The site lies within the Green Belt where the NPPF advises the construction of new buildings is inappropriate development which by definition is harmful to the Green Belt. One of the exceptions to this is "*limited affordable housing for local community needs under policies set out in the Local Plan*". The relevant SCDC policy is HG/5 which states planning permission may be granted for schemes of 100% affordable housing designed to meet local needs on small sites within or adjoining villages.
35. The site is located adjacent the village framework of Great Eversden, which is defined as an 'Infill Village' on the Councils settlement hierarchy in both the adopted Core Strategy and emerging Local Plan. Infill Villages are described as having a poor range of services and facilities where it is often necessary for local residents to travel outside the village for most of their daily needs. Core Strategy policy ST/7 reflects this, only allowing a maximum of two new open market dwellings on greenfield sites within the framework boundary.
36. The adopted Affordable Housing SPD is less prescriptive advising exception sites should be 'small', and not greater than the level of local need identified, as well as being appropriate in scale to the category of the village in the settlement hierarchy.

### **Need for the development**

37. The application is supported by a Housing Needs Survey, which examined the 'need' for affordable housing across both Great and Little Eversden. This concluded there is a current and immediate need for 12 houses to be built. The results of this survey are supported by the Councils Housing team and as such it

is considered there is an identified need for the scale of affordable housing proposed within this application. The development comprises 2no. two bed houses for shared ownership, 1no. two bed bungalow for rent, 6no. two bed house for rent and 1no. three bed house for rent. The size, design, mix and tenure of the dwellings is considered to meet the identified need.

38. Some of the third party representations draw attention to this 'need' emulating from Little Eversden and not Great Eversden, in conflict with the requirements of the affordable housing SPD which advises *'for the purposes of the rural exception site policy, local need is defined as identified need in the individual village or the local area it serves, defined as the parish boundary'*.
39. Officers are of the view given the small size of both villages and close proximity to one another assessing the need across both Parish Council administrative areas is justified. Moreover the Planning Committee has previously addressed this issue elsewhere for development in the Eversdens and indeed accepted the "joint" need was appropriate when considering the original scheme back in 2011.

#### **Alternative sites**

40. Policy HG/5 requires that in the case of sites within the Green Belt, planning permission should not be granted unless the District Council is assured there are no other appropriate sites for the scale and type of development proposed. As above, the 'need' for the development has been assessed across both parishes and therefore it is necessary to consider alternative sites adjoining both villages. The application is supported by a 'Sequential Test' which examines and discards a range of sites abutting the village framework of Great and Little Eversden. Officers are supportive of the reasons why these sites have been discarded.
41. It is of note both villages are completely surrounded by Green Belt, and therefore any exception site outside the village framework would need to be located within this designation.

#### **Sustainability**

42. Criterion c. of Policy HG/5 requires the development site to be well-related to the built-up area of the settlement, with the scale of the scheme appropriate to the size and character of the village. Criterion d. requires the site is well related to facilities and services within the village.
43. Great Eversden is listed separately from the village of Little Eversden on the settlement hierarchy (both Infill Villages) as well as being two distinct parishes. However both villages share a Parish Council and are in close proximity to each other, and as such for the purposes of assessing the sustainability of the site it is considered logical to take into account the scale and service provision offered across both villages as a single entity.
44. This approach is supported by paragraph 55 of the NPPF which advises in rural areas 'development in one village may support services in a nearby village'. Officers have already expressed the view this logic applies to the 'need for the development' as well as a consideration of 'alternative sites', where the search area should reasonably extend across both parishes.
45. In combination both villages have a total of 340 residential properties, doctors surgery, recreation ground, Indian restaurant and village hall. Within this context

the construction of 10 affordable dwellings is considered sustainable and in compliance with the spirit of the Affordable Housing SPD. To this extent, the scale of the scheme is appropriate to the size and character of the village.

### **Effect on heritage assets**

46. Criterion e. of Policy HG/5 states development should not damage the character of the village or rural landscape. Policy CH/4 advises planning permission will not be granted for development which would adversely affect the wider setting of a Listed Building. Further policies relating to heritage assets include the adopted SPD and emerging Local Plan policy NH/14, which both advise a precautionary stance when considering the impact on heritage assets.
47. The NPPF advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation, with the more important the asset the greater the weight. The framework goes on to advise significance can be harmed by development within a heritage assets setting.
48. The protection offered to heritage assets extends beyond policy guidance, with planning law requiring the decision maker to 'have special regard to the desirability of preserving the listed building or its setting'.
49. The site is located circa 60m, at its closest point, from the 'S bend' in Church Street to the east, around which a number of listed buildings are grouped. These include The Homestead, Outbuilding at The Homestead, Church Farm and Barn at Church Farm (all Grade 2 Listed), along with the Grade 2\* Listed Church of St Mary. This grouping is visually separated from the village by the application site and further 'open countryside' to the south of Church Street. Officers are of the view this separation significantly and positively contributes to the setting of these listed buildings and in particular the Grade 2\* listed church.
50. The appeal decision for planning reference S/3202/88/F refers to this land (development site) as 'Guardian Fields'. Although this is not recognised heritage terminology this is an accurate description of the role the site plays in the setting of the listed buildings.
51. The proposed development would extend the built form of the village east of Chapel Road into the 'Guardian Field' creating a visual link with the isolated listed buildings concentrated around the church. This link would be apparent from a number of views in and out of the village.
52. English Heritage advise the isolation of the listed buildings from the main village affords a much stronger presence (for the listed buildings) in the landscape and underlines the churches historic status as the primary building in the community, and conclude the development would harm the setting of these buildings. Officers are of the view this harm is 'significant' but not 'substantial'.
53. Further listed buildings (The Cottage and Telephone Kiosk, both Grade 2 listed) can be found to the north-west of the site beyond no. 3 Church Street, with the Grade 2 listed hall to the north-west. These buildings are sufficiently separated from the application site such that no material harm arises to their setting.
54. The construction of ten residential dwellings in this location will permanently erode the open space or 'Guardian Field' between the village and group of listed

buildings concentrated around the church, adversely affecting the setting of the listed buildings contrary to local and national policy requirements. Both the councils historic buildings officer and English Heritage oppose the scheme.

55. Whilst the application attempts to mitigate this harm through a low density scheme and detailed design of the properties, this is insufficient to address the harm and the setting of the listed buildings and the historic landscape will be significantly adversely affected.

### **Landscape**

56. The landscape officer advises Great Eversden is an historic village with small paddocks around its perimeter which creates a buffer between the village and large arable fields, and that the village is in linear form with rows of cottages and a few larger farmsteads facing the roads and paths. A further notable landscape feature is that the site is bordered by a hedge to its south-western boundary which extends parallel with Church Street, and which is an attractive feature in the landscape.
57. The construction of 10 houses on this site including removal of part of the hedgerow to provide the required access, will result in an adverse impact on the landscape character. This is compounded by the site layout which is not considered appropriate in a village with a well-defined edge.
58. Whilst the landscape impact is mitigated by the low density of the scheme, bespoke layout and varied form and appearance of the properties, this is insufficient to overcome the landscape harm.

### **Highway safety**

59. The county highways authority does not raise an objection as the required visibility splays of 2.4m x 43m can be achieved. Furthermore sufficient off road parking is provided on site.

### **Ecology**

60. The application is supported by a habitat and protected species report, which although dating from 2011 is considered acceptable by the council's ecologist. The ecology officer supports the development on grounds the environmental enhancements proposed through the provision of a community orchard and retained tree belt to the front of the development result in benefit with the development not significantly impacting upon biodiversity interests.
61. The most significant short term impact arises from works to the front hedge, and although a large section is to be lost this will be adequately compensated through new planting within the site.
62. The site is located close to Eversden and Wimpole Woods SAC and as such there is potential for the vegetation to provide feeding and habitat linkage for bats moving across the landscape. Light pollution emitting from the new houses can impact on bats but sufficient 'dark gaps' will remain for bats to continue to move through this parcel of land. The erection of bat boxes and the planting of trees and shrubs (which can be controlled through condition) will ensure enhancements for local bat species as a greater variety of feeding opportunities will be created.

## **Archaeology**

63. The County Council archaeologist highlights there is known archaeological evidence in the vicinity of the site owing to prehistoric and Roman occupation along with the more contemporary origins of the village, and recommends a programme of archaeological investigation to be secured by condition.

## **Environmental Impact Assessment**

64. The application has been 'screened' under the Environmental Impact Assessment Regulations (EIA). A screening opinion was given on 17 December 2014. The development falls within category 10(b) of Schedule 2 of the 2011 regulations and exceeds the threshold in column 2 of the table in that schedule. Taking into account the criteria of Schedule 3 (the characteristics of the development, the site's location outside of any 'sensitive' area, and the characteristics of the potential impact the development) it is not considered to represent EIA development.

## **Other considerations**

65. Concerns have been raised relating to the impartiality of the planning decision making process given the site is within the ownership of South Cambridgeshire District Council. The permission may result in financial benefit to the Council through means of uplift in the value of the land due to the grant of planning permission. This is not a material planning consideration and cannot be taken into account in the decision making process.
66. The police architectural liaison officer advises there have been three crimes recorded in the village in the past 12 months none of which were in this post code, and considers the 'non-permeable' layout of scheme to reduce the risk of crime considerably. Some concerns are expressed over the natural surveillance of the parking spaces, however this is not considered significant.
67. No concerns are raised with regard to contamination from the Council's Environmental Health officer.
68. Anglian Water confirms there is sufficient capacity for waste water and foul sewage treatment. Surface water run off can be controlled through condition.
69. The National Planning Practice Guidance has recently been amended and advises planning obligations should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1000sqm. In light of this legal advice is being sought as to whether the authority can secure the necessary financial contributions for public open space and community facilities and members will be updated at the planning committee. This does not affect the ability to secure the dwellings as affordable units in perpetuity.

## **Representations**

70. Local opinion is divided on the application, with the Parish Council supporting the scheme and a number of local residents of Great Eversden and the District Councillor opposed.
71. The Campaign for Rural England oppose the application on grounds the development will ruin the view from the footpath to the edge of the site, and whilst recognising the need for affordable houses consider such a scheme should be located elsewhere in a locality which has facilities.

## **Conclusions**

72. In determining planning applications it is often necessary to balance competing factors. In this case the identified need and public benefit of providing much needed affordable housing needs to be weighed against the harm to the Green Belt/landscape and adverse effect on the historic environment. In addition, planning law requires the decision maker to have “special regard” to the desirability of preserving the setting of listed buildings.
73. Officers accept and understand the importance of delivery of affordable housing especially when it is built out to meet the needs of a particular parish. Nonetheless, and reluctantly, officers are of the view that the harm identified to the historic environment and landscape character are major concerns which outweigh the public benefit of providing the affordable housing.

## **Recommendation**

74. Refusal for the following reasons –
- (i) The development will result in the permanent loss of open countryside and Green Belt which forms an important gap between the cluster of Grade 2 Listed Buildings (The Homestead, Outbuilding at The Homestead, Church Farm and Barn at Church Farm) and the Grade 2\* listed church of St Mary and the village of Great Eversden. This loss of separation will significantly detract from the setting of these listed buildings contrary to the requirements of Policy CH/4 of the Local Development Framework Development Control Policies (LDF DCP) 2007 which states planning permission will not be granted for development which would adversely affect the curtilage or wider setting of a Listed Building, adopted Listed Buildings: Works to or affecting the setting of SPD, and Chapter 12 of the NPPF. This harm is considered significant, and is not outweighed by the public benefits of providing affordable housing.
  - (ii) The development will introduce a form of development contrary to the prevailing linear form of the village and result in the loss of an important gap site that will harm the landscape setting of the village. The development is therefore contrary to Policies DP/2, DP/3 and HG/5 of the LDF DCP 2007 which states planning permission will not be granted for development which would fail to preserve or enhance the character of the local area and have an unacceptable adverse impact on the countryside and landscape character. This harm is considered significant, and is not outweighed by the public benefits of providing affordable housing.

## Background Papers

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following list contains links to the documents on the Council's website or elsewhere at which copies can be inspected.

- Nation Planning Policy Framework  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- Local Development Framework, Development Control Policies, Adopted July 2007  
<http://www.scambs.gov.uk/content/local-development-framework>
- South Cambridgeshire Local Plan, Proposed Submission July 2013  
<http://www.scambs.gov.uk/localplan>

**Report Author:** Andrew Fillmore – Principal Planning Officer  
Telephone: (01954) 713180

Robin Page

Disgraceful Planning

OSP 148

When I was elected on to South Cambridgeshire District Council (SCDC) for the Haslingfield, Harlton and Eversdens ward on 3.5.2012 I did not realise that I would be walking into an issue in Eversden steeped in animosity and vitriol – the site known as OSP 148. Because of the tangled web of controversy that surrounds it I have obtained its history from a Freedom of Information (FOI) request sent to SCDC. The FOI request was made because I did not feel that I was receiving all the information available either from the SCDC or the Chairman of the Everdens Parish Council and I wanted to make an objective appraisal. I should also point out that although I was elected onto the Council for Haslingfield, I had previously served for over forty years on SCDC for Barton, including many years on the Planning Committee, but resigned in 2006 on a matter of principle. I decided to stand again because of the rising planning pressures being put on South Cambridgeshire and on individual councillors. I was re-elected as an “independent” environmentalist – but also as someone who has always supported social/affordable housing, which includes Council Housing. Many of today’s housing problems were not caused by the simple sale of council houses – but by the **removal of the Discount** under which they were sold. **The price for the resale of the properties should have retained the selling discount linked to the Halifax Index** – sadly a missed opportunity for retaining housing sanity.

The FOI request revealed nearly 1000 documents and I have not yet had time to read them all. It has confirmed that much lobbying was being carried out for the site to be developed despite strong environmental reasons against such development and despite the objections of many completely reasonable members of the village.

Much of the lobbying was conducted by the previous Liberal Democrat District councillor. In my view her lobbying did not come from her politics, I know many good Lib/Dem environmentalists, but from her urban background. FOI has revealed that the present Parish Council Chairman, and the previous Parish Council Chairman were also in regular contact with officers advocating that the site should be built on, with their efforts by-passing me. There are also indications that various meetings took place at which no minutes or notes appeared, for example 17/9/2013, and there were numerous meetings between the Parish Council Chairman , the developers and S.Cambs staff which bypassed me completely and were not reported to me – these were only confirmed by my Freedom of Information request.

Astonishingly in emails, the present Chairman Mr Paul Tebbit refers to opponents of the plan to build on OSP 148 as “Nimby’s” – ( eg email to council staff, Acre and two selective members of Eversdens Parish Council 3.12.2013).

By appearing to insult opponents in this way Mr Tebbit demonstrates a complete lack of respect in my view and in my view also he should resign immediately. The facts are that the site is in the Green Belt, it is outside the village envelope and people, including me, and organisation who live nowhere near the site object to its development, including English Heritage and CPRE.

It should also be said that in my view Mr.Tebbit actually owns a brownfield site (an old pig unit) where it is highly likely that planning permission for social/affordable housing could be obtained. He has already converted some old buildings into holiday lets and recently applied for another conversion (which was refused). From his reluctance to develop the brownfield site of his pig unit for social housing, preferring to advocate site OSP148, is Mr Tebbit in fact behaving like a “Nimby”?

The same could be applied to the former Parish Council Chairman Mr.Clive Dalton who actually has land in the village envelope and outside the Green Belt which could be developed for the affordable houses he claims he would like to see built. So does OSP148 also reveal Mr Dalton’s Nimby tendencies?

The reasons for continued refusal on this site are simple.

At the last application there was an officer recommendation that the application should be refused. In my view nothing has materially changed and again refusal ought to be recommended, although at the time of writing I have no information on officer recommendations. Of course over recent years the conservation element of planning has been considerably reduced within SCDC which in my view reduces the credibility of the planning process.

OSP 148 is in the Green Belt and outside the village envelope – it is an important open space – open space is an important element in responsible development and planning. Once a site like OSP 148 is lost, it is lost forever. In the context of nearby listed buildings and the church it is a very significant open space.

As an open space between the two villages it is also important and it is thought likely that there are important historical aspects that need to be properly explored.

It should be said that the site should also have two local protections but the Parish Council failed to have those protections , implemented. The hedge along the roadside of the plot should have been declared “Important Countryside Frontage”, similar to the hedge on the opposite side of the road and it should also have been declared “A Local Green Space”.

In my view the Parish Council, by ignoring both opportunities, acted irresponsibly and also confirmed that they had pre-judged the issue and would make no serious effort to find an alternative site, as revealed in documents dating back to 2007.

Although the Parish Council claims to have looked for alternative sites there is no “paper trail” showing that any serious searches or approaches were actually made. But yet a document produced

for some residents by Bidwells demonstrated quite clearly that other sites could have been considered quite seriously.

An offer has been made by a village resident to buy the site for £52,000. In my opinion it would be irresponsible not to accept the offer and seek to spend it on one of the alternative sites that could be made available. Interestingly my Freedom of Information Request has revealed that in June 2013 the Council had already received an offer of £50,000 for the site – this offer was apparently refused by legal officer Gary Duthie without appearing to refer it to the Planning Committee (email from Gary Duthie to staff 17.6.2013) and without reporting it to me as the local member.

It is interesting to note that objectors to OSP 148 carried out a survey. They collected 53 signatures in Great Eversden against the development, representing 31 households, showing that 33% of the village is strongly opposed to the development of the site and it should be remembered that the site is in Great Eversden and the central issue should involve the community of Great Eversden. They should not be brow beaten by other issues and other agendas; which is a polite way of saying that they should not be bullied.

It should be remembered too that there are few facilities for young families in the village. There is no shop, no school and no regular, convenient bus service; this site is exactly where social or affordable housing should not be. As a result the residents of the proposed houses would have to travel outside the village for simple amenities and would have to have transport. The developed site would therefore automatically have parked cars – again helping to destroy the character of what is now an important open space that could not be retained in any serious way with development.

As I delve through the huge volume of documents gathered under the FOI request – I am sure that other issues will emerge.

I believe that the site OSP 148 should be sold and under no circumstances be developed.

Furthermore the very fact of a re-application has revealed to me some very disturbing forces and practices in what we call our transparent democracy. “Transparent” it most certainly is not.

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Mr Andrew Fillmore  
Principal Planning Officer  
South Cambridgeshire District Council  
Cambourne  
CB23 6EA

Affordable Homes  
Contact: Cllr Mark Howell

Our ref:  
Your ref:  
25<sup>TH</sup> November 2014

Dear Andrew

### **Planning Application S/1344/14/FL Site OSP 148 Great Eversden**

As Housing Portfolio Holder I felt it was important to write to provide my support for this planning application, which is seeking to secure 10 units of affordable housing on a rural exception site, which is in the ownership of this authority.

I understand that there is a need for a small development to help meet the local housing needs of this village. It is important that as a strategic enabling authority where housing demand is high that we try and use any land assets that we hold to help in meeting this increasing need.

Since 2007 this authority has provided over 466 new homes on rural exception sites. Policy HG/5 has delivered more affordable housing for this district than policy HG/3 (with the exception of the strategic growth sites) and it is important that we provide much needed affordable housing to our parishes. We also have a commitment through the City Deal to provide an additional 1,000 homes on exception sites over the next 10 years.

I am aware of the Low Close Little Eversden scheme which was completed approximately 4 years ago and this has been well received by the parish and local community. I am advised that the development was able to accommodate residents who had a local connections to either Great or Little Eversden and I would like to ensure that the same allocation criteria is applied to this scheme too. Whilst our policy asks us to consider just the local need to the particular parish, given the size of some of our villages we are at serious risk of not being able to provide any more affordable homes in smaller parishes where the needs of others cannot be accommodated.

The changes to the way affordable housing is funded and managed now and in the future presents a real threat to the success of projects such as this, we should ensure that as an authority we embrace projects such as these where we have willing partners who would fund such projects.

Yours sincerely

Cllr Mark Howell – Housing Portfolio Holder





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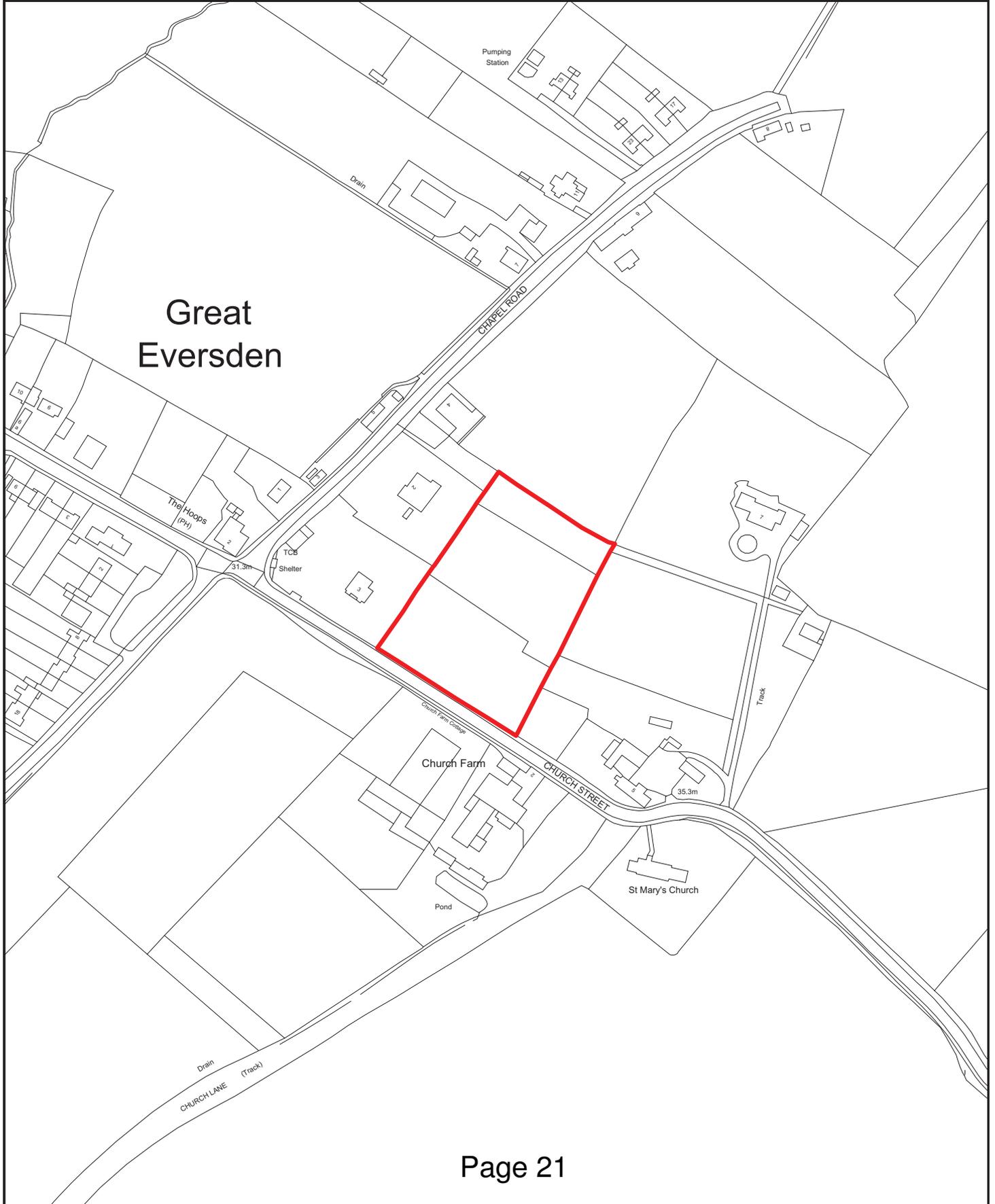
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# Agenda Item 5

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/2216/14/FL
<b>Parish(es):</b>	Steeple Morden
<b>Proposal:</b>	Erection of two detached dwellings, detached garage and access following demolition of existing dwelling.
<b>Site address:</b>	48 Station Road Girton
<b>Applicant(s):</b>	Moatside Properties
<b>Recommendation:</b>	Delegated Approval
<b>Key material considerations:</b>	Principle of Development Visual Impact Residential Amenity Highway Safety
<b>Committee Site Visit:</b>	3 March 2015
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	John Koch
<b>Application brought to Committee because:</b>	Parish Council recommendation of refusal conflicts with Officers recommendation
<b>Date by which decision due:</b>	29 December 2014

### Site and Proposal

1. The site is located within the village development framework for Steeple Morden.
2. The site currently comprises a modest detached 2 bedroom single storey bungalow and garage located close to the road frontage. Access to the site is direct from Station Road. It has parking for one car and a garage. There are existing outbuildings directly to the rear of the bungalow on the southern boundary.
3. The proposal seeks to demolish the bungalow and replace it with a 4 bedroom two storey dwelling with integral garage and erect a further 4 bedroom two storey house and detached garage to the rear. Access to the proposed dwelling to the rear of the site would be from a new private drive. The dwelling to the front of the site would use the existing access.

4. To the rear of the site is a large dwelling served by a private drive adjoining the southern boundary (side boundary). To the north is a 2 storey dwelling fronting Station Road and set back level with the proposed dwelling in the rear garden is a further two storey house and detached garage which is served by Plough Close.
5. The general character of the area to the west of Station Road is residential. The surrounding properties comprise mainly two storey detached houses with a variety of designs. To the east of Station Road is open countryside.

### **Planning History**

6. Outline planning permission was granted under S/2425/13/OL for the erection of a detached dwelling and garage and formation of an associated access to erect a garage to the rear of the existing bungalow.

### **Planning Policies**

7. National Planning Policy Framework (Adopted March 2012)
8. Local Development Framework Core Strategy 2007:  
ST/6 Group Villages
9. Local Development Framework Development Control Policies (Adopted July 2007);  
DP/1 Sustainable Development  
DP/2 Design of new Development  
DP/3 Development Criteria  
DP/4 Infrastructure and New Development  
DP/7 Development Frameworks  
HG/1 Housing Density  
HG/2 Housing Mix  
NE/1 Energy Efficiency  
SF/10 Outdoor Playspace, Informal Open Space and New Developments  
TR/2 Car and Cycle Parking Standards
10. Supplementary Planning Documents  
District Design Guide SPD (adopted March 2010)

### **Consultations**

11. **Steeple Morden Parish Council** recommends refusal. Both properties are too big. Five access points in a short distance. Height of properties a particular concern.
12. The **Local Highways Authority** has no objections, subject to conditions controlling pedestrian visibility splays, surface water drainage, and bound materials for the access drive.
13. **Environmental Health Officer** recommends safeguarding conditions and informatives regarding hours of working.
14. **Historic Environment Team** has no objection subject to a programme of archaeological investigation.

## **Representations**

15. 3 Letters of objection and a sunlight analysis have been received from the immediate neighbours to the rear and north south raising the following concerns:
- (i) The ridge height of proposed dwelling and garage to the rear is higher than the neighbouring dwelling resulting in an overbearing impact and loss of light.
  - (ii) The hedge on the southern boundary is owned by the neighbouring property.
  - (iii) The rear windows of the proposed dwelling, sited to the rear, would overlook the property to the rear and the front windows would overlook the properties to the north.
  - (iv) The garage is sited further forward than the neighbouring garage.
  - (v) Increase in noise and disturbance.
  - (vi) Proposed dwelling to the front too large for the plot, footprint larger than existing footprint, proposed dwelling extends further back into plot. Overbearing impact on street scene.

## **Planning Comments**

### **Principle of Development**

16. The NPPF advises that every effort should be made to identify and then meet the housing needs of an area, and respond positively to wider opportunities for growth. Additionally the Development Plan (Core Strategy Development Plan Document adopted January 2007 and Development Control Policies Development Plan adopted January 2007) identify Steeple Morden as a 'group village' where the construction of new residential dwellings within the framework is supported. The site is within the development framework for the village.
17. The principle of a new dwelling to the rear has been established by the recent grant of outline planning permission. The principle of a replacement dwelling is also consistent with policy. At the present time, the Council cannot demonstrate a five year housing land supply. While policies ST/6 and DP/7 may be out of date as a result, the proposal would nonetheless be consistent with plan policies as a matter of principle.
18. A draft heads of terms that covers the required contributions towards community facilities, public open space and waste receptacles for the proposed two dwellings has been agreed with the applicant.

### **Visual Impact**

19. The dwelling types along this part of Station Road are predominantly of two storeys and therefore a two storey dwelling would not be out of keeping with the character and appearance of the area. The siting of the proposed dwelling to the front of the site would not extend forward of the line of the neighbouring dwelling. The eaves and ridge height of the proposed dwelling are similar to the neighbouring two storey dwelling. The roof would be hipped to reduce the bulk of the building. It is considered that the new dwelling to the front of the site would not therefore be unduly visually intrusive within the street scene.

## Residential Amenity

20. In terms of impact on amenity to number 46, which lies to the north, it is accepted that the footprint of the proposed frontage dwelling is larger than the existing bungalow. The proposed dwelling does extend beyond the rear wall of no 46, however this part of the dwelling would be single storey. The two storey element of the proposed dwelling is a similar depth as the neighbouring property and is in line with the front and rear. The proposed dwelling would have hipped roofs to reduce the mass of the building.
21. In terms of impact on amenity to No 1 Plough Close, the proposed dwelling and garage to the rear of the site is positioned level with the neighbouring house and garage in Plough Close. The gable widths are of similar proportion, however the proposed dwelling does extend beyond the rear wall of the neighbouring property due to a single storey lean too and a two storey projection. The two storey element is furthest away from the neighbouring property and therefore has less of an impact. In terms of height and scale the applicant has provided a street scene to indicate the relative scale and heights of the dwellings. The dwelling to the rear and associated garage would be no higher than the immediate neighbouring house and garage. The plan also indicates that the dwellings would be a similar scale when viewed from the street. The proposal is therefore unlikely to have a significant overbearing impact on the adjacent properties. The proposal provides an adequate level of amenity and parking provision for each property. Given the adjoining development and the general character of the area, it would be difficult to argue that the development would result in the overdevelopment of the site.
22. The sunlight assessment acknowledges that there would be an increased level of overshadowing and loss of sunlight associated with the development due to the dwellings being positioned immediately to the south of the existing properties. The loss would occur mainly during the winter months when the sun is at its lowest level and up until mid day in the rear gardens.
23. The assessment identifies that after noon there would be no loss of sunlight in the private garden rear gardens of the neighbouring properties. It is considered that the assessment has adequately demonstrated that the proposal would not have a significant adverse impact on the amenities of existing properties due to overshadowing and the orientation of the site compared to the sun's path.
24. In terms of privacy, the dwellings have been designed so as not to result in overlooking from the first floor windows. The first floor windows in the gables serve bathrooms and therefore would be glazed using obscure glazing. In addition the opening lights are above eye level. A condition has been imposed to ensure these windows are glazed with obscure glass and designed with a top hung opening light only. Views from the side of the proposed first floor bay windows would be limited and would face the front of the neighbouring properties and therefore not overlook private amenity space or result in direct overlooking.
25. There is a satisfactory degree of separation between the proposed dwelling and between proposed and existing dwellings to provide an adequate amount of privacy.
26. On balance it is considered that whilst the proposal will impact on neighbour amenity, this would not result in a significant adverse impact such that a refusal of planning permission would be justified.

27. Given the concerns raised regarding the scale of the development and the proximity of the neighbouring properties it is considered that permitted development rights for further extensions should be attached to safeguard the neighbour amenity.
28. Conditions will also be attached to ensure the neighbours' amenities are also safeguarded during the construction phase.

### **Highway Safety**

29. The Local Highways Authority has no objections to the development subject to certain conditions. In response to the concerns of the parish council, it has not raised an objection to the location or proximity of the new access in relation to existing accesses in the vicinity of the site.

### **Other Matters**

30. A condition requiring an archaeological investigation has been imposed at the request of the Historic Environment Team.
31. There are several small trees and planting on the site both native and evergreen. It is considered that none are of sufficient quality to be the subject of a Tree Preservation Order but nevertheless they do provide a habitat for birds and wildlife. A condition is therefore recommended requiring the provision and implementation of a landscaping scheme. The hedge on the southern boundary is not in the applicant's ownership and therefore a condition requiring its retention cannot be imposed.

### **Conclusion**

32. Any adverse impacts of the development are not considered to significantly and demonstrably outweigh the benefits when assessed against the material considerations set out in this report and the proposed development remains acceptable. As such it is recommended that permission be granted for officers to approve the scheme subject to the completion of a S106 legal agreement securing contributions towards open space, community facilities, waste receptacles and monitoring and legal fees, and the conditions outlined below.

### **Recommendation**

33. Delegated approval subject to:

#### **S106 requirements**

A scheme for contributions towards community facilities, open space and waste receptacles will need to be agreed prior to issuing a decision notice.

#### **Conditions**

- (a) Approved Plans
- (b) Timescale
- (c) Archaeological investigation
- (d) Pedestrian visibility splay
- (e) Driveway to be constructed using bound material
- (f) No surface water to enter highway from site.
- (g) Removal of householder permitted development rights regarding classes, A, B C, D & E.

- (h) Materials to be agreed
- (i) Soft and hard landscaping to be agreed and implemented
- (j) Hours of construction for power operated machinery
- (k) obscure glazing and top hung lights to all first floor gable windows

#### **Informatives**

- (a) Bonfires
- (b) Demolition notice
- (c) Noise and dust prevention

#### **Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
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The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Core Strategy (adopted January 2007)
- South Cambridgeshire Development Control Policies DPD (adopted July 2007)
- Planning Reference Files : S/2216/14/FL and S/2425/13/OL

**Report Author:** Viv Bebbington – Senior Planning Officer  
Telephone: (01362) 656230



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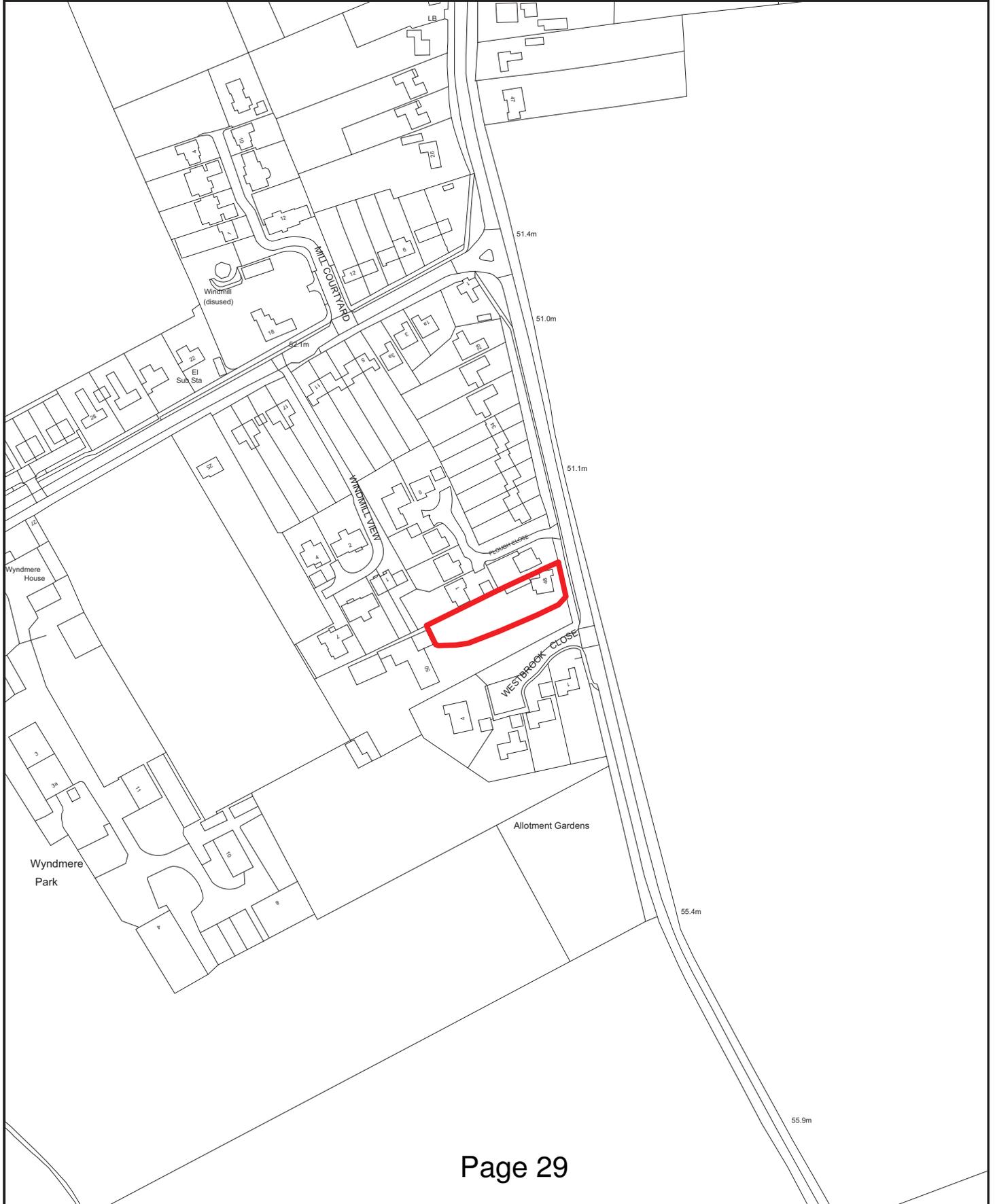
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# Agenda Item 6

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/2046/14/FL
<b>Parish:</b>	Gamlingay
<b>Proposal:</b>	Change of Use to Haulage and Distribution Depot
<b>Site address:</b>	12 Potton Road, Mill Hill
<b>Applicant:</b>	Kevin Hall, Halls Distribution
<b>Recommendation:</b>	Refusal
<b>Key material considerations:</b>	Principle, residential amenity, and highway safety
<b>Committee Site Visit:</b>	3 March 2015
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	Paul Sexton
<b>Application brought to Committee because:</b>	The Local Members have requested that the matter be referred to Planning Committee for the reasons outlined in the report.
<b>Date by which decision due:</b>	18 September 2014

### Site and Proposal

1. This full application registered on 1 September 2014 proposes the change of use of land and building at 12 Mill Hill, Gamlingay to a haulage and distribution depot. The site, which covers 0.35ha of land, is part of a larger area of land formerly used as a scrapyard. The land slopes slightly from the road.
2. Access to the site will be via the existing entrance to the former scrapyard from Potton Road, to the south of the building.
3. To the north of the site is a detached bungalow, and land and buildings which formerly comprised the site used by Cambridge Recycling. The boundary with the bungalow is planted. To the south and west is the remainder of the former scrapyard site. Opposite the site is agricultural land.

4. Halls Transport is currently located on the Green End Industrial Estate in the centre of Gamlingay, but needs to relocate due to the potential redevelopment of that site.
5. The applicant states that there are currently 11 staff employed. The area of the site for which change of use is sought was formerly used for empty skip containers, public and employee parking, entrance to offices and weighbridge. The building was used for the storage of machinery and equipment. Halls Distribution currently operates 9 HGV's (Rigid – non articulated) up to a gross weight of 18 tonnes. The Company transports mostly for local companies in and around Gamlingay for 08.00 deliveries.
6. The application seeks operating hours 24 hours a day, 7 days a week. However, the Company states that its normal traffic movement is from 05.00 hours until 18.00 hours, although there can be occasional movements outside of these hours. The Company is of the view than the noise from passing traffic will be closer to the neighbouring property than the parking of the lorries, and that traffic movement will be less than Cambridge Recycling due to the nature of its business, as vehicles will be off site delivering for most of the day.
7. On average the applicant expects there will be around 25 HGV vehicle movements a day to and from the site, and 25 car movements. Activities that would normally take place on the site would be the completion of vehicle inspections (all major work to vehicles is carried out off-site). HGV chassis washing is carried out off-site.

### **Planning History**

8. There are a number of historic applications that relate to the former use of the site as a scrapyard.

### **Policy**

9. **National Planning Policy Framework**
10. **South Cambridgeshire Local Development Framework Development Control Policies**
  - DP/1 – Sustainable Development
  - DP/3 – Development Criteria
  - DP/7 – Development Frameworks
  - ET/5 – Development for the Expansion of Firms
  - NE/8 – Groundwater
  - NE/15 – Noise Pollution
  - NE/16 – Emissions
  - TR/1 – Planning for More Sustainable Travel
  - TR/2 – Car and Cycle Parking Standards.
11. **Draft Local Plan**
  - S/3 – Presumption in Favour of Sustainable Development
  - S/7 – Development Frameworks
  - CC/8 – Sustainable Drainage System
  - E/16 – Expansion of Existing Businesses in the Countryside
  - T/2 – Planning for Sustainable Travel
  - TI/3 – Parking Provision

## **Consultation by South Cambridgeshire District Council as Local Planning Authority**

12. **Gamlingay Parish Council** – recommends approval. “Request to consider condition on the application to include landscaping/bund/fence to reduce noise and impact of intensification of use of the site on property 12 Mill Hill (noise and fumes) – adjacent residential property.”
13. **Environmental Health** – comment that as stated in response to the pre-application submission, the bungalow to the north of the site is extremely close to the site and its entrance. It will therefore be subjected to noise from lorry movements, which will be of particular concern early in the morning. Similarly lighting levels and noise from yard activities, starting engines, etc. would need to be addressed so as to prevent unacceptable nuisance to the occupiers of the bungalow.
14. It is unlikely this noise will be able to be attenuated sufficiently by physical barriers and consequently the only viable solution would be to restrict working times.
15. If approval is to be granted conditions should be imposed restricting the hours of use to between 08.00 hours and 18.00 hours Mondays to Saturdays, 08.00 hours and 13.00 hours on Saturdays, with no working on Sundays or Bank Holidays. Details of any external lighting should be submitted for approval.
16. **Local Highway Authority** – no objection.
17. **Environment Agency** – following the receipt of a desk top ground contamination study has no objection, subject to conditions for contamination risk assessment and remediation, surface water drainage, and pollution control.

### **Representations**

18. The occupiers of **12 Mill Hill** object on the following grounds:
  - i. Increase in traffic on an already busy road, where visibility is restricted. Further development already planned nearby will add to this. Slowing down of HGV's to access the site will cause a hazard, particularly in dark winter months.
  - ii. There is no street lighting or footpaths.
  - iii. Impact on health from noise and fumes of from HGV's within 20 feet of the living room window. The application seeks 24 hour working, 7 days a week. Windows will not be able to be opened. Other uses in the area already start up early and finish late, but this will be much closer.
  - iv. Concern as to whether haulage use will involve chemicals or waste.
19. Councillors Sebastian Kindersley and Bridget Smith strongly feel that permission should be granted for the business to run on the site for 24 hours per day for the following reasons.
20. Mr Hall's business employs 18 people, 16 of whom live in the village and 2 of whom are retained fire officers, who can only carry out their duties if they are working in the village.

21. There are reducing numbers of sites in the village suitable for B1, B2 or B8 operations. Green End, which is currently suitable is about to lose this allocation when the long expected housing development application is received. The new employment site at Station Road has already been deemed as unsuitable for B1, B2 or B8 use. It is believed that there is considerable interest from existing businesses at Green End on relocating to this site as well, but they are all waiting to see what happens in this case.
22. All Mr Hall's lorries have night time limiters on the audible beepers which stop them working when the lights are on. The lorries are not large and consequently not noisy.
23. Mr Hall's business is currently operating from a central village location in the heart of the residential development with no operating hours restrictions. Neither he nor the Parish Council have ever received any complaints about noise.
24. Gamlingay is about to lose its main employment site. Already many of the businesses at Green End are being forced to relocate outside of the village. This is a disaster from the point of view of local employment, sustainable transport options, and the economy of the village. Surely we should be doing everything in our power to retain rural businesses.

### **Planning Considerations**

25. The key issues for consideration in this case are the principle of development (including the relocation of an existing business), residential amenity, and highway safety.

#### *Principle of development*

26. The site is classified as brownfield land, and has previously been in commercial use. The principle of the re-use of the land and building for alternative commercial use is therefore acceptable subject to the consideration of the other matters outlined above. The site is well screened from Potton Road.
27. Officers recognise that Halls Distribution is an established local company, and is seeking relocation from its current village centre site due to the likely redevelopment of that area of land. Officers are keen to try and find a suitable site for the company to relocate to within the Gamlingay area, due to local employment involved, however any specific impacts of the operation in the new location still need to be duly considered.

#### *Residential amenity*

28. The applicant sought pre-application advice from officers regarding the potential for the use of this part of the land and building as a haulage depot. At that stage Officers highlighted the concern about the proximity of this part of the site to the adjacent bungalow, and the potential impact on the amenity of the occupiers of that property.
29. In assessing the impact of the proposed use on residential amenity officers have had regard to the fact that the site is part of the larger area of land which was previously used as part of the scrapyards, and accept that the occupiers of the adjacent bungalow would have been likely to have experienced a level of disturbance as a result of that use, and others in the immediate area.

30. Officers concern with the current proposal, which is reflected by the comments from Environmental Health, is that the concentration of HGV's in the area to the north of the existing building, between it and bungalow, with the hours of operation requested by the applicant, will have an adverse impact on the occupiers of that property.
31. Due to the constraints of the site, HGV's will be parked in the area immediately adjacent to the bungalow. Although the applicant is seeking 24 hours, 7 days a week operation, he states that the more typical hours of operation are between 05:00 hours and 18:00 hours. Officer are concerned that vehicles starting up, running, and leaving the site in the early hours of the morning, when background noise levels will be lower than at other times of the day, will adversely impact on the amenity of the occupiers of the adjacent bungalow, leading to an unreasonable level of disturbance. This might then lead to possible complaints which Environmental Health may be obliged to investigate, and which may then impact on the operations of the Company.
32. The Environmental Health Officer has indicated that it is unlikely this noise will be able to be attenuated sufficiently by physical barriers and consequently the only viable solution would be to restrict working times. This possibility has been put to the applicant, but has been rejected, as clearly such restriction would severely impact on the existing operations of the Company. Restricting hours of vehicle movement is therefore not an option in this case.
33. The neighbour has also raised concerns re fumes and lighting levels. The Environmental Health Officer has not raised a specific concern regarding fumes and lighting of the site/yard could be satisfactorily controlled by way of an appropriate condition.

*Highway safety and parking*

34. The Local Highway Authority has not objected to the proposed use. The existing site access will have served the previous scrapyards use, and has appropriate kerb radii. Adequate visibility splays can be provide either side of the access, although there will need to be some trimming back and maintain ace of the front boundary hedge to achieve the required dimensions. This could be secured by condition. No highway safety concerns have been made in respect of the lack of street lighting and footpaths.

*Other matters*

35. The applicant has addressed the initial concerns regarding contamination which were raised by the Environment Agency, and it is content that any further investigation/remediation works could be controlled by condition.

**Conclusion**

36. Given that the application is for the relocation of a local company, officers would like to be able to support the proposal. However, notwithstanding the support of the parish council and the two local members, officers consider the potential impact on the occupier of the neighbouring bungalow, particularly as a result of the hours of activity on the site, and proximity to the site, is a serious constraint. This cannot be mitigated by conditions such that the business would be able to operate successfully or be acceptable to the applicant.

## **Recommendation**

37. The application is refused for the following reason:
- (i) The use of the land and building as a haulage and distribution depot will have an unreasonable adverse impact on the amenity of the occupiers of the adjacent bungalow to the north, by increased noise and disturbance. The applicant seeks use of the site 24 hours a day, 7 days a week, although states that the normal operating hours will be between 05.00 hours and 18.00 hours. Given the proximity of the site to the bungalow, the noise and disturbance from the starting up and manoeuvring of HGS's, particularly in the early morning hours will have an unreasonable adverse impact. As a result the proposal is contrary to the aims of Policies DP/3 and NE/16 of the adopted Local Development Framework 2007.

## **Background Papers**

Where the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Plan Proposed Submission July 2013
- South Cambridgeshire Supplementary Planning Documents
- National Planning Policy Framework 2012
- Planning File References: S/2046/14/FL

**Report Author:** Paul Sexton – Principal Planning Officer  
Telephone: (01954) 713255



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Scale - 1:2500

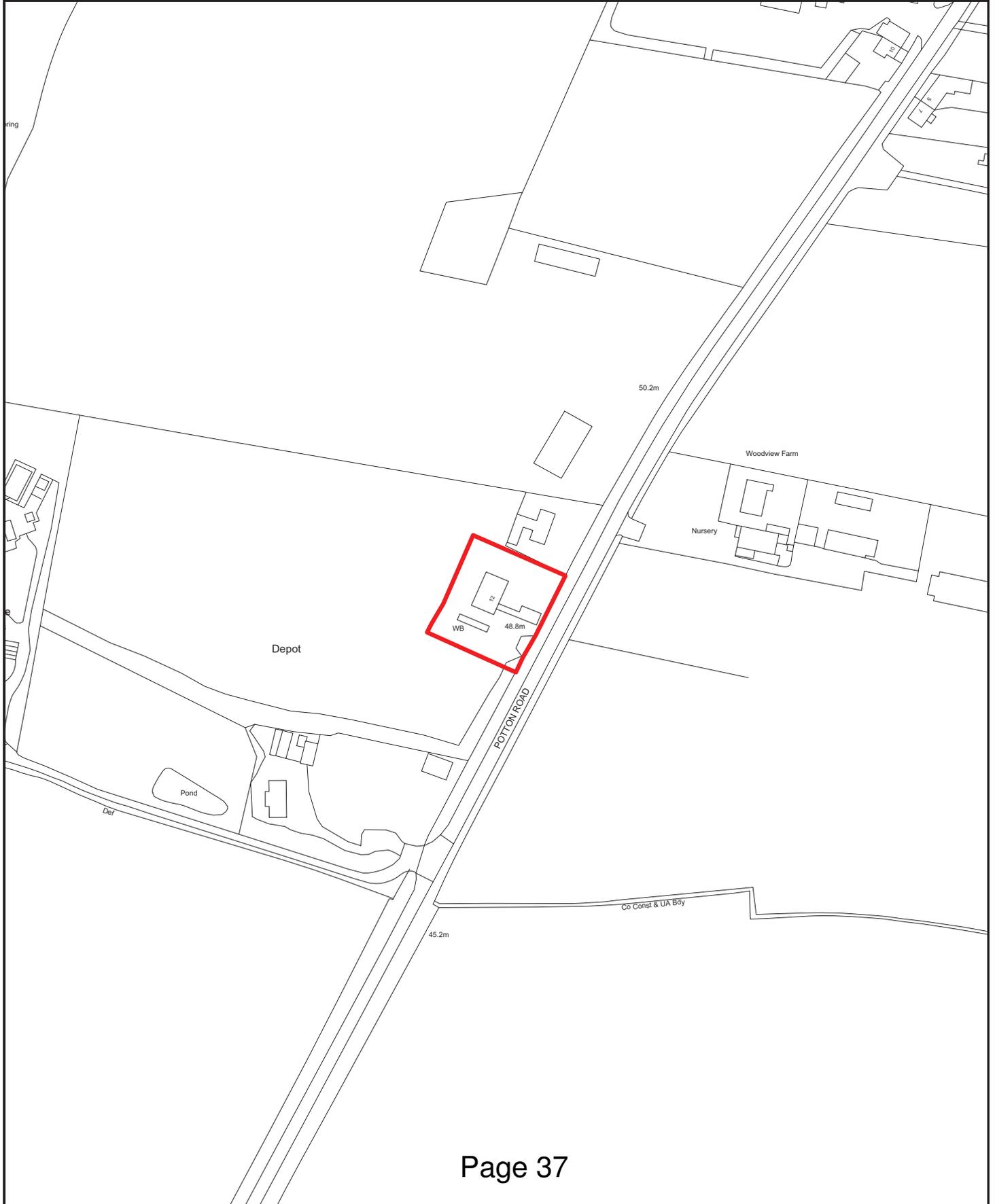
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# Agenda Item 7

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/1504/13/FL
<b>Parish:</b>	Caxton
<b>Proposal:</b>	Residential Development (8 affordable dwellings and 2 market dwellings)
<b>Site address:</b>	Ermine Street, Caxton
<b>Applicant:</b>	Mr G and Mr D Brown and South Midlands Development Ltd
<b>Recommendation:</b>	Delegated Approval
<b>Key material considerations:</b>	Principle and criteria of Policy HG/5, residential amenity, setting of listed building, and highway safety
<b>Committee Site Visit:</b>	No
<b>Departure Application:</b>	Yes
<b>Presenting Officer:</b>	Paul Sexton
<b>Application brought to Committee because:</b>	The officer recommendation of delegated approval is contrary to the recommendation of refusal from Caxton Parish Council
<b>Date by which decision due:</b>	30 October 2013

### Site and Proposal

1. Members may recall deferring this application at the April 2014 meeting, which at that time proposed 10 affordable dwellings, to enable a further housing needs survey to be carried out to identify the current demand for affordable homes in Caxton.
2. This full application, as amended by drawings received 13 March 2014, now proposes the erection of 10 dwellings (comprising 8 affordable and 2 market units) on a 0.39ha area of paddock land to the east of Ermine Street, Caxton.
3. To the south the site adjoins the side and rear gardens of properties in Ermine Street and at the very rear, Brockholt Road. To the north is a detached cottage, beyond which is the Old Court House, a Grade II listed building. To the rear of the site is

paddock land. At the current time there is a line of planting across the rear section of the site.

4. The development, as amended, proposes the erection of 3 x 1-bedroom, 4 x 2-bedroom, and 1 x 3-bedroom affordable dwellings, and 2 x 3-bedroom market dwellings. 6 of the affordable dwellings are for rent and 2 for shared ownership.
5. The development comprises the 2 market dwellings fronting Ermine Street, to the north of the new access roadway, with a 5 affordable units to the south (a pair of units and terrace of three). The access roadway extends into the rear section of the site to serve a terrace of 3 affordable dwellings in the east section of the site, and provide access to the land at the rear. Two areas of open space are provided at the rear of the site.
6. The dwellings will be brick, with a concrete interlocking tile roof, and have ridge heights between 7.8 and 8.1m. Two parking spaces are provided for each dwelling. The dwellings have been designed to incorporate a CO<sub>2</sub> reduction of 25% compared with Building Regulation requirements to provide homes designed under Code for Sustainable Homes Level 4.
7. The application is accompanied by a Design and Access Statement, Heritage Statement, Affordable Housing Statement, Sustainability and Energy Statement, Open Space Statement and Ecological Appraisal.
8. The site is outside the village framework but adjacent to it on its southern boundary.

### **Planning History**

9. There is no relevant planning history on the application site.

### **Policy**

10. **National Planning Policy Framework**  
Paragraph 54 provides advice in respect of rural exception sites.
11. **South Cambridgeshire Local Development Framework Core Strategy**  
ST/7 – Infill Villages
12. **South Cambridgeshire Local Development Framework Development Control Policies**  
DP/1 – Sustainable Development  
DP/2 – Design of New Development  
DP/3 – Development Criteria  
DP/4 – Infrastructure and New Developments  
DP/7 – Development Frameworks  
HG/1 – Housing Density  
HG/5 – Exception Sites for Affordable Dwellings  
NE/1 – Energy Efficiency  
NE/3 – Renewable Energy Technologies in New Development  
NE/6 – Biodiversity  
SF/10 – Outdoor Playspace, Informal Open Space and New Developments  
SF/11 – Open Space Standards  
CH/4 – Development Within the Curtilage or Setting of a Listed Building  
TR/2 – Car and Cycle Parking Standards

13. **South Cambridgeshire LDF Supplementary Planning Documents (SPD)**  
Affordable Housing SPD 2010  
Open Space in New Developments SPD 2009  
District Design Guide SPD 2009  
Listed Buildings SPD 2009  
Biodiversity SPD 2009

14. **Draft Local Plan**  
S/3 – Presumption in Favour of Sustainable Development  
S/7 – Development Frameworks  
S/11 – Infill Villages  
CC/3 – Renewable and Low Carbon Energy in New Developments  
CC/8 – Sustainable Drainage System  
HQ/1 – Design Principles  
NH/4 – Biodiversity  
NE/14 – Heritage Assets  
H/7 – Housing Density  
H/9 – Affordable Housing  
H/10 – Rural Exception Site Affordable Housing  
SC/7 – Outdoor Play Space, Informal Open Space and New Developments  
SC/8 – Open Space Standards  
TI/3 – Parking Provision

**Consultation by South Cambridgeshire District Council as Local Planning Authority**

15. **Caxton Parish Council** – recommends refusal.

“It is a non-linear development and is therefore out of character with this end of the village.

The Parish Council recognises that the developers have gone to great lengths to try and match the requirements of the Housing Needs Survey, but have failed to do so, as they have not provided the correct mix of 1-bedroom, 2-bedroom and 3-bedroom dwellings for the social housing, as follows:

One bedroom dwellings – Plans propose 3, instead of the Housing Needs Survey requirement of 4.

Two bedroom dwellings – Plans propose 4, instead of the Housing Needs Survey requirement of 2.

Three bedroom dwellings – Plans propose 1, instead of the Housing Needs Survey of 2.

By proposing two market houses, the developers are failing to fulfil the real need, by providing only 8 houses out of the 10 required by the HNS, and are instead providing additional two bedroom houses and market value houses.

The exit comes out onto the main road at a pinch point on a very busy road where there is too much traffic already and the development would add to it.

16. **Housing Development Officer** – comments that the proposed scheme of 8 affordable dwellings consists of 6 rented and 2 shared ownership units. The agreed

mix is 3 x one-bedroom and 3 x two-bedroom house for social rent, and 1 x two-bedroom and 1 x three house for shared ownership.

17. The Housing Needs Survey, which was carried out in May 2014, found that there were 9 households in housing need and they need a mix of one and two-bedroom properties.
18. Whilst the mix proposed by the housing association is not an exact reflection of the housing needs survey, it is however reasonable to expect the Housing Association to meet some one-bed need through two-bed provision. This is particularly the case for rural exception sites where long tenures are anticipated, and any risk of shortfall in rent due to welfare reform implications is borne by the housing association.
19. The data on shared ownership has been checked with BPHA, the home buy agents, and they have advised that there are currently 2 households registered with them who have a local connection to Caxton.
20. The scheme mix strikes a sensible balance between seeking to achieve a high proportion of local occupancy and economic viability for the housing association.
21. The Housing Development Manager has advised that a scheme of up to 8 affordable dwellings could be supported.
22. A **Viability Appraisal Report** prepared for the Council concludes that in this instance two market dwellings will be required in order to facilitate the provision of the eight additional affordable houses to meet local needs.
23. **Local Highway Authority** – no objections, but confirms that it will not be adopting the any part of the development. It requests conditions securing vehicular and pedestrian visibility splays, closure of the existing site access to the south, a Traffic Management Plan, improved footway link to the south, turning facilities, and construction of the access.
24. **Environmental Health** – no comments received.
25. **Environment Agency** – has no objection but sets out informatives to be included in any consent.
26. **Anglian Water** – no objection subject to a condition requiring adherence to the surface water/flood risk assessment submitted with the application.
27. **Cambridgeshire Archaeology** – comments that the site is an area of high archaeological potential and recommends that it is subject to a programme of archaeological investigation prior to commencement of development, which can be secured by condition.
28. **Architectural Liaison Officer (Cambridgeshire Constabulary)** – has no issues with the layout of the site and general surveillance, but suggests that the eastern boundary of the site be secured by 1.8m high close boarded fencing.
29. **Ecology Officer** – the field is clearly ancient ridge and furrow, which can be important for flora due to the unploughed nature of the soil, however the application is accompanied by an ecological statement which does not attach any significance to the sites flora, and having viewed the site its contents are accepted. It is likely that the site's flora has been reduced due to historic soil improvement and/or intense

grazing by horses. The most important features are likely to be the boundary hedges and small clusters of trees, which should be retained. If possible the opportunity to secure ecological enhancement of the remaining paddocks as compensatory measure should be sought.

### Representations

30. Letters of opposition/concern in respect of the revised scheme have been received from the occupiers of Nos.160 and 176 Ermine Street.

- i. The revised scheme does not provide the type of housing identified in the recent needs survey. In considering the application previously members of the Planning Committee were clear that a survey needed to be carried out to identify housing types needed.

Property Types	Needs survey May 2014	Housing Register December 2013	Current Planning Proposal Jan 2015
1 bed homes	4	5	3
2 bed homes	2	1	4
2 bed bungalow	1		
3 bed homes	2	1	3 (2 for private sale)
4 bed homes	1		
Totals	10	7	10

- ii. The Council's Affordable Housing SPD states at 6.12 that 'the housing mix and tenure split on rural exception sites will be determined by the particular local need identified in the village'. The application does not do this.
- iii. The inclusion of two market dwellings is contrary to the SPD para 6.14 which requires provision of affordable units in perpetuity, facilitated through a housing association. It is recognised that the NPPF now considers that market dwellings can be considered in order to bring forward affordable housing to meet local needs if it would 'facilitate the provision of significant affordable housing to meet local needs.' It is not believed that eight dwellings, with a mix that does not meet local need is 'significant', and SCDC has not yet adopted its policy on this matter.
- iv. Site not well related to the built-up area, and does not reflect existing liner form of development. Development in depth is out of character – contrary to Policy HG/5 1c. There are better sites in the village.
- v. There is another affordable housing scheme in the village for 7-10 houses, which is at the pre-application stage. This is on a brownfield site, and does not have the same constraints as the Ermine Street site. It is accessed of a much less busy road, and is closer to the village play facilities and village hall.
- vi. The site is not well related to existing services in the village. There is no school, and is over 1km from the nearest LEAP, to reach which would involve crossing the A1198, which is still a dangerous road. The proposal is therefore contrary to Policy HG/5 1d.
- vii. Will damage village character – ecological assessment does not mention that the site is currently ridge and furrow land, which is in decline, and which

English Heritage and DEFRA have been tasked with protecting. Given the proximity of the proposed West Cambourne development application (less than 400m from this site), it is imperative to retain as much green separation as possible to retain the rural character of the Caxton. The West Cambourne development would contain 30% affordable housing, with the necessary associated infrastructure.

- viii. The existing access is not to be used – the proposed access is at a pinch point specifically created to reduce speed on the A1198. Will this be re-created elsewhere?
- ix. The submitted drawings are deceptive. There are no trees or hedge line on the boundary with No.176, which sits in an elevated position, yet the elevations of Plot 1 show this building to be higher. Given the proximity to the boundary it will be very imposing. The boundary treatment listed is unclear. What will prevent car lights shining into the windows of No.176, and how will boundaries be securely fenced.
- x. The occupiers of 176 Ermine Way state that before they purchased the property SCDC advised it would be unlikely that the land to the south would be developed, and if it were development would follow the existing linear pattern. The proposal contradicts that statement and if approved could set further precedents in the village.
- xi. Although the need for affordable housing is supported the application does not meet local need enough to balance the harm to the environment and rural character of the village.

### **Planning Considerations**

#### *Principle of development and Policy HG/5*

- 31. The proposal would partly conflict with Policy DP/7 of the Local Development Framework which seeks to focus new housing within defined boundaries. The Council is currently unable to identify a five year supply of housing land and this policy cannot be considered to be up-to-date as far as it relates to the supply of housing land (Paragraph 49 of the NPPF).
- 32. In this situation, the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) means that permission for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, or where specific policies indicate development should be restricted.
- 33. Policy HG/5 accepts that, as an exception to the normal operation of the policies of the Development Plan, schemes of 100% affordable housing which are designed to meet identified local housing needs on small sites within or adjoining villages, can be granted so long as five criteria are met.
- 34. Paragraph 54 of the NPPF states, in connection with rural exception sites, that Local Planning Authorities should consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs.

35. In response to the NPPF, Policy H/10 of the Draft Local Plan 2013 states that if viability appraisal demonstrate that a 100% affordable housing scheme is unviable, consideration will be given, in order of preference to either changing the tenure mix of the affordable homes and/or the application of any available public subsidy, or including the minimum market housing necessary to make the scheme viable and still remain an exception site. This policy can be given some weight as it accords with the NPPF advice, although objections were received during the Local Plan consultation process.
36. The Housing Development Manager, having discussed the matter further with representatives of Cambridgeshire Acre who conducted the May 2014 Housing Needs Survey, has confirmed that the mix of affordable housing proposed is acceptable. The reasons for this are set out in paragraphs 16-21 above.
37. The independent viability assessment carried out for the Council, has looked at market values, development costs, land values, and the need to achieve a 'reasonable return'. It has also taken into account the offer received from the Housing Association, which has confirmed its commitment to the development of this site.
38. The conclusion is that the 2 market dwellings are justified in this case in order to bring the affordable housing forward, although officers have requested that a calculation is run with 8 affordable dwellings and 1 market unit, to confirm that the minimum level of market dwellings required is 2.
39. The Housing Development Manager has confirmed that there is no scope to alter tenure mix in this case.
40. Officers are of the view that the level of affordable housing provided is significant in this case, as it will meet the whole of the identified need for affordable housing in Caxton at the current time. The scheme remains 80% affordable.
41. The application has been advertised as a departure from the approved development plan, but accords with the more recent advice in the NPPF.
42. The applicant originally requested that the Council agrees to the inclusion of a Mortgage in Possession (MIP) Clause within any S106 Agreement. The Housing Association has been asked to provide an update on this position, and any further information on this point will be assessed.
43. The third of the criteria requires the site to be well located to the built-up area of the village, and the scale of the scheme to be appropriate to the size and character of the village. Caxton is classified as an infill village however schemes for exception sites for affordable housing of this scale have been consented in such villages and officers are therefore of the view that the scale of the scheme is appropriate in this respect.
44. The site abuts the village framework on its south boundary, with additional development beyond the site to the north. Officers are of the view that the site is well related to the built-up area of the village.
45. The fourth of the criteria requires the site to be well related to facilities and services within the village. Caxton is a village where services are limited, and its status as an infill village reflects this, although the public house has now re-opened, albeit as a restaurant. The existing open space provision in the village is limited and some way from the site, although the site itself provides an area of open space at the rear. For other services Caxton is reliant on adjoining villages, such as Cambourne.

46. The policy of allowing sites for affordable housing in villages for people in housing need in that particular village is an exception to the normal operation of the policies of the Local Development Framework and can result in a scale of development being permitted that is in excess of that which would normally be allowed, providing the scheme addresses the criteria in Policy HG/5.
47. The fifth of the criteria requires that the development does not damage the character of the village or the rural landscape. The existing site does form a gap between development at the edge of the village framework and the properties to the north. Existing development along Ermine Street is relatively linear in form, although to the south east of the site the housing in Brockholt Road extends further east in depth. The scheme as revised includes a terrace of three dwellings to the rear of the frontage development, in the east section of the site, but retains the frontage only form in the west part of the site. Officers are of the view that although the present gap will be lost, views through the site to the countryside beyond will be retained at the point of access, and with use of appropriate materials and landscaping, are of the view that the development will not materially damage the character of the village or rural landscape.
48. Concerns have been expressed about the possible future development of West Cambourne and the erosion of important space between Caxton and that site, if development of the Ermine Street site were to proceed. The current proposed plans for West Cambourne do not extend south of the line of the Caxton Bypass and buffer planning is proposed to the north of the Bypass. Officers do not consider that the erection of 10 dwellings in the Ermine Street site would significantly compromise the gap to the proposed site of West Cambourne.

*Residential amenity*

49. Officers are of the view that the scheme, as amended, will not have a significant direct effect on the amenity of adjacent residents in terms of overlooking, loss of light or overbearing impact, although it will result in a material change to the existing open character of the site. The rear of the houses on Plots 8-10 are a minimum of 16m from the boundary with existing properties in Ermine Street and Brockholt Road. There is a secondary bedroom window at first floor level in the side elevation of Plots 7, which faces existing properties in Ermine Street. This can be required to be obscure glazed and non-opening by condition. The north elevation of Plot 1, which faces No.176 Ermine Street, contains no first floor windows, and a condition can be included in any consent to prevent the creation of openings in the future. Appropriate boundary fencing will be required, but solid fencing will be required along part of the north and south boundaries to protect neighbour amenity.

*Setting of Listed Building*

50. The Old Courthouse, now occupied as a dwelling, is an important 19<sup>th</sup> Century listed building at the north end of Caxton. At the present time, although the building is not immediately adjacent the site, views are afforded of its south elevation, across the application site, when approaching from the south. These views will be partly lost as a result of the proposed development along the site frontage. Development in depth within the site has been kept to the southern part of the site, away from the listed building, and the layout form was the subject of discussion with the Conservation Officer before the plans considered at the April 2014 meeting, The principle of the layout has not changed from that time. There will be some harm to the setting of the

listed building which will need to be balanced against the public benefits of the proposal.

51. In this case officers are of the view that the benefit of the provision of the affordable housing outweighs the harm to the setting of the listed building, although more traditional roofing materials should be used than the concrete tiles currently suggested, so that they are more compatible with listed building.

*Highway safety and parking*

52. The Local Highway Authority has not objected to the application, which demonstrates that safe access can be provided to the site. Conditions suggested by the Highway Authority can be included in any consent. Adequate off-street parking is provided

*Other matters*

53. The Ecology Officer has not objected to the application, and the requirement of Cambridgeshire Archaeology for an archaeological investigation can be dealt with by condition. Foul and surface water drainage details can be conditioned.
54. The open space proposed should be secured by Section 106 Agreement. The applicant has submitted a draft Heads of Terms recognising the need for contributions under Policies DP/4 and SF/10 in respect of community facilities, public open space and the need to secure the affordable housing. The application is compliant with the Council's policy in respect of renewable energy requirements.
55. Although there is local comment about there being better sites in the village for affordable housing, there are none currently before the Council for consideration, and Members must consider this site on its merits.

**Conclusion**

56. As this application is being considered as a rural exception site officers are of the view that the application still falls to be considered against that policy, and the advice in paragraph 54 of the NPPF.
57. Officers are of the view that the proposed affordable dwellings are in line with the 2014 survey and meet the identified needs of the village. The need for two market dwellings as part of the scheme has been justified by the viability appraisal, subject to confirmation that two, rather than one market dwellings are required.
58. Any adverse impacts of the development are not considered to significantly and demonstrably outweigh the benefits when assessed against the material considerations set out in this report, and the proposed development remains acceptable.
59. It is recommended that subject to the confirmation in respect of the viability assessment referred to above, and the prior signing of a Section 106 Agreement, that officers are granted delegated powers to approve subject to conditions.

**Recommendation**

60. Approval subject to:.

## **S106 requirements**

A scheme for affordable housing

### **Conditions (to include)**

Time limit – 3 years

List of approved plans

External Materials

Landscaping/Boundary treatment

Surface water drainage

Highway conditions as proposed by the LHA

Restrict hours of operation of power driven machinery

Archaeological investigation

No further openings – first floor – north elevation Plot 1 and south elevation Plot 7

Fixed and obscure glazing – first floor – south elevation Plot 7

Renewable energy and water conservation

## **Background Papers**

Where the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
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The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Plan Proposed Submission July 2013
- South Cambridgeshire Supplementary Planning Documents
- National Planning Policy Framework 2012
- Planning File References: S/1504/13/FL

**Report Author:** Paul Sexton – Principal Planning Officer  
Telephone: (01954) 713255



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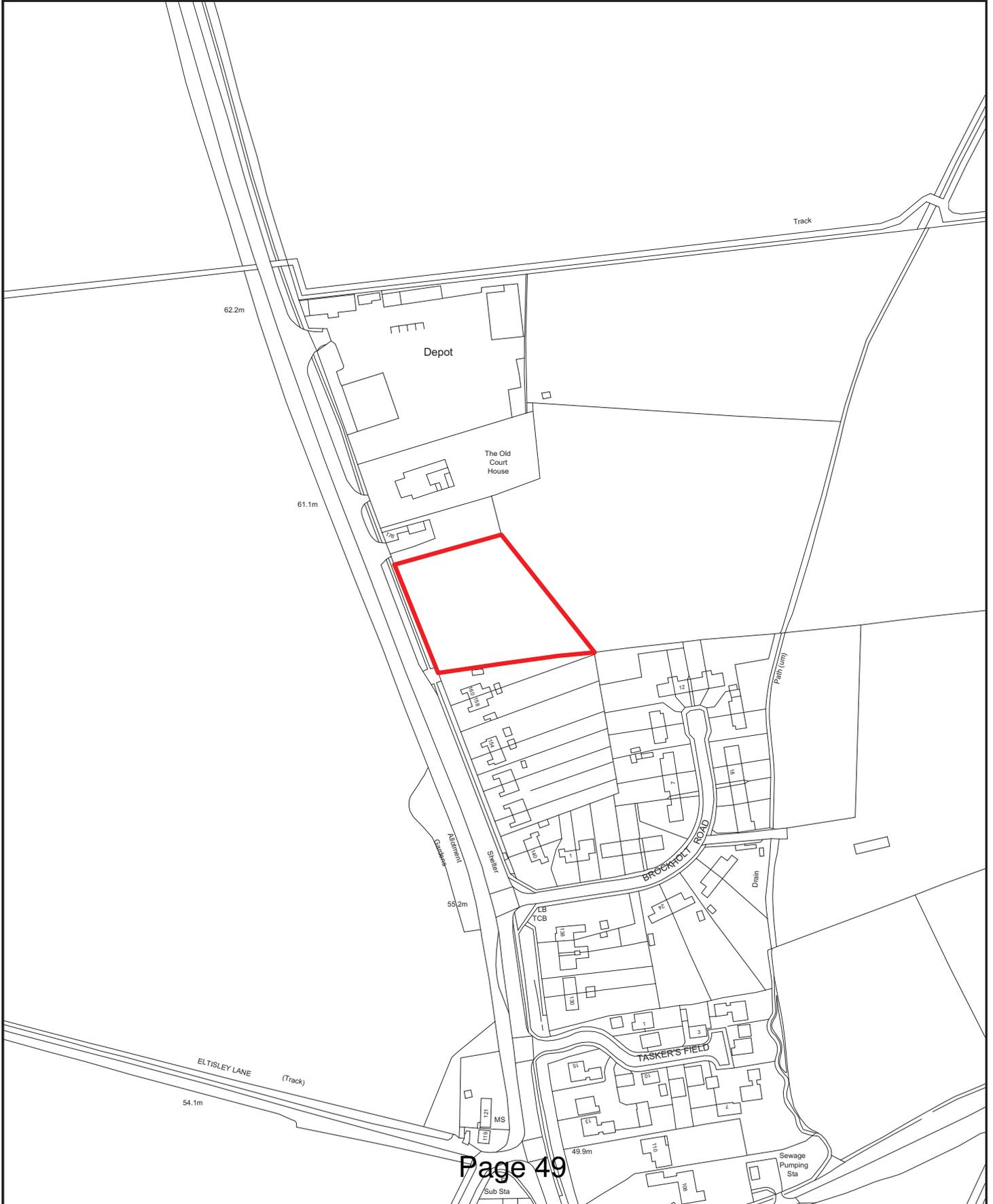
Time of plot: 09:18

Date of plot: 11/02/2015



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# Agenda Item 8

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/2186/14/FL
<b>Parish:</b>	Caldecote
<b>Proposal:</b>	Change of use of existing annex to create independent 3 bedroom dwelling
<b>Site address:</b>	Westwind, Highfields Road, Highfields Caldecote
<b>Applicant(s):</b>	Mr D Baldwin
<b>Recommendation:</b>	Delegated Approval
<b>Key material considerations:</b>	Principle of Development Design Amenity Highway Safety
<b>Committee Site Visit:</b>	No
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	John Koch
<b>Application brought to Committee because:</b>	Parish Council recommendation of refusal conflicts with Officers recommendation
<b>Date by which decision due:</b>	28 November 2014

### Site and Proposal

1. The site comprises a 0.35 ha parcel of land to the north of Highfields Caldecote, approximately 150m beyond the Development Framework. The site consists of part of the garden land to Westwind, a large bungalow, and includes a single storey building currently used as a residential annex to the main dwelling.
2. The residential annex that is the subject of this application is to the north of the main dwelling with its own access via Highfields Road. The site is well screened from Highfields Road by established informal planting, including small trees and hedging.
3. The annex originally was used at only ground floor level for the applicant's mother and included a kitchen, bedsitting room and bathroom. The remainder of the space was used for garden storage. Since planning permission was granted alterations

have been made to the building, which include the insertion of roof lights and the conversion of the roof space to provide additional accommodation.

4. The annex has a ridge height of approximately 5m and height to the eaves of 2.2m. It comprises a footprint of 10m x 14m, including the space used as a logging area. It is constructed of brick and interlocking concrete tiles with timber boarding to the gable end. All external doors and windows are white UPVC.
5. The application seeks planning permission for the change of use of the annex to a three bedroom independent dwelling.

### **Planning History**

6. S/1394/12/VC - Variation of condition (S/0593/07/F) to allow garden room and store to be used as an annex - Approved
7. S/0593/07/F - Garden room and store – Approved

### **Planning Policies**

8. **National Planning Policy Framework (Adopted March 2012).**
9. **Local Development Framework Development Core Strategy (Adopted January 2007)**  
ST/6 Group Villages (Highfields Caldecote)
10. **Local Development Framework Development Control Policies (Adopted July 2007)**  
DP/1 Sustainable Development  
DP/2 Design of new Development  
DP/3 Development Criteria  
DP/4 Infrastructure and New Developments  
DP/7 Development Frameworks  
SF/10 Outdoor Playspace, Informal Open Space and New Developments  
TR/1 Planning for more Sustainable Travel
11. **Local Plan (Proposed Submission Version (July 2013))**  
S/3 Presumption in favour of sustainable development  
S/7 Development Frameworks  
S/10 Group Villages  
HQ/1 Design Principles  
SC/7 Outdoor play space, informal open space and new developments
12. **Supplementary Planning Documents**  
District Design Guide SPD (adopted March 2010)

### **Consultations**

13. **Caldecote Parish Council** recommends refusal (albeit no reasons given).
14. The **Local Highways Authority** (HA) requested that a plan is provided showing the visibility splays prior to determination of the application. It is considered by the HA that the proposal should have no significant impact on the public highway subject to the required visibility splays and incorporation of conditions.

15. The **Contaminated Land Officer** has considered the implications of the proposal and is satisfied that a condition relating to contaminated land investigation is not required.
16. **Environmental Health Officer** – No comments received.

### **Representations**

17. None have been received.

### **Planning Comments**

#### *Principle of Development*

18. The proposed development seeks approval for a new dwelling outside of any defined Settlement Boundary. The proposal would conflict with Policy DP/7 of the Local Development Framework which seeks to focus new housing within defined boundaries. However, as the Council is currently unable to demonstrate a 5 year supply of housing land, this policy cannot be considered to be up-to-date as far as it relates to the supply of housing land (Paragraph 49 of the NPPF).
19. In this situation, the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) means that permission for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, or where specific policies indicate development should be restricted.. The NPPF identifies three dimensions of sustainable development: economic; social; and environmental, and indicates that gains should be sought for each in unison.
20. Although outside the Development Framework, the proposed development comprises the change of use of an existing building situated between the host dwelling and a mobile home park.
21. The site is located approximately 160m from the development framework of Highfields Caldecote, which is identified as a Group Village where residential development of up to 8 dwellings is supported allowing some of the basic day-to-day requirements of their residents to be met without the need to travel outside the village.
22. Whilst not adjacent to the application site, these facilities are accessible from the development on foot via lit footpaths and by cycle. The nearest bus stop is approximately 200m from the site with a regular service to Cambridge town centre. The Committee will also recall planning permission being granted for four dwellings on the site next to Casa-de-Foseta on St Neots Road and further away from the village back in November 2013 when it was considered the site was in a sustainable location.
23. The proposal is therefore not considered to amount to a wholly isolated development in the countryside, and would be consistent with the NPPF principle that rural housing should be located where it will maintain or enhance the vitality of rural communities.
24. The proposal would also add to the range of housing available in the locality, make a modest but positive contribution to the overall supply of housing, and provide some short-term economic benefits through its construction.

25. Taking these matters into account it is considered that the proposal would constitute a sustainable form of development as defined in paragraph 7 of the NPPF.
26. A draft heads of terms that covers the required contributions towards community facilities, public open space and waste receptacles for the proposed three bedroom dwelling has been agreed with the applicant.

#### *Design*

27. The application site comprises a spacious plot with the existing annex building set back from Highfields Road. The annex is well screened in this direction through established planting. To the north of the site is an established mobile home park and to the south the host dwelling known as Westwind.
28. The proposal would comprise the change in use of a single storey annex building to provide a three bed independent dwelling. No external changes are proposed as part of the application and it is considered that the scheme is acceptable in terms of design and would not unduly impact upon the character of the surrounding area.
29. The proposal also provides sufficient private amenity space for the sizes of both the existing and proposed dwelling.

#### *Amenity*

30. The site has adjacent neighbours to the north (mobile home park) and the host dwelling to the south. The annex is positioned in the centre of a spacious plot and would have no impact upon light for the host dwelling at Westwind or the mobile home park. The proposal is unlikely to impact upon privacy for the neighbouring properties as the proposal is limited to single storey construction with only roof lights proposed to first floor accommodation.
31. There have been no neighbour objections in response to the application. The application site is bounded to the north by established planting and the annex building is sufficiently distanced from the host dwelling to ensure no detrimental impact on amenity would occur as a result of the proposed development.

#### *Highway Safety*

32. The Local Highway Authority requested that the applicant provide a drawing showing the required visibility splays which should have the dimensions of 2.4m by 43m as measured from along the nearside edge of the carriageway provided on both sides of the access.
33. The applicants have provided a drawing to illustrate visibility splays on drawing no. PAS/BAL/04 Rev. A. The plan shows the required splays can be provided without the loss of the established planting to the front of the site, although the existing hedgerow would be trimmed back as necessary to achieve the visibility as proposed.
34. It is therefore considered the proposal would provide a suitable access whereby drivers could pull onto and out of the drive safely.

#### *Other Matters*

35. The parish council has not provided any reason for its objection. The case officer has asked for a reason, but no response has been received.

### *Conclusion*

36. Any adverse impacts of the development are not considered to significantly and demonstrably outweigh the benefits when assessed against the material considerations set out in this report, and the proposed development remains acceptable.
37. As such it is recommended that permission be granted for officers to approve the scheme subject to the completion of a S106 legal agreement securing contributions towards open space, community facilities, waste receptacles and monitoring and legal fees, and the conditions outlined below.

### **Recommendation**

38. Approval subject to prior completion of S106 agreement.

### **S106 requirements**

A scheme for contributions towards community facilities, open space and waste receptacles will need to be agreed prior to issuing a decision notice.

### **Conditions**

- (a) Timescale
- (b) Approved Plans
- (c) Highways – retention of visibility splays

### **Background Papers**

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The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Core Strategy (adopted January 2007)
- South Cambridgeshire Local Development Framework Development Control Policies (adopted July 2007)
- Planning Reference File: S/2186/14/FL.

**Report Author:** Jemima Dean – Planning Consultant  
Telephone: (01362) 656250

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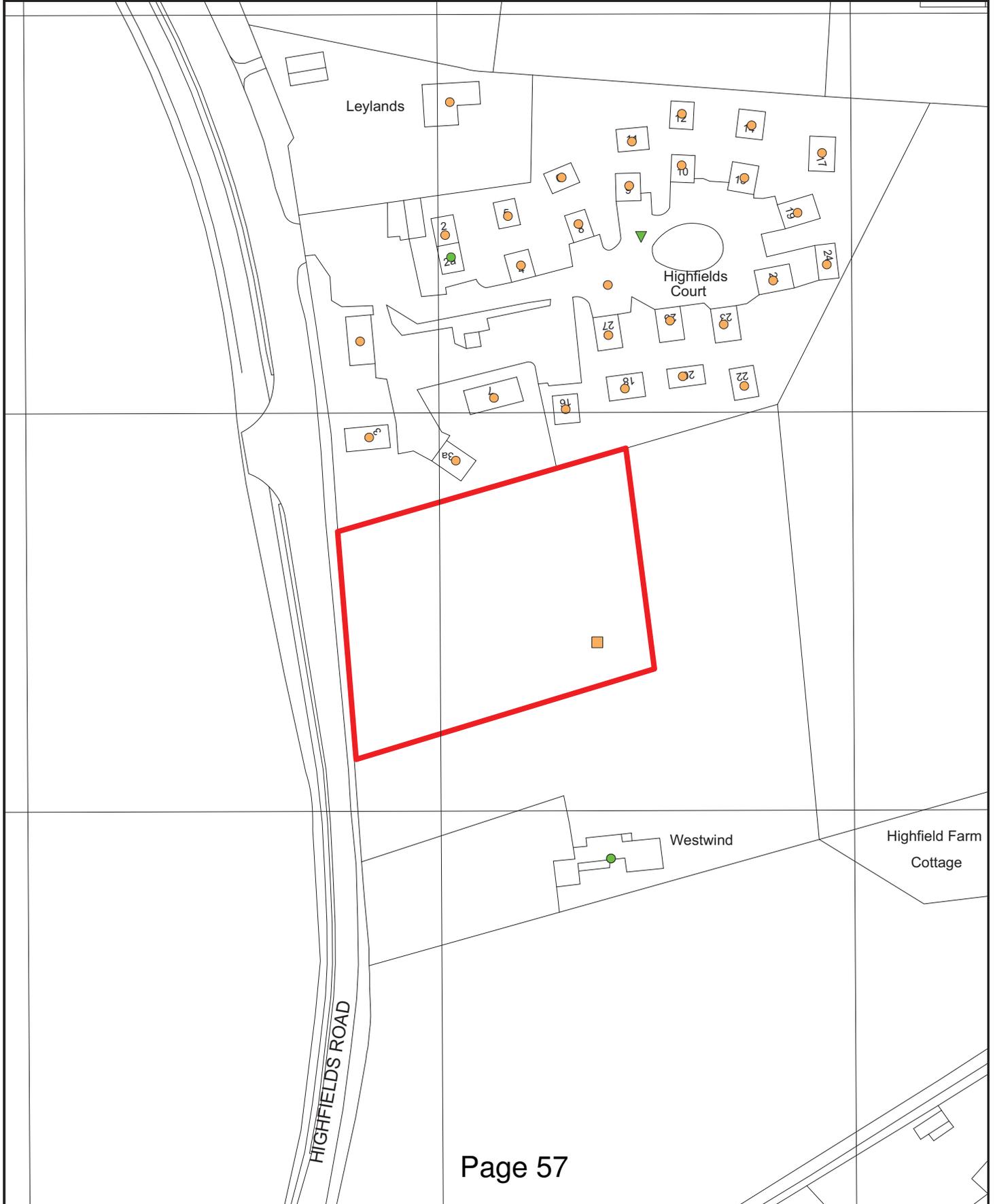
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Date of plot: 23/02/2015



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# Agenda Item 9

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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**Application Number:** S/2646/14/FL

**Parish(es):** Girton

**Proposal:** Demolition of bungalow and erection of 2 storey house

**Site address:** 65 Cambridge Road  
Girton

**Applicant(s):** Mr K Castro Ltd

**Recommendation:** Delegated Approval

**Key material considerations:** Principle of Development  
Visual Impact  
Residential Amenity  
Highway Safety

**Committee Site Visit:** No

**Departure Application:** No

**Presenting Officer:** John Koch

**Application brought to Committee because:** Parish Council recommendation of refusal conflicts with Officers recommendation

**Date by which decision due:** 30 December 2014

### Planning History

1. The site has been subject of a pre-application discussion and application for a similar scheme S/1629/14/FL which was withdrawn.
2. This application was deferred at the February 2015 meeting for a Committee site visit.

### Planning Policies

3. **National Planning Policy Framework (Adopted March 2012)**
4. **Local Development Framework Core Strategy 2007**  
ST/3 re-Using previously Developed Land and Buildings  
ST/6 Group Villages

5. **Local Development Framework Development Control Policies 2007**  
DP/1 Sustainable Development  
DP/2 Design of new Development  
DP/3 Development Criteria  
DP/4 Infrastructure and New Development  
DP/7 Development Frameworks  
HG/1 Housing Density  
HG/2 Housing Mix  
NE/1 Energy Efficiency  
SF/10 Outdoor Playspace, Informal Open Space and New Developments  
TR/1 Planning for more Sustainable Travel  
TR/2 Car and Cycle Parking Standards
6. **Supplementary Planning Documents**  
District Design Guide SPD (adopted March 2010)

### **Consultations**

7. **Girton Parish Council** recommends refusal. The amended application is similar to the previous application to which the Parish Council objected. The amended application has not addressed the issue of overshadowing, there is no recommended frosted glass or re-siting of the side windows and the change from a 2 bed bungalow to a 4 bed house is a significant change and the size would be out of keeping with the street scene.
8. The **Local Highways Authority** has no objections, subject to conditions controlling visibility splays, surface water drainage, and bound materials for the access drive.
9. **Environmental Health Officer** recommends safeguarding conditions and informatives regarding hours of working.

### **Representations**

10. Letters of objection have been received from the immediate neighbour to the north and the two immediate neighbours to the south raising the following concerns;
- (i) Proposed dwelling is too large for the plot, footprint larger than existing footprint, proposed dwelling extends further back into plot
  - (ii) Adverse impact on neighbouring properties due to loss of light, overlooking, loss of privacy.
  - (iii) Design too contemporary; materials inappropriate
  - (iv) Close proximity to boundary hedge
  - (v) Lack of on-site turning
  - (vi) Home Office could be used for business which would result in increased traffic

### **Planning Comments**

11. The site is located within the village development framework for Girton and currently comprises a detached prefabricated 2 bedroom bungalow. Access to the site is direct from Cambridge Road with parking within the front garden for 1 car.
12. Adjoining the site to the north is a pair of two-storey semi-detached dwellings. To the south is a detached bungalow and to the rear residential properties fronting Redgate Road.

13. The general character of the area is residential. The surrounding properties comprise mainly two-storey detached dwellings with a variety of designs.
14. The proposal seeks to demolish the bungalow and replace it with a 4 bedroom two storey dwelling. Two car parking spaces would be provided within the front garden. The application is supported by a sunlight and daylight assessment.
15. The proposal, as amended, is the resubmission of a previous application which was withdrawn. A first floor projection adjacent the northern boundary has been omitted.

#### *Principle of Development*

16. The NPPF advises that every effort should be made to identify and then meet the housing needs of an area, and respond positively to wider opportunities for growth. Additionally the Development Plan (Core Strategy Development Plan Document adopted January 2007 and Development Control Policies Development Plan adopted January 2007) identifies Girton as a 'Group Village' where the construction of new residential dwellings within the framework is supported. This is subject to other detailed considerations.
17. The proposed development would have been acceptable in principle having regard to adopted LDF and emerging Local Plan policies, had policies ST/5 and DP/7 not become out of date as a consequence of the Council not currently being able to demonstrate a five-year supply of deliverable housing sites.
18. A draft heads of terms that covers the required contributions towards community facilities, public open space and waste receptacles for the proposed two bedroom dwelling has been agreed with the applicant.

#### *Visual Impact*

19. The dwelling types along this part of Cambridge Road are predominantly two storey and therefore the introduction of a two storey dwelling in place of a bungalow would not be out of character with the general appearance of the area. The siting of the proposed dwelling is very similar to that of the bungalow and would not extend forward of the line of the dwellings on either side, the new dwelling not would therefore be unduly visually intrusive. The eaves height of the proposed dwelling is similar to the neighbouring two storey dwelling, although the lower pitch would ensure the overall ridge height is lower and helps to provide a transition between the single storey and two storey dwellings either side.
20. The proposal is for a contemporary design. The main body of the dwelling would be rendered and includes timber boarding and a brick chimney. There is no strong distinctive architectural character in the immediate vicinity of the site. There is a broad range of architectural styles and a broad pallet of materials and as such a contemporary design would not be at odds with the form and character of the area.

#### *Residential Amenity*

21. The proposed dwelling would be positioned in between two existing dwellings. In terms of the impact on amenity of the adjacent property to the north (no 63) the proposal would be 5.2m from the side wall of the adjacent house and therefore there is an adequate degree of separation between the two properties.

22. The current application has been revised to omit a two storey rear projection in order to reduce the overshadowing of no 63. A daylight assessment submitted with the application has concluded that in terms of loss of daylight the impact of the development would not be detrimental to the windows to the front and rear of the property. Officers do not dispute these conclusions.
23. The sunlight/overshadowing assessment does acknowledge that there would be an increased level of overshadowing and loss of sunlight associated with the development and that the loss would occur during the winter months when the sun is at its lowest level. The assessment identifies that between April and July the overshadowing would not be materially different at midday than at present. Between October and January, however, the shadow would be extended increasingly over the rear garden towards the rear kitchen window. While the assessment does not detail other months, there would be some additional shadowing of the kitchen window.
24. Members will note from the site visit that part of the rear garden is already overshadowed by a high (in excess of 2m) hedge.
25. From the above it is considered there would be an increase in overshadowing of the part of the neighbour's rear garden during the winter months. Due to the orientation of the rear kitchen window which faces more or less south, overshadowing during the winter months would be confined to between the hours of approximately 9 a.m. and midday. As a matter of fact and degree, officers have concluded this would not have a significant adverse impact on the amenities of the property.
26. In terms of impact on amenity to the existing bungalow to the south (no 67) the proposed dwelling would be 2.2m from the bungalow. The proposed dwelling does extend beyond the rear wall of no 6, however this part of the dwelling would be single storey. The two storey element of the proposed dwelling is similar to the depth of the existing property and is in line with what was the rear of the existing bungalow on the site. The proposal is therefore unlikely to have a significant overbearing impact on the adjacent bungalow.
27. The neighbouring bungalow has two side windows which face north towards the proposed development. Both these windows are secondary windows serving a dining room and bedroom. Both these rooms have large primary windows which face the front and rear of the property.
28. The view out of these side windows and the natural light into the room is currently limited due to the close proximity of the existing bungalow and orientation facing north. It is considered that the proposal is unlikely result in significantly adverse loss of natural light or view above or beyond what is currently experienced. The daylight and sunlight assessment accompanying the proposal demonstrate that the proposal would not have an adverse impact on the neighbours at no 67 in terms of loss of light.
29. In terms of privacy, the dwelling has been designed so as not to result in overlook from the first floor windows. The first floor windows in the gable serve bathrooms and therefore would be glazed using obscure glazing. In addition the opening lights are above eye level. A condition can be imposed to ensure these windows are glazed with obscure glass and designed with a top hung opening light only.
30. There is a satisfactory degree of separation between the proposed dwelling and the existing properties to the rear of the site to provide an adequate amount of privacy. The proposed dwelling is positioned and orientated to safeguard the private area immediately to the rear of the adjoining properties either side, although it is accepted

that the end of these gardens would be overlooked. However, it is considered that the loss of privacy would affect a relatively small area and is not so significant such that a refusal of planning permission on the grounds of loss of privacy would be justified.

31. The proposed home office is a small room with no independent means of access.
32. On balance it is considered that whilst the proposal will impact on neighbour amenity, this would not result in a significant adverse impact such that a refusal of planning permission would be justified.
33. Given the concerns raised regarding the scale of the development and the proximity of the neighbouring properties it is considered that permitted development rights for further extensions should be attached to safeguard neighbour amenity. Conditions will also be attached to ensure the neighbours' amenities are also safeguarded during the construction phase.

#### *Highway Safety*

34. The Local Highways Authority has no objections to the development subject to certain conditions. The proposal includes one additional parking space to the front of the main dwelling. The Highway Authority has not raised an objection to the proposal in terms of the amount of parking spaces or lack of onsite turning and therefore a recommendation of refusal of planning permission on the grounds of inadequate off road parking and turning cannot be justified.

#### *Conclusion*

35. Any adverse impacts of the development are not considered to significantly and demonstrably outweigh the benefits when assessed against the material considerations set out in this report, and the proposed development remains acceptable. As such it is recommended that permission be granted for officers to approve the scheme subject to the completion of a S106 legal agreement securing contributions towards open space, community facilities, waste receptacles and monitoring and legal fees, and the conditions outlined below.

#### **Recommendation**

36. Delegated approval subject to:

#### **S106 requirements**

A scheme for contributions towards community facilities, open space and waste receptacles will need to be agreed prior to issuing a decision notice.

#### **Conditions**

- (a) Approved Plans
- (b) Timescale
- (c) Materials
- (d) Obscure glazing to first floor windows in side elevations
- (e) Power operated machinery and other conditions and informatives.
- (f) Removal of householder permitted development rights regarding classes, A, B, C, D & E.

## **Background Papers**

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- South Cambridgeshire Local Development Framework Core Strategy (adopted January 2007)
- South Cambridgeshire Local Development Framework Development Control Policies (adopted January 2007)
- District Design Guide SPD (adopted March 2010)
- Planning Reference Files : S/2646/14/FL and S/1629/14/FL

**Report Author:** Viv Bebbington – Senior Planning Officer  
**Telephone:** 01362 656252



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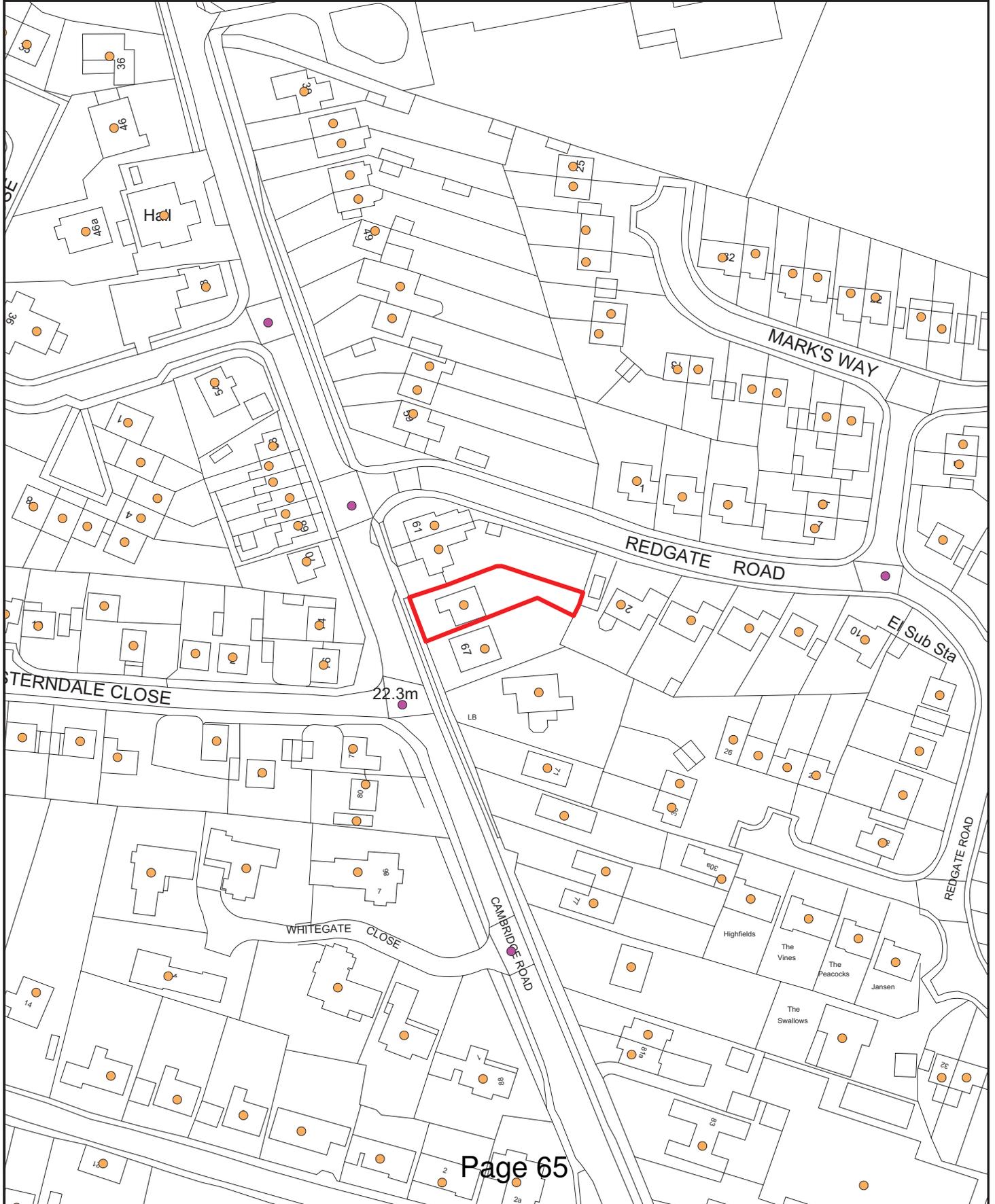
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# Agenda Item 10

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/3038/14/FL
<b>Parish(es):</b>	Great Abington
<b>Proposal:</b>	Detached three-bedroom dwelling
<b>Site address:</b>	23 South Road, Great Abington, Cambs
<b>Applicant(s):</b>	Mr & Mrs Johnson
<b>Recommendation:</b>	Refusal
<b>Key material considerations:</b>	Principle of development, sustainability, character of area
<b>Committee Site Visit:</b>	Yes
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	Lorraine Casey
<b>Application brought to Committee because:</b>	Referral to Committee has been requested by District Councillor David Bard
<b>Date by which decision due:</b>	4 March 2015

### **Planning History**

1. S/1013/85/F – Extension – approved.
2. S/0683/86/F – Extensions – approved.

### **Planning Policies**

3. *National Planning Policy Framework 2012*
4. *Local Development Framework 2007*

DP/1: Sustainable Development

DP/2: Design of New Development

DP/3: Development Criteria

DP/4: Infrastructure and New Developments

DP/7: Development Frameworks

SF/10: Outdoor Playspace, Informal Open Space and New Developments

SF/11: Open Space Standards  
TR/1: Planning for More Sustainable Travel  
TR/2: Car and Cycle Parking Standards  
Open Space in New Developments SPD  
District Design Guide SPD

5. *Draft Local Plan 2013*

S/1: Vision  
S/2: Objectives of the Local Plan  
S/3: Presumption in Favour of Sustainable Development  
S/5: Provision of New Jobs and Homes  
S/7: Development Frameworks  
HQ/1: Design Principles  
H/15: Development of Residential Gardens  
SC/6: Indoor Community Facilities  
SC/7: Outdoor Play Space, Informal Open Space and New Developments  
SC/8: Open Space Standards  
TI/2: Planning for Sustainable Travel  
TI/3: Parking Provision

**Consultations**

6. *Great Abington Parish Council* – Recommends approval “as this application is in-line with proposed policy set out within the LDF (on p 146) under review by the Inspector.”
7. *The Local Highways Authority* – Raises no objections.
8. *The Environmental Health Officer* – Raises no objections providing the following conditions/informatives being added to any consent:
  - Restriction of hours of use of power-operated machinery during the construction period.
  - Details of any driven pile foundations.
  - No bonfires or burning of waste during construction.

**Representations**

9. District Councillor Bard has confirmed his support for the application, stating the following:

“I have been asked to represent the applicants Mr. & Mrs. Johnson on behalf of the local member, Cllr. Orgee as he is personally acquainted with the Johnsons.

I gather that you are proposing to refuse this application under delegated powers on the ground that approval would result in a dwelling in an unsustainable location. I visited the site on 23<sup>rd</sup> January and it was fairly obvious that in addition to the dwellings associated with the former land settlement, most of which have been considerably extended, a number of new dwellings have been created by conversion of former farm buildings. This impression is confirmed by a brief search. Six applications, mostly involving farm building conversions have been approved since 2010.

S/2086/14/FL involved the construction of a completely new building and though it is described as a ‘live work unit’ is surely subject to similar sustainability considerations

as the present application. A further application (S/2320/14/FL) is currently the subject of an appeal, yet to be determined. It is difficult to reconcile the claim that this site is unsustainable with this steady trickle of approvals over the last five years.

The site is less than 2 km from a major employment site (Granta Park) and about 3.5 km from another (Babraham Institute), both of which are accessible by safe cycle routes. The distance to the Southern end of Gt Abington High Street is 1.6 km . These distances are considerably less than those claimed by County officers to be reasonable and realistic for cycle commuting in justification of their ambitious cycleway programme. The applicant has, I gather, offered to contribute towards safe cycle storage at the nearest bus stop.

The assessment of 'sustainability' is largely a matter of judgement, as is consistency with previous permissions granted on neighbouring sites. For that reason I request that this application be referred for determination to Planning Committee and that prior to this, there should be a member site visit."

10. 6 letters of support have been received from residents of Nos. 20, 34, 35, 36, 37 South Road and No.8 Chalky Road. These responses confirm that the old piggery for No.23 was sited to the east of the existing house near to the other outbuildings, and support the application to build a house in this location.
11. 2 objections have been received (no addresses supplied for either). The main concerns raised are as follows:
  - The erection of a house on this site would open the floodgates for every other house on the land settlement to build on their land. The infrastructure could not support this. The village school is over-subscribed and the road is not suited for such an increase in development in the area.
  - Upgrading the existing property to insert a lift would appear to be more cost-effective than building a new dwelling.
  - There is currently no building on the site. Although there are letters confirming there was previously a piggery on the site, they were very sturdy structures and unlikely to have been in danger of collapse.

## **Planning Comments**

### ***Site and Proposal***

12. No.23 South Road is a detached dwelling that was originally constructed in the 1930's and extended in the 1980's. It lies outside the defined village framework within the Great Abington Land Settlement Association area. The site forms part of the residential curtilage on the east side of the dwelling and comprises a single-storey timber outbuilding that currently provides garaging and storage for the dwelling.
13. The application proposes to erect a detached three-bedroom dwelling within the existing garden land on the east side of the existing property. The proposed dwelling would be set back from the road in a similar position to No.23. It would be 6.9 metres high to the ridge and 3.6 metres high to the eaves, and would comprise three floors of accommodation (including a basement), with materials consisting of stained weatherboarding walls under a clay plain tile roof. The existing outbuilding would be retained and used in association with the proposed dwelling for the storage of bins, bikes and garden equipment etc. The existing vehicular access would be shared between the existing and proposed dwellings, and parking spaces provided within the

curtilage of each property. A new post-and-rail fence and hedgerow would be planted to subdivide the gardens of the two properties.

14. A supporting statement explains that the Abington Land Settlement was set up in 1937, and comprised around sixty holdings, each with about 10 acres, a small house and a piggery in its curtilage. In the 1980's, the houses and land were sold off and the roads became private roads jointly owned by the landowners. Many of the houses have subsequently been extended and some additional outbuildings, such as stables and horticultural buildings, added.
15. No.23 has been extended over time to become a five-bedroomed family home. The proposal is to build a house on the site of the former piggery, which was demolished some years ago as it was collapsing and unsafe. The applicants state that the proposed dwelling sits on the same building line as the houses in the area and reflects the character of the original houses and surrounding agricultural buildings. The proposed dwelling is designed to enable the applicants to live an independent life and incorporates wide doorways and the facility to put in a lift. It would also be insulated to a high standard and incorporate solar panels for electricity generation, rainwater recycling and a ground source heat pump.

#### ***Principle of development***

16. The site lies outside the defined village framework of Great Abington. The erection of a dwelling in this location would be contrary to adopted LDF Policy DP/7 and the emerging Local Plan Policy S/7 which state that, outside frameworks, only development for agriculture, horticulture, forestry, outdoor recreation and other uses that need to be located in the countryside will be permitted.
17. The information accompanying the application explains that, following the Waterbeach appeal decisions in June 2014, the Council does not have a demonstrable five-year housing land supply, that the Local Plan is out-of-date and that the application should therefore be determined in accordance with the NPPF.
18. The Council acknowledges that it cannot currently demonstrate a five-year supply of deliverable housing. The NPPF states that, in such instances, policies for the supply of housing cannot be considered up-to-date. Paragraph 14 makes it clear that, where the development plan is out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies indicate development should be restricted.

#### ***Sustainable development***

19. Whilst there is a demonstrable housing need in the District, Local Plan policies and the NPPF make it clear that new housing must be provided in a sustainable manner and considered in the context of the presumption in favour of sustainable development. The supporting text to Policies DP/7 and S/7 explain that it is necessary to define village frameworks in order to ensure that the countryside is protected from gradual encroachment and to help guard against incremental growth in unsustainable locations. Whilst weight cannot presently be given to the framework boundaries, it remains the case that the proposed dwelling lies in an isolated location and would compromise the principles of promoting sustainable development and protecting the countryside from encroachment.

20. The applicants have submitted supporting information which states that, in their opinion, the site is in a sustainable location. It lies within a community of around 60 houses approximately 2.5km away from the village centre and 1.6km from the Pampisford Road bus stop (from which there is a half-hourly service to Haverhill and Cambridge, including access to the doctor's surgery in Linton). Granta Park is 2.2km away and accessible by cycle, and it is argued that the network of roads forming the Land Settlement area provide a safe environment for cyclists. Furthermore, there is a post box with daily collections, newspapers are delivered to a pick-up point on South Road, there is a milkman, eggs, library stop for 30 minutes on North Road (650m from the house) and refuse collections that are carried out on the same schedule as the rest of the village.
21. Officers consider that the arguments put forward by the applicants in support of the application very much demonstrate how unsustainable the site is. Great Abington, the centre of which is 2.5km from the site, is designated as a Group Village. Villages in this category have a limited level of services and facilities allowing only some of the basic day-to-day requirements of their residents to be met without needing to travel outside the village. Great Abington has a primary school, local shop, pub and hairdressers but residents are required to travel further afield for facilities such as doctors and dentists (Linton) or village colleges/further education (Linton, Sawston or Cambridge). Additionally, the roads in the Land Settlement Association are shared between pedestrians and vehicles, and have no street lighting. The combination of the lack of well-lit footpaths and cycleways together with the distance of the site from the village centre and nearest bus stop means that, in all likelihood, residents would be likely to rely on the private car to access local services and facilities. It is therefore considered that the proposal would conflict with one of the undermining principles of sustainable development, namely minimising the need to travel and reducing car dependency.

***Impact on character of the area***

22. Notwithstanding the above concerns, it is also considered that the proposed development would harm the rural character and appearance of the area. No.23 South Road consists of one of around 60 houses in the Land Settlement area, dwellings that were set up in the late 1930's as smallholdings. Whilst a number of the dwellings have been significantly extended over time, and some outbuildings converted to form annexes/habitable accommodation, the character of the Land Settlement is overwhelmingly one of detached houses set within significant plot sizes, with a relatively even spacing between dwellings. Whilst an Inspector has previously commented that the area is 'characterised by a density and regularity of housing that is not typical of the countryside', Officers would argue that the low density and degree of spacing between houses is not consistent with an urban, built-up area and that the Estate could therefore be argued to be semi-rural in character.
23. Whilst the proposed dwelling has been designed on the same building line as nearby properties and is similar in scale and design, the proposal would result in a smaller plot size and more cramped form of development (in terms of average spacing between dwellings) than is typical of the area. Additionally, if the application is approved, it would make it impossible for the Council to resist similar applications elsewhere within the Land Settlement area. This would have a seriously detrimental impact on the character of the area and result in the creation of a suburban form of development in this semi-rural location.
24. The applicants and Cllr Bard have referred to other instances in the Land Settlement area where planning permission has been granted for dwellings. It is notable that

there is not a single example or instance of a newly constructed dwelling being erected in this area. Examples of recent development in the LSA include the conversion of outbuildings to a new dwelling at 44 North Road and to a live/work unit at 32 South Road, and the conversion of a former pumping station to a dwelling in North Road. All of these consents are consistent with policies relating to the conversion of rural outbuildings to alternative uses. Consent has also recently been granted to convert an outbuilding at 57a North Road to a dwelling, but, for sustainability reasons, the occupation of this approved dwelling was specifically restricted to an equestrian worker employed in connection with the business being operated on the adjacent.

25. None of the examples quoted within the application and referred to above are considered to have established any form of precedent that would make the erection of a new dwelling in this location acceptable.
26. The harm caused by providing the proposed new dwelling in an unsustainable location and to the character of the area would significantly and demonstrably outweigh the benefits from the contribution of a single dwelling towards meeting the Council's five-year housing need. The proposal would therefore be contrary to paragraph 14 of the National Planning Policy Framework 2012.

#### ***Other matters***

27. In 2012, Great Abington Parish Council submitted a representation to the Local Plan. This suggested that there should be a special policy covering the LSA that, amongst other things, would include provision for each of the original houses being allowed to convert one existing outbuilding to a dwelling subject to maintaining adequate distances between neighbouring properties and to a maximum floor area of 150 square metres.
28. This representation was considered as part of the Local Plan review, but was not taken forward. The draft Local Plan does propose to introduce a greater degree of flexibility into policies relating to extending dwellings in the countryside and to the conversion of existing rural buildings, but it is notable that this application does not fall within either of these categories of development. Additionally, whilst the Parish Council may consider the proposal to be consistent with its representation and intentions for the Estate, the lack of any specific policy covering the area would mean the Council would have no means by which future development could be controlled in the event this application were approved.

#### **Recommendation**

29. Refusal:
  1. The site is located outside the defined village framework for Great Abington and within the countryside, approximately 2.5 kilometres from the services and facilities within the centre of Great Abington and 1.6 kilometres from the nearest bus stop in Pampisford Road. Additionally, the roads in the Land Settlement Association area are shared between pedestrians and vehicles, and have no street lighting. The combination of the lack of well-lit footpaths and cycleways together with the distance of the site from the village centre and nearest bus stop means that, in all likelihood, occupiers of the proposed dwelling would be likely to rely on the private car to access services and facilities. The proposal would conflict with one of the underlying principles of sustainable development, namely minimising the need to travel and reducing car dependency. Consequently, the

proposal would be contrary to: the aims and objectives of the National Planning Policy Framework 2012, which contains a presumption in favour of sustainable development; and the principles of Policy DP/7 of the adopted Local Development Framework 2007, which seeks to prevent incremental housing growth in unsustainable locations..

2. Notwithstanding the above, the proposed development would harm the character and appearance of the area. No.23 South Road consists of one of around 60 houses in the Land Settlement area of North road, South Road and Chalky Road. Whilst a number of the dwellings have been significantly extended over time, and some outbuildings converted to form annexes/habitable accommodation, the character of the area is overwhelmingly one of detached houses set within significant plot sizes, with a relatively even spacing between dwellings that lends the area a semi-rural character. The proposed development would result in a smaller plot size and more cramped form of development (in terms of average spacing between dwellings) than is typical of the area. Additionally, if approved, it would make it very difficult for the Council to resist similar applications elsewhere within the Land Settlement area. This would result in the creation of a suburban form of development that would have a seriously detrimental impact on the character of the area. Consequently, the proposal would be contrary to Policies DP/2 and DP/3 of the Local Development Framework 2007, which state that permission will not be granted for development that has an unacceptable adverse impact on the countryside, and require new development to preserve or enhance the character of the local area.

### **Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Core Strategy DPD 2007
- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Development Framework Supplementary Planning Documents
- Draft Local Plan 2013
- National Planning Policy Framework 2012
- Planning File Ref: S/3038/14/FL

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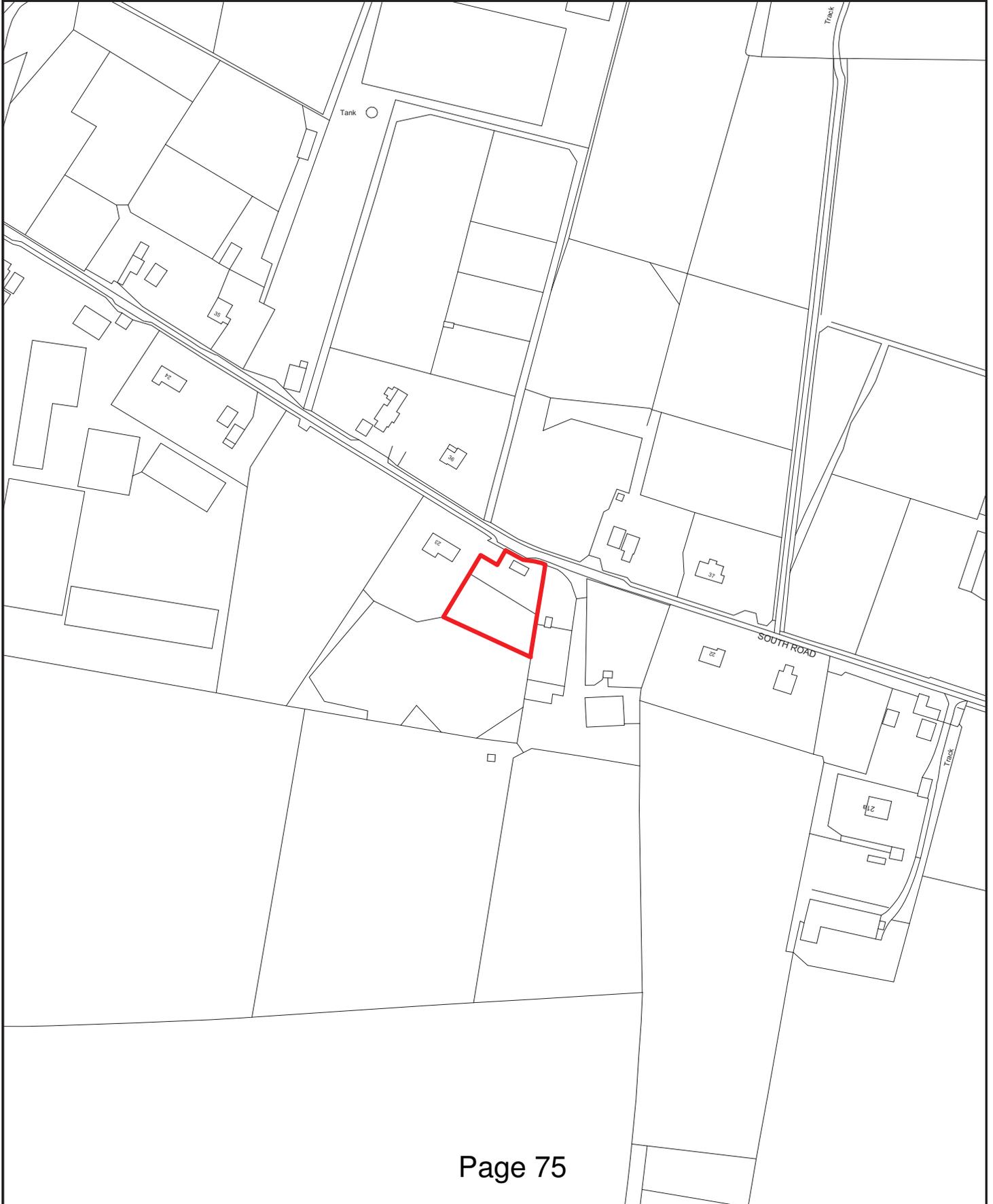
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# Agenda Item 11

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

4 March 2015

**AUTHOR/S:** Planning and New Communities Director

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<b>Application Number:</b>	S/2268/14/PO
<b>Parish(es):</b>	West Wrattling
<b>Proposal:</b>	Modify paragraph 2.4 of the deed of variation of planning obligation dated 29 July 2011 to amend wording to remove restriction of daily HGV movements within the unilateral undertaking dated 4 January 2007. Modify unilateral undertaking dated 4 January 2007 to remove definition of 'two-way HGV movement' and reference to the need to supply an annual monitoring report to the County Council
<b>Site address:</b>	Camgrain, London Road, Balsham
<b>Applicant(s):</b>	Camgrain Stores Ltd
<b>Recommendation:</b>	Delegated Approval
<b>Key material considerations:</b>	Highway safety
<b>Committee Site Visit:</b>	None
<b>Departure Application:</b>	No
<b>Presenting Officer:</b>	Lorraine Casey
<b>Application brought to Committee because:</b>	The Officer recommendation is contrary to the recommendation of West Wrattling, Great Wilbraham and Balsham Parish Councils
<b>Date by which decision due:</b>	11 November 2014 (Time extension agreed until 27 March 2015)

### Planning History

1. S/2494/04/F – Planning permission granted for a 90,000 tonne grain storage facility.
2. S/0506/09/F – Planning permission granted for a 210,000 tonne extension to the original facility.

## **Planning Policies**

3. *National Planning Policy Framework 2012*

4. *Local Development Framework 2007*

DP/1: Sustainable Development  
DP/2: Design of New Development  
DP/3: Development Criteria  
DP/4: Infrastructure and New Developments  
DP/7: Development Frameworks  
NE/1: Energy Efficiency  
NE/15: Noise Pollution  
TR/1: Planning for More Sustainable Travel  
TR/2: Car and Cycle Parking Standards

5. *Draft Local Plan 2013*

S/1: Vision  
S/2: Objectives of the Local Plan  
S/3: Presumption in Favour of Sustainable Development  
S/5: Provision of New Jobs and Homes  
S/7: Development Frameworks  
CC/3: Renewable and Low Carbon Energy in New Developments  
CC/4: Sustainable Design and Construction  
TI/2: Planning for Sustainable Travel  
TI/3: Parking Provision

## **Consultations**

6. *West Wrattling Parish Council* – Recommends refusal:

“At the Parish Council meeting....the above planning application was discussed both with the parish council and a large number of parishioners and it was agreed that the Parish Council unanimously opposes the application and wishes the planning authority to consider the following and reject the application.

1. Impact on safety on the A11

The restrictions were put in place on the original application because of safety concerns relating to volume of grain lorries accessing and leaving the A11. These concerns were raised by an independent assessment made at the time that was commissioned by SCDC. No improvements have taken place since.

No change should be made that would result in considerable increase in volume **before the junction to the A11 is substantially improved**. It is the council's opinion that any such improvements to the junction should be financed by the applicant, not the tax payer. Because of concerns about road safety we therefore request that the Police Authority are consulted over this application and a further independent assessment carried out to measure the impact of changes in volume.

2. Impact of removing restrictions on HGV traffic in surrounding villages

Public concern. We have had an unprecedented amount of concern expressed locally about grain lorry traffic already prior to this application that has come about as a result of the expansion of both the facility on West Wrattling Common (Thurlow Estate) and CamGrain. Feelings could be described as febrile on the issue of large numbers of HGV's going through the village.

Weight restrictions. The application has caused many people (and us as a council) to consider lobbying for a weight restriction through our village if matters do not improve.

Accidents. Although as far as we know, there have been no serious accidents yet caused by grain lorries, this is regarded as fortunate, as there have been many minor problems with several near-misses caused by grain lorries going too fast in narrow country roads. We are encouraging residents who experience such incidents to report them to police even if there is no damage. Again we would ask that the Police Authority consider the increased risk of RTAs on minor roads caused by a large increase in HGV traffic.

### 3. Environment

Noise and air pollution and road damage. There is an environment issue following on from removing the restrictions with the noise of the grain lorries, particularly when empty, which could become a 24-hour nuisance, together with additional localised air pollution and also the damage to the narrow roads.

Listed Buildings. Of great concern to SCDC regarding any decision that increases HGV traffic in the locality should be the impact upon listed buildings close to the roadside. There are 11 listed buildings on West Wrattling High Street (five within a few metres), which is a favoured route for grain to be transferred between Camgrain and the Thurlow facility on West Wrattling Common. The Chairman of WWPC has had it confirmed from a director of the Thurlow Estate that regular movements do take place to make use of spare capacity and use WW High Street as the route of choice.

Again we would ask that independent assessment of the impact of HGVs on listed buildings in West Wrattling, and ask that English Heritage be consulted."

In response to the proposed extension to the routing agreement, West Wrattling Parish Council states that it still strongly objects to the application due to reasons previously given that have not been addressed:

- The proposed exclusion zone needs to have some enforcement capability that should be transparent to the local residents.
- All journeys taken within the exclusion zone for purposes of transfer and delivery need to be separately logged so that if residents have cause to believe drivers are taking shortcuts they can refer to the times when they have seen the lorries to the log to find out where they were delivering to.
- There should be a clear definition as to what constitutes a delivery, and a clear declaration that they will not transfer grain to the Thurlow site on WW Common via WW High Street.
- There should be an agreement to financial penalties if infringement takes place.
- What evidence does Camgrain have to refute evidence by residents? This is a clear attempt to mislead planners, as grain is being transferred to the Thurlow site at The Common via West Wrattling High Street.
- Why has the Parish Council's request for an independent assessment of the safety of the junction been ignored?

7. *Great Wilbraham Parish Council* – Recommends refusal:

“The members of the Council are seriously concerned that no traffic figures have been given as part of the application. In addition no justification for need has been included. Finally it is the Council’s understanding that current movement rates have been exceeded.”

Great Wilbraham Parish Council has confirmed that the proposed amendment to the routing agreement has not altered its previous recommendation. Additionally, it notes that the route through Six Mile Bottom is a rat run.

8. *Balsham Parish Council* – Recommends refusal, stating:

“The removal of the restriction of daily HGV movements will result in increased traffic through Balsham which will increase noise pollution, vibration and disruption in the village.”

9. *Weston Colville Parish Council* – Recommends approval, although states it is generally not happy to see planning conditions relaxed as it rather negates some of them.

In response to the amended details, Weston Colville Parish Council has commented that:

“The green colouring on the map (ie the exclusion zone proposed by Camgrain) should be extended to the other parish boundaries of Carlton, West Wickham, West Wrating, Balsham and Weston Colville. If the green delineation as it stands on the map remains in place then the grain lorries can go to and through most of the villages.”

10. *The Highways Agency* – Raises no objections.

11. *The Local Highways Authority* – Raises no objections, stating that no significant adverse effect upon the public highway should result from this proposal should consent be granted. The removal of the movements restriction and the removal of the need to supply an Annual Monitoring report does not affect the Routing Agreement that stipulates the routes that HGV’s must take to the site, as the prohibited routes shown within the Unilateral Undertaking will remain in place and are fully supported and monitored by Camgrain.

### **Representations**

12. District Councillor Turner has confirmed his support for the application on the basis of the amendment to the routing agreement.

13. Approximately 56 letters of objection have been received, the majority of these from residents within West Wrating. The main concerns raised are:

- The A11 access junction for the Camgrain site is inadequate for its current use as the on/off slip roads are too short. Any increase in HGV movements will make this junction more dangerous.

- The 210,000 tonne extension has not yet been built. The number of movements associated with the extended store, and the impact of those movements, is not therefore known.
- Any application to increase the number of daily movements is premature until the store has been operating at full capacity for a number of harvest periods and a full safety investigation has been conducted for the site and surrounding villages.
- When the A11 is fully dualled to Norwich, this will increase vehicle numbers and more traffic using this junction.
- Minimal improvement to the junction was undertaken for the original scheme. SCDC employed an independent consultant to undertake a Safety Audit and advise on requirements for the A11 junction. The Consultant advised there should be longer slip roads but these improvements were not imposed.
- The weighbridge restriction is meant to prevent platooning onto the A11. However, HGV's have been observed parking on the exit side of the weighbridge and leaving in convoys, hence leading to platooning.
- Villages to the south (West Wratting, Weston Colville and Balsham) are used as a rat run by Camgrain's HGV's. Six Mile Bottom is also used to access the A14. The removal of restrictions would increase traffic movements through these villages.
- Restrictions are in place for Fulbourn and Great Wilbraham but no such restrictions exist for the above villages to the south. The extent of prohibited roads should therefore be increased to protect the parishes adjacent to the site, particularly those to the south (Weston Colville, West Wratting and Balsham).
- HGV's travelling through surrounding villages are resulting in damage to property and verges, causing a safety risk to other road users and pedestrians and cyclists, and disrupting the quality of life of residents in surrounding villages as a result of noise and vibration. The proposal would exacerbate these problems, particularly during harvest time.
- Noise and vibration caused by HGV's are resulting in damage to listed buildings, and causing potholes etc in local roads. If this application is approved, it is likely nearby villages will seek weight restrictions on traffic travelling through the villages.
- Environmental and sustainability impact studies should be undertaken, and the impact of the current level of traffic reviewed, before any increase is allowed. Such a review would identify any amelioration required to address any damage that would be caused by increased HGV volumes.
- Camgrain should have to continue to report the volume of vehicle movements to SCDC. This provides the only tool for SCDC to protect road users and residents if problems arise. There is no justification to relax this restriction.
- In response to the proposed amendment to the routing agreement, it is stressed the village of Six Mile Bottom suffers greatly from HGV traffic routing through it and must be included in the proposed extension to the routing agreement.

## Planning Comments

### Site and Proposal

14. Camgrain occupies a site extending to approximately 11.3 hectares on the south-east side of the A11 trunk road. Along the northern boundary is a public byway beyond which lies a landfill site. To the east and south is higher land upon which a wind farm has been erected. Approximately 400m to the west is a residential property, West Wrattling Valley Farm. Around 3km to the north, beyond the A11, is the village of Great Wilbraham, whilst the villages of Balsham and West Wrattling lie to the south-east.
15. The site comprises an approved 90,000 tonne grain storage facility, for which planning permission was granted in 2006 under planning reference S/2494/04/F. In 2011, planning permission was granted for a 210,000 tonne extension to the original facility (S/0506/09/F). This extension has not been constructed to date.
16. The original application for the 90,000 tonne facility was subject to a planning obligation restricting HGV movements to 150 two-way movements per day and that put in place a routing agreement to ensure lorries delivering grain do not use roads through nearby villages.
17. The later application to extend the facility to a total of 300,000 tonnes was subject to a deed of variation to the original legal agreement to restrict development generated traffic to 500 two-way movements each day.
18. The current application seeks to modify the legal agreement and deed of variation in order to remove the restriction on the number of daily HGV movements and to remove the associated obligation to supply an annual monitoring report to the County Council.
19. The accompanying Planning Statement explains that Camgrain is a major grain storage facility playing a vital role in the UK food supply chain. Food security issues are a key element of the business. The British weather affects supply and demand, and food security is increasingly difficult to manage during harvest. Climate change means crops need to be harvested from the field with increasing urgency. Crops are harvested in often narrow timeframes, and grain movement needs to be equally adaptive. Camgrain has to adapt to changeable weather conditions especially during the busiest months of harvest time and also guarantee the highest levels of food security to its customers.
20. The supporting information explains that the imposition on the number of permissible HGV movements affects the Company's ability to be adaptive and responsive to demand whilst dealing with the uncertainty of the British weather. The site has to be capable of meeting demands by having the ability to accept grain as it comes off the fields. The constraint is having a significant impact on the potential of the facility to fulfil its function.
21. The statement also explains that, if the restriction on the number of HGV movements is lifted, this raises a question regarding the relevance of any requirement for an Annual Monitoring Report, which have recorded the number of HGV movements across the year.
22. The application has been amended, in response to concerns raised, to extend the routing agreement. This proposes to introduce new prohibited routes through West

Wratting and Balsham, and to ensure that the Camgrain HGV vehicles travelling through these villages are those that are collecting grain from the local area. The 'local area' is proposed to cover the parishes of Carlton, Weston Colville, West Wratting, Balsham and West Wratting, as well as the stretch of the B1052 between Linton and Balsham.

### **Comments**

23. Under planning application reference S/2494/04/F, permission was granted for the erection of a 90,000 tonne grain storage facility. The consent was conditional upon improvements being carried out to the slip lanes on and off the A11 trunk road and to traffic lights being installed on the bridge over the A11. In addition, a planning obligation restricted HGV movements to 150 two-way movements per day, and also put in place a routing agreement to ensure lorries delivering grain do not use roads through the villages of Fulbourn and Great Wilbraham.
24. The Highways Agency raised no objections to this application subject to the amount of grain being restricted to 90,000 tonnes and to the aforementioned restriction on the number of HGV movements. The application was deferred by Members at Committee so that independent highways advice could be obtained. The appointed consultants concluded that a different layout/slip road length would be preferable, but could not substantiate an objection to the proposal given the highways improvements proposed in the application. In the absence of a demonstrable highway safety issue, the original scheme was approved.
25. Under application reference S/0506/09/F, a 210,000 tonne capacity extension to the original premises was proposed. This proposal incorporated a number of highways improvements including the widening of Mill Road between the A11 junction and site access. The application also sought to increase the number of permitted two-way movements to 250 per day (500 in total). The Highways Agency raised concerns regarding this application on the basis that the potential platooning of heavy vehicles leaving the site could lead to short but significant interruptions in flow on the A11. To address this, it required any consent to be subject to a condition requiring all haulage vehicles to exit the site through a single weighbridge. This permission was also subject to a deed of variation to the Section 106 Agreement to restrict the number of vehicle movements to those specified in the application.
26. The Highways Agency has commented in relation to the current proposal that, if the restriction on the number of HGVs is lifted, maintaining the 'metering' effect of the weighbridge would continue to mitigate the problems of vehicles queuing onto the A11.
27. The weighbridge effectively limits movements to 1 grain lorry per minute which provides a built-in controlling mechanism. It is the maximum rate at which HGV's join the A11 that is the relevant factor to the Highways Agency in terms of highway safety and capacity, in particular the effect of platooning vehicles joining the A11. The weighbridge constrains these movements and the restriction on the total number of movements is not therefore relevant.
28. It is notable that the restriction on the number of HGV movements was controlled within the previous application in order to tie the number of movements to those requested at the time by Camgrain, rather than because it was specifically requested by the Highways Agency.

29. The legal agreements currently include a requirement for the number of vehicle movements to be monitored. This is to ensure a mechanism is in place for measuring the number of movements and ensuring compliance with the restrictions in the agreement. If this restriction is removed, it automatically follows that there should be no continuing requirement for an Annual Monitoring Report. The Local Highways Authority has raised no objections to the consequent removal of this requirement.
30. West Wrating Parish Council has requested that an independent highways assessment be carried out prior to any decision being made. However, neither the Highways Agency nor the Local Highways Authority has objected to the application. As such, Officers consider there can be no justification for requiring independent highways advice. Whilst Members have previously requested an independent highways assessment on the site, this did not result in any changes to the original recommendation. Additionally, further road improvements have been carried out and the site is also now subject to an additional restriction relating to the weighbridge (as set out above), both of which represent material changes since the previous deferral for highways advice.
31. The previous applications were subject to a lorry routing agreement preventing HGV's associated with the development from travelling through the villages of Great and Little Wilbraham and Fulbourn (unless collecting grain within these villages). Much concern has been raised on the grounds that Camgrain's lorries are rat-running through nearby villages on the south side of the A11 (notably West Wrating and Balsham) and that the routing agreement should be extended to include these villages.
32. Camgrain has strongly refuted these allegations, stating that it cannot be held responsible for all HGV movements observed in the area. It is estimated that around just 5% of current arable crops grown in the local area are destined for a Camgrain store, and that less than 2.5% of bulk vehicle movements in these villages will be serving Camgrain. Additionally, it is stressed that lorry movements associated with Thurlow Estates are not related, in any way, to Camgrain. The two are entirely separate operations and it is stressed that Camgrain does not store grain at Thurlow as has been suggested by West Wrating Parish Council.
33. Camgrain has stressed that its lorries will have to use routes through these villages when accessing farms in the area given the need to take the most direct route. However, there is no need for its lorries to use roads through these villages unless specifically serving farms in the area. In response to the concerns raised, Camgrain has offered to amend the routing agreement in order to extend the prohibited routes to include the villages of West Wrating and Balsham in order to provide comfort that the only Camgrain HGV's travelling through these villages will be those serving the local area (as described in paragraph 22 above).
34. It has been suggested in third party responses received that the routing agreement should be extended to include the village of Six Mile Bottom. The road that runs through this village is an A road (the A1304) and the most direct route for all vehicles (not just those associated with Camgrain) travelling to and from the Newmarket area as well as for vehicles accessing the A14 westbound via the Wilbraham Road. Including this route would significantly impact on Camgrain's operation and is not considered to be justified by the proposal.
35. Concerns have been raised that any increase in lorries travelling through nearby villages would result in an associated increase in noise disturbance to local residents, as well as having a potentially adverse impact on historic/listed buildings within those

villages. The previous restrictions on vehicle numbers were imposed for highway safety reasons, rather than for reasons of minimising disturbance to residents or protecting heritage assets within villages through which vehicles may travel. Given that Camgrain's vehicles would represent a very small proportion of all vehicles travelling through these villages (particularly with the extended routing agreement in place), the proposal is not considered to give rise to significant adverse issues in respect of either of these matters.

### **Recommendation**

36. Approve the requested variations to the Section 106 Agreement and Deed of Variation

### **Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

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- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following list contains links to the documents on the Council's website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Core Strategy DPD 2007
- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Development Framework Supplementary Planning Documents
- Draft Local Plan 2013
- National Planning Policy Framework 2012
- Planning File Refs: S/2268/14/PO, S/0506/09/F, S/2494/04/F

**Report Author:** Lorraine Casey – Senior Planning Officer  
Telephone: (01954) 713251

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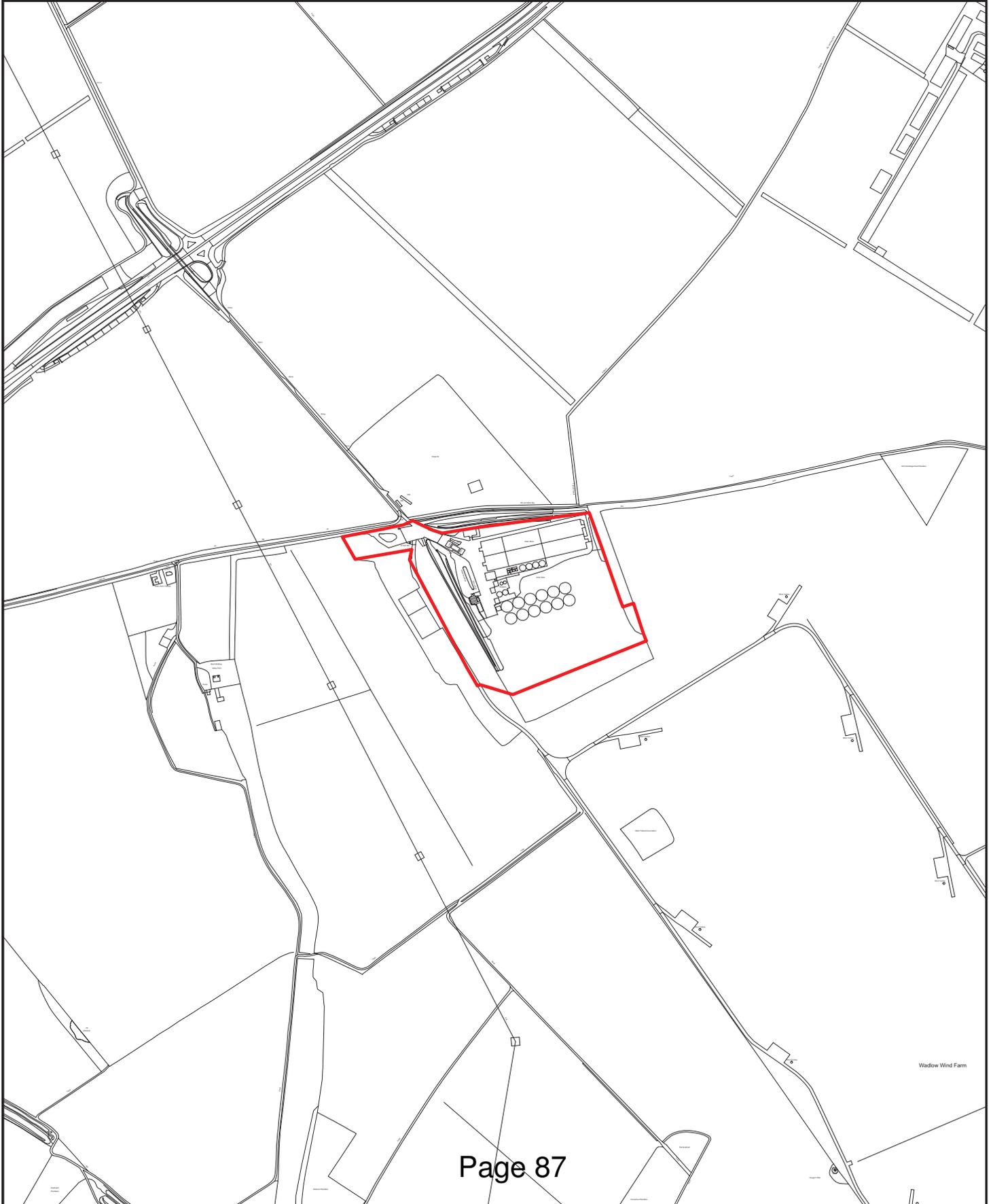
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District Council

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# Agenda Item 12



South  
Cambridgeshire  
District Council

**Report To:** Planning Committee  
**Lead Officer:** Jo Mills, Executive Director

4 March 2015

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## Changes to Planning Obligations for Smaller Residential Developments

### Purpose

1. To seek approval to changes in Council practice on planning obligations for smaller residential developments.
2. This is not a key decision because, although the effects of the changes on local communities could be significant, they are a consequence of Government policy and outside the discretion of the Council.

### Recommendations

3. It is recommended that:
  - (a) decisions on planning obligations and associated legal agreements, where there has been a resolution to grant planning permission by the Planning Committee on smaller residential development, be delegated to the Executive Director for Planning and New Communities, in accordance with government policy and
  - (b) a planning condition be used requiring submission and approval of an Affordable Housing Scheme for developments of 3 or more new dwellings, or 4 or more dwellings where an existing dwelling is to be demolished.

### Reasons for Recommendations

4. Following receipt of Counsel's advice, an urgent Executive Chief Officer decision was taken, as approved by the Planning Portfolio Holder and Leader on 20 February 2015. The Chairman of the Council and the Chairman of Scrutiny & Overview Committee agreed that the decision was reasonable and urgent, due to the many enquiries from planning applicants and agents regarding delays to date and to assist in the promotion of residential development in the district.

### Background

5. On 28 November 2014, the Minister announced changes in the development thresholds for planning obligations. The statement provided that 'Due to the disproportionate burden of developer contributions on small scale developers, for sites of 10 units or less, and which have a maximum combined gross floor space of 1000 square metres, affordable housing and tariff style contributions should not be sought.'
6. Early in the New Year, West Berkshire and Reading Councils sought a Judicial Review of the Government's actions, seeking to have the policy in the Ministerial statement quashed. The outcome of this challenge is unlikely to be known for some weeks, if not months, but the Council will continue to monitor progress and has offered a witness statement. In view of the challenge, the Council, similar to several

others, deferred completion of legal agreements on planning approvals, which along with previous delays created a backlog of 143 cases.

7. In the meantime, the Council sought Counsel's advice on legal options open to it and whether a conditional, or 'either/or', clause could be used in the period up to the decision upon the judicial challenge. Counsel's advice was that any such clauses would be ultra vires.
8. The Council has received many enquiries from planning applicants and agents regarding the delays to date. Many of them are anxious to conclude land sale agreements or complete funding to start on site. Delays are causing reputational and financial risks to the Council and it is considered there are now no alternative options, so the Planning Portfolio holder has approved an urgent decision to issue permissions without legal agreements, in accordance with the government changes in policy.

### **Considerations**

9. The wider context to these changes is that from 5<sup>th</sup> April this year all planning obligations of a general tariff nature will be subject to the "Rule of 5", and so may no longer be applicable. The Council is seeking Counsel's Advice as to possible steps for SCDC to introduce CIL ahead of the Local Plan being adopted, and which could potentially accelerate CIL receipts by a number of months. In the meantime, all cases will be individually assessed, with no tariff based rules applied. Larger residential developments and obligations that meet the tests of relevance and are needed to make a development acceptable, may still be required.

### **Options**

10. All options to mitigate the impacts of the changes in national planning policy have been explored, including not issuing permissions until the outcome of the JR is known. This approach, however, would not secure s106 payments for community infrastructure. The Council would be liable to appeals on the basis on non-determination and is likely to suffer reputational damage due to the impact on planning performance.
11. An alternative would have been to only issue permissions where a s106 agreement had been secured in line with the Council's adopted policies. However, it is estimated that only a very limited percentage (perhaps no more than 10%) of the outstanding 91 permissions for single dwellings would agree to enter into a section 106 Agreement on such a basis, It is thought that most applicants would not agree a section 106 requiring tariff style payments and would hold off drawing down their permission until after 5th April, when "subject to the rule of 5" most if not all such payments would no longer be applicable. This would have a clear negative impact upon housing delivery, and upon the relationship between the Council and its planning applicants. Considerable concern has already been expressed regarding delays in issuing planning consents.

### **Implications**

12. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, there are no significant implications, other than legal, which are implicit in the recommendations.

### **Consultations**

13. In view of the urgent and legal nature of this report, no consultations have been undertaken.

### **Effect on Strategic Aims**

14. The reduction for the period up to 5<sup>th</sup> April 2015 in development funding of infrastructure in villages from smaller residential developments will impact on the Council's engagement with local communities. This report sets out the steps taken to require some affordable housing provision for such schemes.

### **Background Papers**

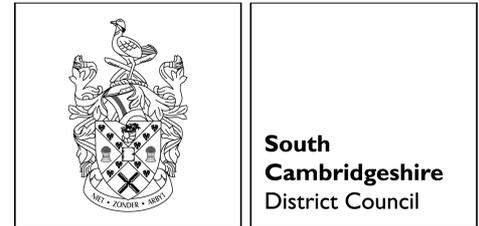
Affordable Housing SPD – Website

Planning Practice Guidance – Planning Portal website

**Report Author:** Tony Pierce – Interim Development Control Manager  
Telephone: (01954) 713165

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# Agenda Item 13



South  
Cambridgeshire  
District Council

**REPORT TO:** Planning Committee  
**LEAD OFFICER:** Planning and new Communities Director

4 March 2015

## Appeals against planning decisions and enforcement action

### Purpose

1. To inform Members about appeals against planning decisions and enforcement action, and proposed hearing and inquiry dates, as 23 February 2015. Summaries of recent decisions of importance are also reported, for information.

### Decisions Notified By The Secretary of State

2.	Ref.no	Details	Decision	Decision Date
	S/0571/14/FL	Ede and Ravenscroft South of Penbroke Avenue Denny End Waterbeach 139 Parking Spaces and associated works	Dismissed	04/02/15
	S/2158/13/FL	Mr J Amin 145 High Street Cottenham Shop Front	Dismissed	05/02/15
	S/2390/13/FL	Mr F Stother-Cooke Riverside Stables Bourne Bridge Road Little Abington Change of Use of lans & Mobile Caravan from Storage to Residential	Dismissed	17/02/15
	S/0558/14/OL	Downing Ventures Ltd Bannold Road Waterbeach. 57 Dwellings	Allowed	18/02/15

### Appeals received

3.	Ref. no.	Details	Decision	Received
	S/2770/13/FL	Mr & Mrs Spencer Lower camps hall Farm Bartlow Road Castle Camps Cambridge	Refused	26/01/15
	S/1415/14/FL	Ms P Buckley	Refused	10/02/15

	The Oaks Meadow Road, Willingham Upgrading the existing equestrian development		
S/1605/14/FL	Guster Group 31 Granta Terrace Great Shelford Erection of 4 dwellings and associated works following demolition of existing dwelling	Refused	10/02/15
S/2841/14/FL	Mr A Aslam 1 Icen Way Orchard Park Cambridge Retention of extension to garage and 2 rooflights in garage	Refused	12/02/15

Local Inquiry and Informal Hearing dates offered or confirmed in the next few months.

4.

Ref. no.	Name	Address	Hearing
S/0638/14/FL	Mr T Wall	1-5 Pine Lane Smithy Fen Cottenham	Hearing 18 February 2015 Confirmed
S/1451/14/FL	Mr T Buckley	The Oaks Meadow Road Willingham	Hearing No Date Arranged

5. **Summaries of recent decisions**

**Downing Ventures Ltd – up to 57 dwellings, including affordable housing, public open space, new roads and associated infrastructure including a sustainable drainage system at Bannold Road and Bannold Drive, Waterbeach – Appeal Allowed**

1. The Planning Committee refused this application in September 2014. The application was for outline planning permission with all matters except access reserved. The appeal was determined by way of written representations.
2. The two main issues in the appeal were the effect of the proposal on the character and appearance of the area and whether or not the proposed density of development would make efficient use of the land. The site lies outside the defined village framework and the parties had agreed that the Council cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework states that relevant policies for the supply of housing should not be considered up-to-date in these circumstances. Paragraph 14 of the Framework states that where relevant

policies are out-of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

3. The inspector found the proposal would be beneficial in terms of helping to address the identified housing supply shortage and the provision of affordable housing of the required tenure mix. It would also provide employment during construction. The housing would be in a sustainable location with good access on foot to local services and facilities and good access to public transport. He also concluded that the proposal would not adversely affect the character and appearance of the area and that the proposed density of development would make efficient use of the land having regard to the character of the area, especially given the location of the site on the edge of the village.
4. Thus the proposal would not be harmful when considered against the policies in the Framework when considered as a whole. The benefits of the development were not therefore outweighed by significant and demonstrable harm. The appeal was allowed subject to the completion of a section 106 agreement and a raft of various conditions as proposed by the Council.

**Back ground Papers: the following background papers were used in the preparation of this report:** None

**Contact Officer:** Tony Pierce – Development Control Manager

**Report Author:** Sara James- Appeals Admin  
Telephone: (01954) 713201

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# Agenda Item 14



**REPORT TO:** Planning Committee  
**LEAD OFFICER:** Planning and New Communities Director

4 March 2015

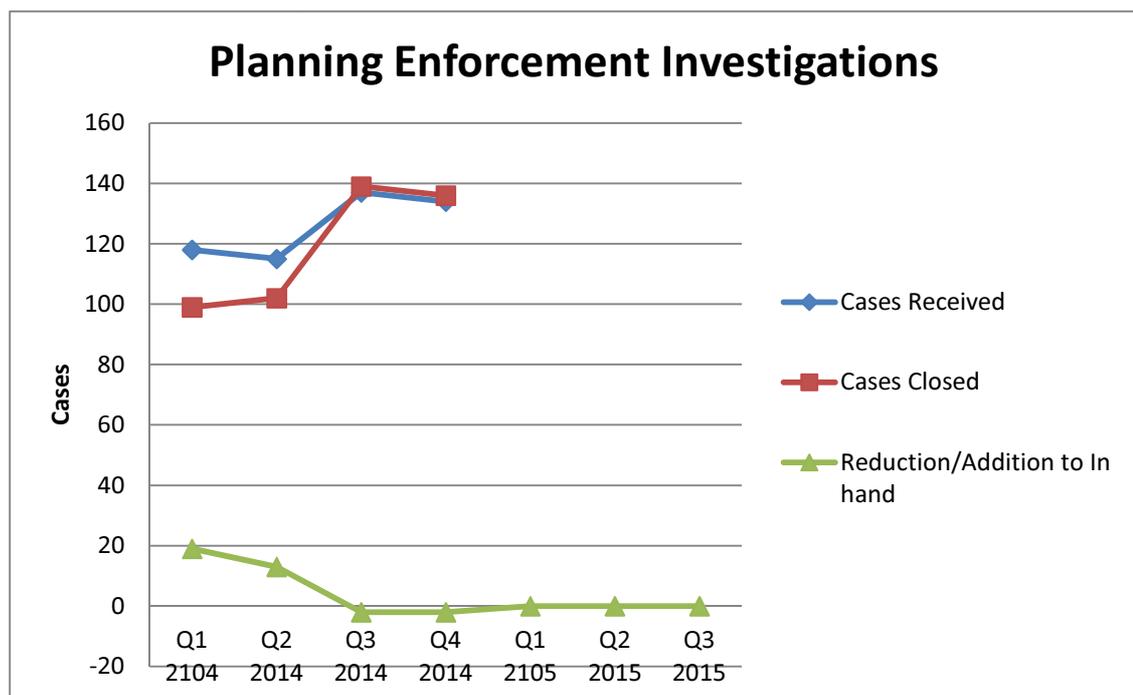
## Enforcement Report

### Purpose

- To inform Members about planning enforcement cases, as at 23<sup>rd</sup> February 2015. Summaries of recent enforcement notices are also reported, for information.

### Enforcement Cases Received and Closed

Period	Cases Received	Cases Closed
January 2015	37	35
<b>2015 YTD</b>	<b>37</b>	<b>35</b>
<b>2014</b>	<b>504</b>	<b>476</b>



**Enforcement Cases on hand:**

3. Target 150
4. Actual 87

**Notices Served**

5. Type of Notice	Period	Year to date
	January 2015	2015
Enforcement	1	1
Stop Notice	0	0
Temporary Stop Notice	0	0
Breach of Condition	0	0
S215 – Amenity Notice	0	0
Planning Contravention Notice	0	0
Injunctions	0	0
High Hedge Remedial Notice	0	0

**Notices issued since the last Committee Report (None)**

6. Ref. no.	Village	Address	Notice issued
PLAENF.1472	Swavesey	Land north of Anderson Road	Planning Enforcement

7. Details of all enforcement investigations are sent electronically to members on a weekly basis identifying opened and closed cases in their respective areas along with case reference numbers, location, case officer and nature of problem reported.
8. Full details of enforcement cases can be found on the Councils Web-site

**Updates on items that are of particular note**

9. Updates are as follows:

**a. Stapleford: Breach of Enforcement Notice on land adjacent to Hill Trees, Babraham Road.**

Work still in progress regarding legal action relating to the current breach of enforcement. Additional concern noted since the March report regarding the stationing of a mobile home on the nursery land section and the importation of brick rubble to form a track to link the upper field to the main residence. Assessment to the Planning Contravention response and the site inspection 10<sup>th</sup> May 2013 has confirmed the breach of planning control relating to the engineering operation to the new track, and breaches relating to the planning enforcement notices. A report to the planning committee was prepared and submitted. The Committee authorised officers to apply to the Court for an Injunction under Section 187B of the Town and Country Planning Act 1990. Members agreed the reasons for the application as being the desire to protect

and enhance the character and amenity of the immediate countryside and the setting of Cambridge, Stapleford and Great Shelford in view of the site's prominent location, and the need to address highway safety issues arising from access to the site directly from the A1307

The Injunction statement has now been considered by Counsel with further information being requested in order that the Injunction application can be submitted. Information is currently being collated in order to prepare a further report to submit to the Planning Committee.

Report prepared and formed part of the May Planning Committee Agenda. The Committee resolved to give officers the authority sought in paragraph 8 of the report from the Planning and New Communities Director for the reasons set out in paragraphs 9, 10 and 11. Further inspection of the land carried out, Statements under Legal consideration

**b. 1-6 Pine Lane – Smithy Fen**

Previously the subject of a planning consent resulting from an appeal decision 14<sup>th</sup> October 2003 under reference APP/W0530/C/03/1113679 The planning permission is no longer valid as the owners have failed to comply with their planning permission relating to conditions. Additionally a further permission granted at appeal for plots 4 & 5 Pine Lane 30<sup>th</sup> August 2012 under reference APP/W0530/A/12/2170121 has also lapsed due to planning conditions contained in the appeal decision not being complied with/met. A planning application for plots 4/5 has been submitted but not validated. An application for the remaining plots in Pine Lane, 1, 2, 3 & 6 is in the process of being submitted.

Valid planning applications relating to plots 1-6 inclusive have not been received as requested therefore a file has been submitted to legal requesting the issue of a planning enforcement notice. Notices have now been issued and are effective from 21<sup>st</sup> March 2014

Planning enforcement notice issued relating to plots 1 to 5 inclusive. Plot no 6 is currently empty and not in breach of planning control. Planning application covering plots 1 to 5 inclusive subsequently submitted and validated. Planning Reference no S/0638/14 refers. Application referred to Planning Committee – Application considered by the Committee and refused contrary to officer recommendation within the report. A letter issued to owner/occupiers including a copy of the Planning decision notice and enforcement notice issued to Plots 1 to 5 Pine Lane instructing them to vacate the land as set out in the enforcement notice - Informed by the Planning Inspectorate (PINS) that an appeal has been submitted and validated. Appeal hearing 18th February 2015 – Waiting decision

**c. Buckingham Business Park, Swavesey**

Complaint received regarding the stationing of buses belonging to Sun Fun Travel on land adjacent to the business park without the benefit of planning.

Retrospective planning application submitted under reference no S/0065/14/FL– Outstanding items submitted, application now validated – Planning application with external planning consultants – Planning application considered, The Council refused permission for use of land for parking of double decker buses / coaches and the laying of surfacing, erection of metal fencing and a gate (Part Retention) 17<sup>th</sup> September 2014. Sun Fun Travel instructed to vacate the land as soon as possible but no longer than 30 days. Sun Fun Travel failed to comply which has resulted in a file being submitted to legal for the issue of an enforcement notice.

Enforcement Notice Issued - Compliance period 1 Month – 10th March 2015

**d. Land North West of Cambridge Road, Wimpole**

Without planning permission, the change of use of the affected land for the stationing and residential occupation of a mobile home Planning application submitted and validated. Planning enforcement notice issued, effective 30<sup>th</sup> April 2014 unless an appeal is made against it beforehand. Appeal against the enforcement notice submitted Waiting for start date. Planning application S/0583/14 delegated refusal. Planning appeal hearing held – Site visit carried out 17<sup>th</sup> December 2014. Appeal allowed and temporary planning permission granted subject to conditions, as set out in the formal decision.

**e. Pear Tree Public House, High Street Hildersham**

Complaint received regarding the reported change of use of the premises to residential without the benefit of planning. Investigation carried out; however the results did not reveal any breaches of planning control at this time. Further report received from parish council, content of which investigated resulting in an out of hour's inspection. Planning breach identified as ground floor being used for residential purposes. Breach resolved, situation being monitored.

**Summary**

10. As previously reported Year to date 2014 revealed that the overall number of cases investigated by the team totalled 504 cases which was a 1.37% decrease when compared to the same period in 2013. The total number of cases YTD 2015 totals 37 cases investigated which when compared to the same period in 2014 is a 11.9% reduction in cases
11. In addition to the above work officers are also involved in the Tasking and Coordination group which deals with cases that affect more than one department within the organisation, including Environment Health, Planning, Housing, Anti-Social behaviour Officers, Vulnerable Adults and Safeguarding Children Teams. Strategic Officer Group, dealing with traveller related matters
12. Enforcement contact details are as follows:  
  
Charlie Swain – Tel: 01954713206 e-mail [charles.swain@scambs.gov.uk](mailto:charles.swain@scambs.gov.uk)  
Alistair Funge- Tel: 01954713092 e-mail [alistair.funge@scambs.gov.uk](mailto:alistair.funge@scambs.gov.uk)  
Gordon Mills – Tel: 01954713265 e-mail [gordon.mills@scambs.gov.uk](mailto:gordon.mills@scambs.gov.uk)

**Effect on Strategic Aims**

13. This report is helping the Council to deliver an effective enforcement service by

**Engaging with residents, parishes and businesses to ensure it delivers first class services and value for money**

**Ensuring that it continues to offer an outstanding quality of life for its residents**

**Background Papers:**

The following background papers were used in the preparation of this report: None

**Report Author:** Charles Swain – Principal Planning Enforcement Officer  
Telephone: (01954) 713206

# Agenda Item 15



South  
Cambridgeshire  
District Council

**Report To:** Planning Committee  
**Lead Officer:** Planning and New Communities Director

4 March 2015

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## Smithy Fen Cottenham (5 to 11 Orchard Drive and 14 to 18 Water Lane) - Proposed Variation of 2006 Injunction in Light of May 2014 Appeal Outcome (App/W0530/A/12/2181439 arising from Refusal S/0041/12/Ful)

### Purpose

1. To inform committee of any significant residual breaches of development control now affecting the various pitches contemplated by the above planning appeal decision.
2. To seek authority for an application to the High Court to vary the Injunction granted by Mr Justice Mitting on 6 April 2006 (sealed by the Court on 7 April 2006 under claim reference HQ05X02057), to ensure the tolerations and prohibitions contained in that order ("the 2006 order") properly reflect the planning authorisations and refusals resulting from the May 2014 appeal decision.
3. To note the granting of an Injunction order, made by Mr Justice King on a without notice basis on 16 January 2015, that had the effect of removing the 2006 tolerations in respect of the following three named Defendants as relate to three particular pitches detailed in the proviso to paragraph 4a of the 2006 order:-
  - Michael O'Brien – 5 Orchard Drive
  - Margaret O'Brien – 5a Orchard Drive
  - Nora O'Brien – 6 Orchard Drive
4. This is a key decision because:
  - (a) it results in the authority incurring expenditure that is, or the making of savings that are, significant having regard to this Council's budget for the service or function to which the decision relates; and
  - (b) it is of such significance to the locality, the Council or the services it provides that the decision-maker is of the opinion it should be treated as if a key decision.

### Recommendations

5. The Director (Planning and New Communities) recommends that application be made to the High Court under section 187B of the Town and Country Planning Act 1990, seeking variation of the April 2006 order such that:
  - (a) the **toleration** in respect of the following named Defendant as relates to that particular pitch detailed in the proviso to paragraph 4a of the 2006 order be **removed** entirely:-
    - Michael Hegarty – 11 Orchard Drive (also spelled 'Heggarty')
  - (b) The **toleration** in respect of the following named Defendant as relates to that one particular pitch detailed in the proviso to paragraph 4a of the 2006 order be **extended to also personally benefit** Jimmy O'Brien in similar terms:-

- Kathleen O'Brien – 15 Water Lane (n.b. this individual is a different person to that contemplated by recommendation (d) below).
- (c) The **toleration** in respect of the following named Defendant as relates to that one particular pitch detailed in the proviso to paragraph 4a of the 2006 order be **extended to also personally benefit** Kathleen Slattery and David Gammell in similar terms:-
- Nora Slattery – 10 Orchard Drive
- (d) The **prohibitions set out at paragraph 4 of the 2006 order be expressly and specifically extended** to contemplate and bind the following person as if a named Defendant without any toleration as relates to the one particular pitch detailed, or otherwise in respect of the Northern Area or the Southern Area as defined at paragraph 2 of the 2006 order and, further, **that the current and continuing breach of development control affecting that pitch as represented by its unauthorised use for the stationing and residential occupation of caravans and/or mobile homes be ordered to cease and the pitch be cleared of chattels associated with such unauthorised development:-**
- Kathleen O'Brien – 11 Orchard Drive (n.b. this individual is a different person to that contemplated by recommendation (b) above).

#### **Reasons for Recommendations**

6. Approval of the recommendations described above and securing the resulting further variations to the April 2006 Injunction will, should the Court be minded to exercise its discretions in the manner suggested, harmonise the current and now fully established planning authorisations for the affected pitches with the controls asserted by the Injunction. This harmonisation will increase certainty for all stakeholders as to the extent and nature of residential occupations that are now permitted, and as to the sanctions that might apply (i.e. committal to prison for contempt) if occupations occur or continue that are not permitted. The varied Injunction will complete a suite (in conjunction with a series of others relating to land at Victoria View and land at Pine View) that effectively reinforce the Council's ability to assert planning control at Smithy Fen in the face of a serious and extensive history of non-compliance there.

#### **Background – May 2014 Appeal**

7. Planning appeal APP/W0530/A/12/2181439, decided on 2 May 2014 after a local public inquiry held in March 2014, was made by Kathleen O'Brien of 15 Water Lane, following a refusal by the Council on 17 July 2012 of planning application S/0041/12/FUL, as submitted on 9 January 2012. The development proposed by this application and refused consent by the Council was a change of use of 5, 5a, 6, 10 and 11 Orchard Drive, and 15 Water Lane to six gypsy/traveller pitches; and the change of use of 7, 8, and 9 Orchard Drive, and 14, 16, 17 and 18 Water Lane to a community garden.
8. Prior to the holding of the inquiry, the appellant amended the appeal proposal to a smaller site extent that excluded pitches 5, 5a, and 6 Orchard Drive due in part to those pitches having then been vacated and the absent occupiers/proprietors not wishing to pursue the appeal in respect of their holdings. The appeal was accordingly decided on the basis of a revised development description reflecting this reduced scope; these three pitches not being considered and the Council's refusal of consent for their development not being challenged.

9. The appeal decision in respect of the revised scheme issued on a split basis, with some elements of the reduced appeal succeeding and others failing.
10. The appeal was allowed insofar as it related to the change of use of 10 Orchard Drive and 15 Water Lane to gypsy/traveller pitches. Planning permission was duly granted for such use of each pitch for a temporary period of up to four years from 2 May 2014 for the personal benefit only of Nora Slattery, Kathleen Slattery, and David Gammell (10 Orchard Drive); and Kathleen O'Brien and Jimmy O'Brien (15 Water Lane), and their respective resident dependents.
11. The appeal was dismissed insofar as it related to the change of use of 11 Orchard Drive to a gypsy/traveller pitch; and for the change of use of 7, 8, and 9 Orchard Drive, and 14, 16, 17 and 18 Water Lane to a community garden.
12. A copy of the 2 May 2014 appeal decision is appended to this report as Appendix 1 and members are requested to especially note the detailed balancing exercise undertaken by the Inspector in weighing personal circumstances of occupiers against planning harm in arriving at the split outcomes arrived at (from paragraph 54), together with his description of the factual context for the appeal (from paragraph 9).

**Background – June 2008 Appeal**

13. A previous planning appeal APP/W0530/A/07/2049741, decided on 2 June 2008 on the basis of written submissions after a local public inquiry was opened in March 2008 but not conducted to conclusion due to withdrawal of the appellants' agent, was made by Michael O'Brien, Nora O'Brien, Margaret O'Brien, Nora Slattery, and Michael Hegarty, following a refusal by the Council on 19 April 2007 of planning application S/1631/06/F, submitted on 4 August 2006. The development proposed by this application and refused consent by the Council was the retention of a residential gypsy caravan site for a temporary period of four years at 5, 5a, 6, 10 and 11 Orchard Drive.
14. It is apparent from the retrospective nature of the development description at issue then that all of the pitches were in occupation at the time the appealed planning application was made. This is confirmed at paragraph 2 of the appeal decision, which is appended to this report as Appendix 2.
15. Once again, a reading of the Inspector's reasoning reveals that the personal circumstances and accommodation needs of the various occupiers were considered in detail and weighed against the planning harm resulting from the development that could then be seen; the balance of that exercise indicating that the appeal should be dismissed and permission for the development refused.

**Background – Enforcement Notices and Enforcement Appeals**

16. The south-eastern extent (broadly half) of each of the three pitches comprising 5, 5a, and 6 Orchard Drive, together with the entirety of the two pitches comprising 10 and 11 Orchard Drive, were all made the subject of individual enforcement notices issued by the Council on 22 June 2005. These notices addressed the unauthorised change of use of the affected land for the stationing of residential caravans and the ancillary laying of hard surfaces, erection of sheds and other ancillary structures.
17. The north-western extent (again, broadly half) of each of the three pitches comprising 5, 5a, and 6 Orchard Drive were collectively included (together with other land previously forming an orchard belonging to a third party) in a single enforcement notice issued by the Council on 22 December 2004. This notice addressed the

unauthorised use of the land for siting residential caravans with associated vehicles, sheds, steel containers, ancillary drainage, electricity and water supplies, and construction of accesses and hard-standings.

18. A further enforcement notice in similar terms was issued in respect of 15 Water Lane on 11 April 2006.
19. All of these enforcement notices were the subject of enforcement notice appeals that were duly dismissed with the result that, where not superseded by subsequent grants of planning permission as described previously in this report, their requirements to remedy the breaches of planning control variously addressed remain extant and continue to give rise to criminal offences where not complied with.

#### **Background – April 2006 Injunction**

20. The order made by Mr Justice Mitting on 6 April 2006 colloquially refers to two discrete tracts of the wider Smithy Fen area as the '*Northern Area*', and the '*Southern Area*' respectively; all the pitches subject to this report lie within the latter area, accessed from Orchard Drive and Water Lane.
21. At the time of its making, and in the light of the then rapidly evolving and increasingly complex planning, enforcement, and related litigation history affecting Smithy Fen generally as a result of a large number of unauthorised developments then occurring (and anticipated), the Council adopted through necessity a policy of underpinning regular planning controls with the mechanism of the planning injunction, sometimes on a pre-emptory basis so as to robustly deter breaches that might be in contemplation.
22. In respect of the pitches discussed in this report, and the interested individuals then named as Defendants to the proceedings resulting in the 2006 Injunction, it is clear from the witness statement of the then Deputy Planning Director of the Council, as filed in support, that although there were current and continuing breaches of development control represented by unauthorised residential occupations (as described at paragraphs 15 to 18 above), the relief being sought was not then focused upon evicting occupants without planning permission. Rather, the purpose of the proceedings was to prevent further unauthorised encroachments occurring whilst existing avenues of application, appeal and statutory challenge as then in train, or about to be, were seen through to conclusion.
23. A copy of the order of 6 April 2006 is appended to this report as Appendix 3. Members will see the proviso to the Injunction set out at paragraph 4a that tolerates certain development on certain pitches for the benefit of specific named Defendants, included for the reasons described at paragraph 22 above.

#### **Background – January 2015 Injunction**

24. Where the pitches at 5, 5a, and 6 Orchard Drive had been vacated as described at paragraph 8 above, and where their removal from the scope of the May 2014 appeal effectively rendered their planning status final in having no lawful basis for any resumed residential occupation, officers considered there was a necessity to separately address the residual tolerations of the 2006 order so far as they related to these three vacant pitches. Not least in informing this perceived necessity, was an identified risk of these pitches being brought back into unauthorised occupation without warning whilst enquiries were properly made into the personal circumstances of those who unlawfully remained in occupation elsewhere within the protected areas.

25. Accordingly, and after consultation with lead members, application was duly made to the Court in the New Year seeking to vary the 2006 order so as to remove the continuing tolerations in that order that related to these pitches only. The simple aim of this application was to complete the legal protection against these most vulnerable pitches being unlawfully redeveloped. As the whereabouts of the last occupiers was not known, and as no prejudice arose due to their not having been in active occupation since before the May 2014 appeal, this application was made without notice.
26. On 16 January 2015, Mr Justice King granted an Injunction order amending the 2006 order so as to remove the tolerations benefiting Michael O'Brien, Margaret O'Brien, and Nora O'Brien in respect of the pitches at 5, 5a and 6 Orchard Drive respectively. Those pitches may not now be brought back into unauthorised residential occupation without a contempt of court arising. A copy of the January 2015 Injunction is appended to this report as Appendix 4.

### **Regularisation with planning permissions - next steps**

27. Given that the various avenues of planning application, appeal and statutory challenge then contemplated have now been exhausted or legally expired, and have crystallised in the outcomes described at paragraphs 7 to 26 above, it is considered appropriate that the terms and tolerations of the 2006 Injunction are revisited as described in this report. This is to ensure the continuing protections the Injunction affords in the public interest properly reflect the current planning permissions and extant enforcement notices attaching to the pitches under consideration, decided after detailed and transparent testing of relevant material considerations since the order was granted.
28. The variation application now recommended to committee will also enable the 2006 order to be refreshed to reflect, require, and secure with certainty the regularisation necessary at 11 Orchard Drive, where unauthorised development represented by the continued siting and residential occupation of caravans continues despite planning avenues to permit such use having been exhausted.
- ### **11 Orchard Drive – consideration of personal circumstances**
29. Of the pitches potentially affected by the recommendations to this report, 11 Orchard Drive requires especial consideration as it is subject to continuing residential occupation that approval of the recommendations at paragraph 5(a) and 5(d) will result in being brought to an end, if the proceedings suggested by it succeed.
30. 11 Orchard Drive presently sites one mobile home, a touring caravan, and a portable utility cabin. These together afford residential accommodation for Kathleen O'Brien and three dependent children. Michael Hegarty, a former resident partner of Ms O'Brien and the only person expressly tolerated to be in occupation of this pitch under the 2006 order (with one touring caravan and one day room only), no longer lives at the pitch – see the May 2014 appeal decision at Appendix 1 (paragraph 48). It has previously been suggested that Ms O'Brien and her children should benefit from the toleration currently enjoyed by Mr Hegarty in view of her past association with him.
31. Notwithstanding that the personal circumstances of the occupiers of 11 Orchard Drive were considered during the hearing of the May 2014 appeal, during the hearing of the June 2008 appeal, and also during the appeal against the 2005 enforcement notice, which were all dismissed, it is necessary for committee to now consider occupants' personal circumstances afresh in deciding whether anything in those circumstances today outweighs the public interest in exerting due planning control by the means that are now recommended.

32. Where Ms O'Brien has the benefit of legal representation in connection with this matter, her advisors have compiled information that updates the personal circumstances that were before the Inspector at the May 2014 appeal. Given this contains material concerning health and schooling matters, this information is appended for committee members (but not for wider publication) in exempt Appendix 5 to this report.
33. Committee will note that, relying on the authority of Supreme Court case *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, Ms O'Brien's advisors assert that the best interests of the children potentially affected by the decisions being sought be this report must be a primary consideration. As it may assist members in their deliberations, a full transcript of this judgment is appended to this report as Appendix 6.
34. The remedy of injunctive relief pursuant to Section 187B of the Town and Country Planning Act 1990 is a discretionary one. This means the Court will have to be satisfied that the Council as claimant should be granted the remedy on the facts as apply, balancing the interests of the Local Planning Authority (and the public interest by extension) against the personal circumstances of, and any other material considerations advanced by, the plot owners and/or occupiers as defendants. The remedy of an injunction will not lightly be granted where breach of any that is ordered will represent a contempt of court for which committal to prison is a possible sanction and where compliance will displace individuals from homes that have now been occupied for several years.
35. In seeking an injunction to bear against the occupied pitch especially, the Council will need to demonstrate that a breach of development control endures and that the public interest in remedying this outweighs considerations analysed under the following themes, considered in turn below, some of which are particularly engaged due to the potential defendants being Gypsies or Travellers:
- Health (including any disability impact)
  - Educational needs of children
  - Race impact
  - Availability of alternative sites
  - Homelessness (including aversion to bricks and mortar, and potential exceptional storage need for chattels)
36. Members will see and need to consider that certain occupants do present a variety of personal health needs, all stated as requiring treatment or other support that is presently provided locally.
37. The committee has been provided with education information that describes the position in respect of the three children as reside at 11 Orchard Drive. An update has also been requested from the Education Authority that will be reported verbally at the meeting if any material changes or additional facts are disclosed.
38. Councillors will note and need to consider the extent to which educational arrangements may be disturbed or disrupted at least to some extent by a successful injunction application if children are enrolled with and noted as satisfactorily attending local educational establishments.
39. Although the Court of Appeal and other authorities have held that a separate race impact assessment is not necessary to be undertaken by the Council in order to

discharge its duties under equalities legislation as long as such matters as would inform such assessment are addressed in substance, it is nonetheless prudent to remind members that in discharging its remit as Local Planning Authority (i.e. where contemplating enforcement proceedings), the Council does need to have due regard to the need to eliminate unlawful racial discrimination and/or to promote equality of opportunity and good relations between persons of different racial groups when making decisions.

40. In the circumstances here, it may be suggested that the Gypsy/Traveller status of the prospective defendants is likely to result in an inequality of opportunity to access authorised sites for their housing needs when compared with the wider community generally, as has been recognised by the historic acceptance by the Council that additional Gypsy and Traveller site provision is necessary locally and regionally.
41. The Council recognises that Gypsies and Travellers suffer amongst the worst health and education status of any disadvantaged group in England and there is, accordingly, a pressing need to promote equality of opportunity in these areas between Gypsies/Travellers and the general settled community to address this inequality. The Council also recognises, however, that this aim is supported by reducing the number of unauthorised developments, balanced by approvals being granted for sites in appropriate locations. The Council does have a track record of granting permanent and temporary consents when suitable sites are promoted, and consents have been won at appeal albeit, recently, in the acknowledged context of weaknesses identified by Inspectors as affecting the currently applicable Gypsy and Traveller Needs Assessment available to the authority.
42. Countervailing factors are the need to protect the countryside from development that impacts adversely on the area and cannot be assimilated into its surroundings, and also the imperative of upholding planning control in the wider public interest. This latter consideration may also be thought relevant from an equalities perspective in circumstances where the settled community can and sometimes do perceive unequal treatment if planning controls are selectively (dis)applied; whereas, conversely, their strict application could result in an otherwise locally established family being forced back onto the roadside.
43. Ultimately, the balance to be struck between and the weight to be afforded these competing considerations (and any others identified by members) is a matter for the committee, provided the duty described at paragraph 39 is discharged.
44. In respect of alternative sites that might be accessed by those at risk of being displaced if the recommendations now made are approved, the background papers cited as informing this report clearly demonstrate the lengths the Council has gone to over recent years to identify and promote alternatives to the continued occupation of unauthorised pitches within the areas protected by the 2006 order. At the date of publishing this report, 11 Orchard Drive remains the site of the only significant subsisting breach of development control within these areas, and one in respect of which it must now be regrettably concluded there is no realistic prospect either of regularisation occurring by future planning approval being secured or by voluntary compliance with the extant enforcement notice.
45. In discussions prior to the preparation of this report, those advising Ms O'Brien were specifically canvassed as to whether allowing further time for compliance would be of assistance and, if so, how long might be needed to avoid the requirement for contested proceedings being brought. In the event, and save for the information provided in Appendix 5, no engagement on this point has occurred and the Council

accordingly seems to be faced with having now to decide whether to finally enforce due planning control or look away whilst planning law is disregarded.

46. Although the proceedings contemplated by this report would be conducted by the Council in its statutory capacity as Local Planning Authority, members should be aware that the Council might need to react in another statutory capacity, as Housing Authority in the event individuals are displaced and present as being homeless as a consequence.
47. If such approaches are made, and assistance in meeting housing needs are sought, there may be challenges to address arising from the Gypsy or Traveller status of those likely to be seeking that assistance.
48. Whilst housing eligibility and needs fall to be assessed in the same manner as for any applicant, it may be necessary for any interim accommodation offered to be exceptionally accompanied by assistance in safely storing large chattels such as caravans or mobile homes. A duty to furnish such assistance, at least in the short term, may arise even if any interim accommodation offered is not accepted.
49. In addition to possessions of this nature, further specialist assistance may have to be offered for those applicants who present as own and wish to retain animals associated with their traditional lifestyle. Ponies are perhaps the most usual example of this but not necessarily exclusive to other animals that may well also be owned.
50. Experience of administering housing applications from displaced Gypsies or Travellers indicates that the storage of large chattels and/or the accommodation of animals can prove a limiting factor in respect of the suitability of any housing that may ultimately be offered in the event eligibility is established. If housing with sufficient space to store a mobile home or caravan, or appropriate for the keeping of animals is even identified as being available, it may well be the case that such is not located reasonably local to family, schools, or health infrastructure as has previously been relied upon.
51. Similarly, it is acknowledged that Gypsies and Travellers may well suffer a deep aversion to being accommodated in bricks and mortar housing. Although Housing Authorities are required to be mindful of this and the potential health consequences that might arise, it is settled that there is no duty to provide or facilitate caravan or mobile home based accommodation (whether from existing housing stock or by dedicated acquisition), provided regard is had to the likely availability of alternative accommodation in making any decision to enforce planning controls by requiring the cessation of residential occupation.
52. Whilst it is clear that the special circumstances of Gypsies and Travellers, as a minority with a traditional lifestyle different from the majority in society, mean that consideration must be given to those circumstances before making decisions that impact that way of life, there can be a legitimate, proportionate and balancing aim to uphold planning controls in the interests of society as a whole. This balance is considered to be reflected in the recommendations made by this report.

### **Options**

53. As an alternative to the course recommended, members could resolve not to seek any amendment of the 2006 order at all, or prefer only such amendment as does not potentially interfere with the current use and occupation of 11 Orchard Drive.

54. The former alternative does not commend itself where the Injunction contained in the 2006 order, as varied in January of this year, would otherwise be out of kilter with the planning permissions that have now been both granted and refused in respect of pitches lying in the Southern Area contemplated by it. This can only perpetuate uncertainty for all stakeholders, particularly including those who have now secured and rely on planning permissions to occupy pitches in a manner that gives rise to a technical contempt of court (i.e. where contrary to the express controls of the 2006 order), and those who might consequently choose to query the legitimacy of that occupation.
55. The latter alternative, regardless of any other variation sought, would effectively be tantamount to the Local Planning Authority condoning the continuing commission of a criminal offence (i.e. the ongoing breach of the 2005 enforcement notice) represented by unauthorised development maintained in the face of serial refusals of consent that have confirmed the existence of planning harm that outweighs personal need. Again, it is suggested this course has nothing to commend it and cannot be viewed as being in the public interest.

### **Implications**

56. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered:-

#### ***Financial***

57. The recommendations of this report, if approved, will result in legal costs being incurred that might, if proceedings are successfully defended, include those of defendants. It is considered the amounts at issue will be contained within existing budgetary provision however, regardless of outcome.

#### ***Legal***

58. The recommendations of this report, if approved, will result in the Council commencing and pursuing legal proceedings against third parties under statutory powers.

#### ***Equality and Diversity***

59. Equalities issues are engaged by this report and are as analysed in the main body.

#### **Consultation responses (including from the Youth Council)**

60. The report is informed by and appends information concerning the personal circumstances of the occupiers of 11 Orchard Drive, as provided by legal advisors for those affected.

#### **Effect on Strategic Aims**

61. The recommendations of this report are consistent with and support the statutory purposes of the Council acting corporately as Local Planning Authority.

### **Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and

- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

In addition to the appendices to this report, the following previous committee reports, associated minutes, and other documents as listed have informed the recommendations now made:

Planning Enforcement Sub-Committee, 21 July 2010, Agenda item 6  
Planning Enforcement Sub-Committee, 17 November 2010, Agenda item 4  
Planning Enforcement Sub-Committee, 16 March 2011, Agenda item 4  
Delegation Report for planning refusal S/0041/12/FL, 18 July 2012

**Report Author:** Gary Duthie – Senior Lawyer  
Telephone: (01954) 713022

## Appeal Decision

Inquiry opened on 18 March 2014

Site visit made on 21 March 2014

by **B Hellier BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 May 2014

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**Appeal Ref: APP/W0530/A/12/2181439**

**Land at 5-11 Orchard Drive and 14-18 Water Lane, Smithy Fen, Cottenham, Cambridge, CB24 8PN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Kathleen O'Brien against the decision of South Cambridgeshire District Council.
  - The application Ref S/0041/12/FUL, dated 9 January 2012, was refused by notice dated 17 July 2012.
  - The development proposed is change of use of 5,5a,6,10 and 11 Orchard Drive and 15 Water Lane to 6 gypsy/traveller pitches, involving the siting of 6 mobile homes, 6 touring caravans and the erection of 6 amenity buildings and a stable; and change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.
- 

### Decision

1. The appeal is dismissed insofar as it relates to a change of use of 11 Orchard Drive to a gypsy/traveller pitch and a change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.
2. The appeal is allowed insofar as it relates to a change of use of 10 Orchard Drive and 15 Water Lane to gypsy/traveller pitches and planning permission is granted for gypsy/traveller pitches at 10 Orchard Drive and 15 Water Lane in accordance with the terms of the application, Ref S/0041/12/FUL, dated 9 January 2012, as amended, so far as relevant to that part of the development hereby permitted and subject to the conditions set out in the accompanying Schedule.

### Application for costs

3. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Procedural matters

4. The Inquiry was held over a period of three days from 18-20 March with a site visit on the morning of 21 March after the Inquiry was closed.

5. Prior to the inquiry the appellant amended the proposal to a smaller site area which excluded pitches 5, 5a and 6 Orchard Drive and reduced the number of caravans. I am satisfied that none of the parties have been prejudiced by these changes and have considered the appeal on the basis of the revised scheme.
6. Consequently it was agreed that the description of the development should be revised to: Change of use of 10 and 11 Orchard Drive and 15 Water Lane to 3 gypsy/ traveller pitches, involving the siting of 4 mobile homes, 4 touring caravans and the erection of 3 amenity buildings and a stable; and change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.

### **Gypsy status**

7. The proposed occupiers are culturally Irish Travellers who have all been brought up on the road and continued travelling as adults, living on temporary roadside sites, before settling down with young children or, in the case of David Gammell, because of ill health. All but Kathleen Slattery and David Gammell have been acknowledged as having traveller status in previous appeals. I accept from this and from what I heard at the inquiry that all the adult travellers in this appeal satisfy the planning definition of a traveller in Planning Policy for Traveller Sites<sup>1</sup> (PPTS).

### **Main issues**

8. I consider the main issues are:
  - The effect of the proposal on the character and appearance of the surrounding area;
  - Whether the scale of the proposal together with the existing traveller development at Smithy Fen would unduly dominate the settled communities of Smithy Fen and Cottenham;
  - Whether the proposal would set a harmful precedent for further development;
  - The effect of the proposal on community infrastructure and public open space; and
  - Whether any harm arising from the above is outweighed by other considerations, including the general need for sites, future site provision and the accommodation needs and personal circumstances of the proposed occupiers.

### **Background**

9. The Smithy Fen traveller site occupies a rectangular block of land of about 7ha in area situated some 800 metres from the main built up part of the village of Cottenham. In the late 1980s a Romany Gypsy site was developed along Setchel Drove which forms the north-west boundary. Over the next ten years or so both this Romany site and most of the rest of the land was acquired by Irish Travellers. Planning permissions were granted which have resulted in two separate concentrations of development which now accommodate a total of 50 authorised traveller pitches.

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<sup>1</sup> Annex 1 of Planning Policy for Traveller Sites. DCLG. March 2012

10. The remaining, unconsented, part of the site is situated between the two authorised developments. The Council has consistently resisted any extension of caravans into this area. Its stance has been supported by the Secretary of State who dismissed two appeals in 2005. Since then the Council has obtained injunctions preventing further caravan development.
11. The appeal site is at the southern end of the unconsented area and relates to ten plots with frontages either onto Water Lane or Orchard Drive. These plots do not have planning permission and are for the most part undefined. They may, nonetheless, be described as plots because they are generally in separate ownerships. They were acquired in the past by travellers in the hope that planning permission would be forthcoming or in some cases in the mistaken understanding that they were approved plots. An injunction granted in April 2006 effectively stopped any further caravans being introduced but allowed existing caravans, including those on 10 and 11 Orchard Drive and 15 Water Lane, to be retained. The proposal seeks permission for residential pitches on these three plots and for a further seven plots to be formed into a landscaped amenity area.
12. Since the April 2006 injunction there have been further appeals relating to residential gypsy caravans on plots within the appeal site, together with an appeal against an enforcement notice which have all been dismissed<sup>1</sup>. All current occupation of these plots is unlawful.

## **Reasons**

### ***Character and appearance***

13. The appeal site is surrounded by flat arable farmland, geometric field patterns with long straight droves and drainage channels running out into the fens. Cottenham is a large village built on a slightly higher fen island with good tree cover along its edges. Smithy Fen is a small community which, in addition to the traveller site, consists of a cluster of some 18 properties and the modern Brookfield Business Centre on Twenty Pence Road together with a scattered linear development of individual farms, dwellings and small businesses along Lockspit Hall Drove and Oxholme Drove. There is some shelter belt planting along the droves and a community woodland immediately to the east of the business centre.
14. The traveller site is not on the fen island but is in open fen country. It is bounded by a strong hedge on its south-west edge so that it is not easily visible from Lockspit Hall Drove. Viewed from Setchel Drove some screening is provided by an overgrown hedge on the north-east boundary and by the existing buffer of the unconsented part of the site and from this direction the impact of the caravans is further reduced because they are seen against the backcloth of larger scale industrial buildings within the business centre. However from Twenty Pence Road and the public footpaths on the twin embankments of Cottenham Lode the unscreened existing Water Lane plots on the south-east flank are open to view and are particularly intrusive.

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<sup>1</sup> Appeal Ref APP/W0530/A/07/2049741 Residential gypsy caravan site for a temporary period of four years, Plots 5,5a,,6,10 and 11 Orchard Drive. Dismissed June 2008  
Appeal Ref APP/W0530/A/2081713 Caravan site for four caravans....for a traveller family.... for a temporary period, 16 Water Lane/9a Orchard Drive. Dismissed April 2009  
Appeal Ref APP/W0530/C/06/2013997 Residential caravan and mobile home, 15 Water Lane. Dismissed and Enforcement Notice upheld. January 2007

15. The landscape is classified in the District Design Guide SPD<sup>1</sup> as Fen Edge. In such a landscape the SPD advises that any village extensions should be located on the higher ground of the fen islands, avoiding incremental development on the flat, low-lying fen. It goes on to say that the transition from fen to fen island may be enhanced by the retention and creation of small paddocks with hedgerows.
16. As noted above the traveller site is not on a fen island and it is not a small paddock. I find that it is not in character with the surrounding landscape and has a significant adverse visual impact. However the site is established. It is now part of the landscape and I have to consider the degree of additional harm that would arise from the proposal before me. There would be an intensification of structures on site. It is also the case that to minimise flood risk the bases for the mobile homes would have to be raised slightly above the existing site level. Both they and the amenity blocks would be readily visible through and over the existing Water Lane development and, further along Cottenham Lode, through gaps in the boundary hedge. They would also reduce the openness of the site when viewed from Setchel Drove.
17. It would be possible to plug the gaps in the hedge along the north-east boundary. Even so there would still be an adverse effect on the character and appearance of the surrounding area which could not be satisfactorily mitigated by landscaping. There would therefore be some conflict with Policies DP/3 and NE/4 of the Development Control Policies (DCP) DPD<sup>2</sup> which require development to respect both the character and appearance of the countryside and landscape distinctiveness. I consider the proposal would result in further modest harm to the countryside.
18. One of the core planning principles of the National Planning Policy Framework is that *planning should take account of the different roles and character of different areas ..... recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it*. However this does not prevent appropriate development in rural areas. Notwithstanding my finding of harm to the countryside I do not accept the view of the Council that traveller sites should not be located in the open countryside. National guidance in PPTS is that sites may be suitable in rural or semi-rural settings but that they should be strictly limited in open countryside that is away from existing settlements. In this case the site is not away from existing settlements. It is in an accessible location and is well related to Cottenham.

### ***Scale affecting local infrastructure and living conditions***

19. Policy C and paragraph 17 of the PPTS advise that traveller site policies should promote peaceful and integrated co-existence between a site and the local community and that the scale of the site should not dominate the nearest local community. Cottenham has a population of over 6000. There is no evidence that the existing traveller site of 50 authorised pitches has any significant impact on village facilities or infrastructure. It is not visible from the main village and does not have an overbearing physical presence.

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<sup>1</sup> Local Development Framework District Design Guide: *High Quality Sustainable Development in South Cambridgeshire* Supplementary Planning Document. March 2010

<sup>2</sup> Local Development Framework *Development Control Policies* DPD. South Cambridgeshire. Adopted July 2007

20. However the site does dominate the small settled community of Smithy Fen and activities spilling out from the site have an impact on the living conditions of other residents. The Parish Council refers to a number of anti social activities and I saw for myself a considerable amount of fly tipping along Setchel Drove. Whoever is responsible it is clear that these activities cause some tension between the two communities and I consider it is a reasonable concern that any significant increase in the size of the Smithy Fen traveller site would exacerbate these tensions and conflict with the objectives of the PPTS.
21. National design guidance<sup>1</sup> for gypsy sites suggests a maximum of 15 pitches is conducive to providing a comfortable environment which is easy to manage. However this advice is principally directed at Councils and developers who are developing and managing sites, not at the impact on the nearest community. It is not intended, in any event, to apply to private owner occupied sites and I do not consider it relevant to this appeal.
22. The appellant refers to the Chesterton Fen Road area on the outskirts of Cambridge where there is a concentration of over 200 caravans. Whilst the scale is considerably greater than Smithy Fen I was told that the area was relatively isolated and situated between a railway and the River Cam. It would not appear to be comparable with the relationship between the settled and travelling communities at Smithy Fen.
23. In relation to the present proposal there is no suggestion that any anti social behaviour is laid at the door of the proposed occupiers. In this case the three additional pitches would be unlikely to add materially to any existing adverse off site impact on local infrastructure and living conditions and I attach little weight to this concern.

### **Precedent**

24. It is estimated that the capacity of the site, if fully developed, would be 130 pitches. Previous appeal decisions have all given weight to the concern that allowing an individual pitch or a small scale extension would open the way for more development which, cumulatively, would lead to unacceptable impact on the local community and environment. The appellant argues that the proposed occupiers are, with one exception, long term residents who, in the terms of the injunction and unlike most of the other owners, are permitted to remain on the site. The one exception is put forward on the basis of specific health grounds that are unlikely to be repeated. Underlying these special circumstances the extant injunctions and enforcement notices provide a belt and braces control over further development.
25. I am not persuaded by this argument when it is applied to the southern part of the unconsented area served by Orchard Drive and Water Lane. The long history of enforcement action and appeals here is good reason alone to be concerned about creation of a precedent and the occupiers are there in contravention of enforcement notices. Owners of neighbouring plots would note that, in this case, holding out against enforcement action for as long as possible has been successful. Other named owners in the injunction on 5, 5a and 6 Orchard Drive would be encouraged to return. It is also the case that the plots for which community open space is proposed would become part of

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<sup>1</sup> Designing Gypsy and Traveller Sites Good Practice Guide. DCLG May 2008

the approved site. Once land is within the authorised site it would be harder to resist residential use as evidenced by a recent appeal decision on Pine Lane<sup>1</sup>.

26. I find, therefore, that the proposal would set a precedent for further residential use within the southern section of the unconsented part of the site which, if permitted, would extend development up to the site boundary and reduce the gap between the two existing authorised caravan groups. The scale and form of the resulting development would lead to a considerable further erosion of countryside character and appearance.
27. On the other hand the two strips of land known as The Orchard and Pine View which separate the northern and southern developments are protected by bunds, fenced off and inaccessible. So too is the remaining unauthorised area to the north because its only access via Victoria View has now been closed off by plots on Pine Lane. In this respect the situation has changed since the previous appeals and I do not consider precedent would extend to these areas.
28. In terms of scale, the current clearly defined limit to the size of the authorised site creates certainty and stability within the local community. A significantly larger site and a period of unplanned incremental growth would tend to exacerbate community tensions and conflict with the social sustainability objectives of the PPTS.
29. I conclude that there is realistic and specific concern that a harmful precedent would be set and that this weighs substantially against the proposal.

### ***Open space and community provision***

30. The appellant indicated that the community garden and play area together with a future community building was a high priority for the traveller site. However it was conceded that due to lack of funding and uncertainty over ownership there was no guarantee that the open space would be provided or properly maintained. It would therefore not be possible to enter into a S106 agreement to secure its delivery. Taking this on board it is not entirely clear why the proposal was put forward.
31. As an alternative the Council would seek a financial contribution to off site provision in accordance with DCP Policy DP/4 and it refers specifically to improvements that are needed to two community halls in Cottenham. Set against this it is noted that the Council is not always consistent in applying this policy as three recently approved sites at Chesterton Fen Road have not been subject to a S106 agreement. However the development plan sets out a clear requirement for such a contribution and failure to comply should count against the proposal although in this case I attach only limited weight to this factor.

### ***Other considerations***

#### General need and future provision

32. The appellant relies on a gypsy and traveller accommodation needs assessment (GTANA) carried out in 2006<sup>2</sup>. This included a survey of gypsy households and liaison with the traveller community. It identified a need for 110-130 pitches between 2005 and 2010, later updated to 120 pitches between 2006 and 2011.

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<sup>1</sup> Appeal Ref APP/W0530/A/12/2170121. Siting of 2 static caravans, 2 touring caravans, 2 utility blocks, one temporary portaloo and parking for 4 vehicles, Pine Lane, Smithy Fen. Allowed August 2012

<sup>2</sup> Cambridge Sub-Region Traveller Needs Assessment 2005-2010. Published May 2006

If a standard annual household formation rate of 3% is applied for the period 2011 to 2016 a further 55 pitches are needed giving a 10 year requirement of 175. Against this target it was agreed that 120 new permanent pitches had been approved since 2006. On this basis there remains a significant under provision.

33. The Council relies on a GTANA carried out in 2011<sup>1</sup> which relies heavily on the annual January and July caravan counts and takes into account up to date figures on outstanding temporary permissions. Taking 2011 as the baseline it estimates that there is a 2011-2016 requirement for 65 pitches. Already there have been 105 pitches approved since 2011 so there would appear to be no unmet need. Indeed over the 20 year period 2011-2031 there is an estimated pitch requirement of only 85. On this basis the Council already has a 20 year supply of traveller sites.
34. I have no doubt that the approach adopted by the appellant is too crude. However I have considerable reservations over that adopted by the Council. The lack of a full household survey is an underlying weakness but there are concerns about the methodology.
- There is an assumption that there is no demand from hidden households doubling up or in overcrowded conditions on existing private sites.
  - There is a further assumption that there will be an annual turnover of 4% of pitches which would then count towards supply. There is no evidence of this level of turnover on privately owned sites but more fundamentally it assumes that there will be no net in-migration or internal movements within the District. Indeed it assumes there will be out-migration but no in-migration.
  - One indicator of demand is the waiting list for the two Council sites. This stands at 49. Whilst there may be some double counting in this figure it represents an element of unmet need which is not currently reflected in the assessment model.
  - Demand from households living in conventional housing is assumed to be balanced by those wanting to move in the opposite direction. Yet there is no analysis of those travellers on the housing waiting list to understand whether they would prefer caravan accommodation if it were available.
35. The Council, with other Cambridgeshire housing authorities, will carry out a full traveller household survey in 2015 although I was told this is intended primarily to provide information on health and social conditions. At the moment I conclude its needs assessment has serious weaknesses and that in practice there is a current shortage of sites. Similar findings were identified in recent appeal decisions on four traveller sites in nearby Willingham<sup>2</sup> and by the Inspector examining the East Cambridgeshire Local Plan.
36. The Local Plan<sup>3</sup> has recently been submitted for examination. Adopting the 2011 GTANA figure Policy H19 states that provision will be made for 85 permanent pitches between 2011 and 2031. Since permissions exceed the

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<sup>1</sup> Cambridge Sub-Regional Gypsy and Traveller Accommodation Needs Assessment 2011. Published October 2011

<sup>2</sup> Appeal Refs APP/W0530/A/12/2184129, 2185676, 2186665 and 2186669 various sites in Willingham determined October 2013.

<sup>3</sup> South Cambridgeshire Local Plan Submission Document. Approved for submission 13March 2014

identified need no new allocations are proposed (see para 33 above) although Policy H20 indicates that opportunities will be sought to deliver sites within major development proposals. Policy H21 is a criteria based policy which will be used to assess windfall proposals.

37. Little weight can be attached to the Local Plan at this stage particularly as the GTANA assumptions are likely to be contested. The Council has an allocation of £500,000 from the Homes and Communities Agency for site development/improvement which must be spent before April 2015 but it is not able to say how or where it will be spent.
38. Overall I consider the current shortage of traveller sites and the lack of any prospect of future provision weighs significantly in favour of the proposal.

#### Accommodation needs of the proposed occupiers

##### *Kathleen and Jimmy O'Brien (15 Water Lane)*

39. They married in 1996 and travelled until 1998 when Mrs O'Brien moved to a local authority site at Gerrards Cross. She moved to Smithy Fen in 2002 with her children to a plot owned by her father at 4 Orchard Drive (also within the unconsented area). Her relatives bought her the plot at 15 Water Lane and she moved there in 2004. She and her husband have lived there ever since.
40. Mr O'Brien travels to markets and fairs selling antiques. Their son John (17) has travelled abroad for work and Jimmy (14) has left school but is hoping to gain a qualification in block paving before completing his formal education. Jean (12) attends the secondary school in Cottenham. Their young daughter Eileen (5) lives in Wolverhampton with her grandmother and aunt. The family has always lived in caravans and when they visit Eileen they stay in a caravan.
41. Since the enforcement notice was upheld in 2007 they have looked for an alternative site. They looked at a Council owned site at Willingham and suggested taking it over but the Council had resolved to close it. They investigated a pitch at one of the two Council owned sites but these are dominated by Romany Gypsy families. The Council does not specifically debar Irish Travellers but the two groups do not mix well and it was agreed that in practice the Council sites were not available. The family also looked further afield in the Spalding, Ely and Peterborough areas but found that sites were either full or do not take Irish Travellers.
42. There are a number of vacant pitches within the authorised Smithy Fen site. I saw two in Water Lane, one in Orchard Drive, one in Pine Lane and nine of the twelve pitches in Setchel Drove. On the face of it these would appear to provide a solution but Mr O'Brien stated that they are either retained for future family use or, if they are for sale, they are unaffordable. Whilst the Council maintains that the vacant sites are available it did not provide any evidence. It has tried to facilitate possible land swaps and considered compulsory purchase of plots on Setchel Drove but to date it has been unable to unlock these sites. It is unable to suggest any sites other than these.
43. The family moved onto 15 Water Lane without the benefit of planning permission and are currently occupying the site unlawfully. This weakens their case. However they have lived here for 10 years and for the last six years the Council has been in a position to bring the matter to a head. It is not a criticism that it has not but it does reflect an acknowledgment that there is no

easy alternative accommodation option. Taking this into account and the lack of alternative available and affordable accommodation I give significant weight to their accommodation needs.

*Nora Slattery (10 Orchard Drive)*

44. Mrs Slattery moved to Smithy Fen about ten years ago and lived initially on 10 Orchard Drive. After the injunction was granted she moved to live with her brother Patrick on an approved pitch at 6 Pine Lane. Another brother James also lived elsewhere on the site. She has four children. Michael (5), Kathleen (10), Margaret (15) and James (17). James has moved away and is working with his uncles. Her brothers left Smithy Fen in 2013 and, rather than making any provision for her, sold their pitches. Although she has not looked for other sites the situation for her is the same as for the O'Brien family. This leaves her with only 10 Orchard Drive, which she owns, as a potential site.
45. The boundaries to No.10 are undefined and the surface is potholed. Although there was a touring caravan there on my site visit photographs submitted by the Council taken in January 2013 and January 2014 show the site to be vacant. It was agreed that in its present condition it was not really suitable for occupation. It is not clear where the family has been living since her two brothers moved on but it has not been on No.10. In these circumstances I consider only limited weight should be given to their accommodation needs.

*Kathleen Slattery and David Gammell (10 Orchard Drive)*

46. Mrs Slattery moved to Smithy Fen in 2002. Three of her four sons have moved away leaving herself, Michael (11) and Mr Gammell, the father of her boys on the site. Mr Gammell moved to the site in 2008 because he was ill and could be looked after by Mrs Slattery. Prior to this she and her sons do not appear to have been on this particular pitch. In 2011 their mobile home burnt down and they then moved off the site and lived elsewhere on Smithy Fen. She is currently doubling up at 11 Orchard Drive but this is a move that has only occurred recently.
47. Mr Gammell is essentially bed bound although he does go out in a wheelchair. Whilst previously doubling up was possible, Mr Gammell now has a need for a larger caravan and a site to accommodate it. A prerequisite for any funding assistance with more spacious accommodation and appropriate equipment and facilities is that the site occupied by Mr Gammell is lawful. This is a very specific accommodation need to which I attach significant weight.

*Kathleen O'Brien and Michael Heggarty(11 Orchard Drive)*

48. Mrs O'Brien has lived on the Smithy Fen site since 2011. Her husband Mr Heggarty no longer lives with her. Two of her children, Michael (11) and Mary (8), live with their grandmother in Mansfield<sup>1</sup>. She occupies a mobile home on No.11 with Richard (3). She does move away to stay with family members for periods but this causes overcrowding and is not a satisfactory permanent solution. Whilst her children are now settled in school in Mansfield she would like to have the opportunity to bring them back to live with her. My assessment is that at the most she relies only partly on No.11 as a base and that only limited weight should be given to her accommodation needs.

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<sup>1</sup> The written evidence from Michael Heggarty was that they lived with their grandmother in Dublin

Personal circumstances of the proposed occupiers

*Kathleen and Jimmy O'Brien (15 Water Lane)*

49. Their daughter Jean has just started in Year 7 at Cottenham College and would benefit from being settled. It is still unusual for traveller girls to progress into secondary education. Jean, together with another girl from the site, has a weekly education support session in Cottenham Library. Mr and Mrs O'Brien have also participated in a lottery funded project to develop literacy skills. I attach further modest weight to the benefits of a settled base which would allow Jean to continue her education at the school.

*Nora Slattery (10 Orchard Drive)*

50. It is anticipated that her son Michael will start school in September but in view of my conclusion on her accommodation circumstances this adds little weight. However she provides assistance to her sister Kathleen in transporting Mr Gammell to hospital and to other appointments and her presence nearby adds some support to her case.

*Kathleen Slattery and David Gammell (10 Orchard Drive)*

51. Mr Gammell has a degenerative neurological condition which has left him reliant on Mrs Slattery and, to a lesser extent, his young son Michael for his personal care. They do not have a mobile home and have to use an outside toilet. A pilot move to respite care was unsuccessful. Mr Gammell wants to be with his family and this would appear to be not only in his interests but also those of the national health service. It is also important to be within easy travelling distance of Addenbrooke's Hospital in Cambridge where there is a specialist unit and where his consultant is based.
52. I find it unhelpful that there is no corroborating evidence from those health and social services professionals caring for Mr Gammell. Nevertheless the caring needs arising from his condition are plain to see and it is a matter of considerable importance that they are provided for.

*Kathleen O'Brien and Michael Heggarty (11 Orchard Drive)*

53. I accept that Mrs O'Brien would like a fresh start with all her children living with her. However I am not persuaded that her accommodation arrangements are the main constraint to achieving this. I do not find that there are any personal circumstances that would add further support to her case or to that of Mr Heggarty who now lives elsewhere.

***Balancing harm against other considerations***

54. The proposed development is relatively small scale. It would have a modest adverse impact on the intrinsic character of the surrounding landscape and on public views into the site. There would also be limited harm arising from the lack of open space and community provision with little harm from the physical and social impact on the local settled community.
55. My analysis of the impact of extending development into the unconsented area differs from that of previous appeal decisions because, for the reasons set out at paragraphs 25-27, I do not consider it likely the proposals would set a precedent for development in the northern part of the site. Nonetheless, there is an important and well founded concern that allowing the proposal would set

a precedent for a further unplanned extension of development in the southern part of the site. This would have a substantial adverse effect on the character and appearance of the surrounding countryside and be of a scale that would be likely to exacerbate tensions with the Smithy Fen settled community. This would conflict with development plan Policies DP/3 and NE/4 and with Policy C and paragraph 17 of the PPTS.

56. Set against this harm is the significant weight that must be given to the general need for sites and the lack of planned future provision, together with the individual accommodation needs and personal circumstances of the proposed occupiers. I conclude that these considerations would not outweigh the harm that would be caused by granting a permanent permission.
57. However I have considered whether a temporary permission would be appropriate. It would restrict the harm to a limited period and in the long term would not dilute the principle of containing development within the existing site boundaries. When this reduced harm is taken into consideration I conclude that the particular situation of Kathleen and Jimmy O'Brien and their daughter Jean and the special health considerations that apply in the case of David Gammell would justify temporary permission on 15 Water Lane and 10 Orchard Drive respectively. The accommodation needs of Nora Slattery are not determinative but I accept that sharing the pitch with her sister would be helpful in the care of David Gammell.
58. A temporary permission would only be justified if planning circumstances may be expected to change in a particular way at the end of that period. Whilst the Council has no plans for further site provision it has an allocation of funding for improved provision and there is a window of opportunity during the Local Plan examination to review the position. A four year period would give adequate time to identify and bring forward one or more sites. By the end of this period Jean O'Brien would be coming to the end of Year 11 at school. The prognosis for David Gammell is uncertain but it is likely his circumstances too will change during the next four years.
59. I do not consider dismissing the appeal for Kathleen O'Brien on 11 Orchard Drive would leave her homeless as the evidence is that she has a number of relatives on site and has other places to stay. Whilst this may not be ideal I consider the interference with her human rights and those of her young son would be a proportionate response having regard to the substantial harm caused by the proposal.
60. The community garden, if implemented, would become an integral part of the site and strengthen the precedent argument. It should be resisted on this basis alone but it is also not likely to be deliverable.

### **Split decision**

61. I consider the proposal before me can be considered as a number of parts which are clearly severable both physically and functionally. They are the residential pitches each of which is a separate entity and the community garden which, although extending over a number of plots, is a further separate element. I propose to grant a four year temporary permission for residential pitches on 15 Water Lane and 10 Orchard Drive but to dismiss the appeal as it relates to 11 Orchard Drive and to the community garden.

## Conditions

62. Suggested conditions were included in the Statement of Common Ground and I have considered these in relation to the advice in national planning practice guidance. Since gypsy policies apply in this case and, since it is only personal circumstances that have tipped the balance in favour of the decision, both gypsy occupancy and personal conditions should be imposed.
63. Since the permission is temporary it would not be appropriate to permit permanent amenity buildings or a stable block although alternative temporary amenity units would be acceptable. To limit visual impact the number of caravans should be restricted to those applied for. The mobile home bases should be raised above flood level and the mobile homes securely fixed to the ground. Conditions should be imposed to secure these requirements.
64. A condition is also required for the submission and approval of a scheme which should include pitch layout and drainage arrangements, together with details of lighting and the means of securing the mobile homes.
65. I do not consider it would be reasonable to seek a landscaping scheme in light of the limited period of the consent.

## Conclusion

66. I find that South Cambridgeshire has a current unmet need for traveller sites which is unlikely to be resolved in the near future. Taking this into account I find that the individual accommodation needs and personal circumstances of the proposed occupiers of 15 Water Lane and 10 Orchard Drive are such as to outweigh the limited conflict with countryside protection and community integration planning policies so as to justify a temporary permission. A temporary permission which is tied to specific health, education and accommodation needs would not provide a general precedent for any further incursion into the unconsented area at Smithy Fen.
67. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part in the terms set out in paragraph 61.

*Bern Hellier*

INSPECTOR

## Schedule of Conditions (10)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The pitches shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites.
- 3) The use hereby permitted shall be carried on only by the following: Kathleen and Jimmy O'Brien (15 Water Lane) and Nora and Kathleen Slattery and David Gemmell (10 Orchard Drive) and their resident dependants, and shall be for a limited period being the period of four years from the date of this

- decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 4) When the premises cease to be occupied by those named in condition 3 above, or at the end of four years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
  - 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on 15 Water Lane and no more than 4 caravans (of which no more than 2 shall be a static caravan) shall be stationed on 10 Orchard Drive.
  - 6) Notwithstanding the submitted application and plans this permission does not grant consent for any permanent amenity buildings or for a stable block.
  - 7) The concrete mounting pads for the mobile homes shall be set no lower than 4.05m above AOD (Newlyn) and the mobile homes shall be securely anchored to the pads or otherwise to the ground.
  - 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
    - i) within 3 months of the date of this decision a scheme for: the internal layout of the two pitches, including the siting of caravans, any temporary amenity block, hardstanding and amenity areas and boundary treatment; the means of foul and surface water drainage; proposed and existing external lighting; and details of the means of securing the mobile homes as required by Condition 7:
    - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State:
    - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State:
    - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
  - 9) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the two pitches hereby approved.
  - 10) No commercial activities shall take place on the two pitches hereby approved, including the storage of materials.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Saira Kabir Sheikh	of Counsel
She called	
Mrs Emily Temple	Principal Planner, Pegasus Group
Mr Stephen Hills	Director of Housing

### FOR THE APPELLANT:

Mr Marc Willers	Of Counsel
He called	
Mr Michael Hargreaves	Michael Hargreaves Planning
Mrs Kathleen O'Brien	Applicant and proposed occupier 15 Water Lane
Mr Jimmy O'Brien	Proposed occupier 15 Water Lane
Mrs Nora Slattery	Proposed occupier 10 Orchard Drive
Mrs Kathleen Slattery	Proposed occupier 10 Orchard Drive
Mrs Kathleen O'Brien	Proposed occupier 11 Orchard Drive
Mrs Margaret Wood	Traveller education advisor

### INTERESTED PERSONS:

Mr Phillip Kratz	Representing Cottenham Parish Council
Mrs Joanne Clark	Local resident

## DOCUMENTS

- 1 East Cambridgeshire Local Plan Examination. Inspectors Note. 19 February 2014
- 2 List of gypsy/traveller approvals since 2011
- 3 Council Opening Statement
- 4 Council emails re highway response and re David Gammell. April 2012
- 5 Council response to complaint re consultation. 29 Feb 2012
- 6 Council response to witness statement of Jannie Brightman
- 7 Council viewpoints for site visit
- 8 Amended 1:1250 location plan from appellant
- 9 Last 10 caravan counts for South Cambridgeshire
- 10 Photographs of the site taken 4 January 2013 by Mrs Temple
- 11 Aerial photograph and views of surrounding area from Mr Hargreaves
- 12 Schedule of permissions at Chesterton Fen Road from Council
- 13 Two witness statements from Mrs J Clark
- 14 SI 2012 No.628 re transitional provisions of the Localism Act 2011
- 15 Witness statement from David Gammell
- 16 Council response to Doc 1 above
- 17 South Cambridgeshire Local Plan. Submission document March 2014
- 18 Central Bedfordshire Council v SSCLG and Michael Kiely CO/14561/2013
- 19 Leanne Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925
- 20 Elizabeth Collins v SSCLG and Fylde Borough Council [2013] EWCA Civ 1193
- 21 Appeal Ref APP/X0360/A/11/2163400 Wokingham Borough Council
- 22 The Queen v South Cambridgeshire District Council [2014] EWHC (Admin)
- 23 Closing Submissions



## Appeal Decision

Inquiry opened on 11 March 2008 and subsequently adjourned.

Site visit made on 11 March 2008

by **Claire Sherratt** DipURP MRTPI

The Planning Inspectorate  
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an Inspector appointed by the Secretary of State  
for Communities and Local Government

Decision date:  
2 June 2008

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### Appeal Ref: APP/W0530/A/07/2049741

### Plots 5, 5A, 6, 10 & 11 Orchard Drive, Smithy Fen, Cottenham CB24 8PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Michael O'Brien, Nora O'Brien, Margaret O'Brien, Nora Slattery & Michael Heggerty against the decision of South Cambridgeshire District Council.
- The application Ref S/1631/06/F, dated 4 August 2006, was refused by notice dated 19 April 2007.
- The development proposed is the retention of a residential gypsy caravan site for a temporary period of 4 years.

**Summary of Decision: The appeal is dismissed.**

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### Procedural Matters

1. I opened the Inquiry on 11 March. The appellants' agent had withdrawn from the inquiry prior to it opening. In the circumstances, the main parties agreed that an inquiry would no longer be the most appropriate procedure by which to determine the appeal. The main parties agreed that I should determine the appeal based on the written evidence submitted. The main parties and interested persons were given the opportunity to make final comments, in writing, on the written evidence produced in preparation for the inquiry. I have determined the appeal on this basis.
2. All the plots that are the subject of this appeal are currently occupied. They contain both static and touring caravans. Section 73A of the Town and Country Planning Act 1990 expressly provides for the grant of planning permission for development carried out without permission. I have determined the appeal accordingly.
3. I saw that the plots have previously been extended beyond the northern boundary of the site indicated on the submitted plans. I understand this was done without the permission of the landowner and was the subject of an enforcement notice and subsequent appeal. I saw that this land to the north is not separated from the plots within the appeal site by any formal boundary treatment, I nevertheless acknowledge that it is not included within the appeal site (as defined by the red-edge on the plans) and is not to be considered as part of this appeal.

### **Preliminary Matters**

4. Temporary planning permission is sought for a period of 4 years. The plots that are the subject of this appeal are occupied (based on the information received from the appellants<sup>1</sup>) by:
  - Plot 5 - Mr Michael O'Brien and his children.
  - Plot 5A - Mrs Margaret O'Brien and her daughters, Jean (aged 5) and Breda (3).
  - Plot 6 - Mrs Nora O'Brien together with her 4 children James (aged 13), John (12), Jeremiah (7) and David (2). James and John attend Cottenham Village College. Jeremiah attends Cottenham Primary School and David, the youngest is booked into nursery.
  - Plot 10 - Nora Slattery and her 3 children James (11), Margaret and Kathleen (4) who all attend Cottenham Primary School. I understand that Mrs Slattery is also expecting another child.
  - Plot 11 - Michael Heggerty, his wife and their children.

They are all members of an extended family of Irish travellers.

5. Enforcement notices were served in respect of the unauthorised occupation of plots 5, 5A, 6, 10 and 11 Orchard Drive in June 2005. Plots 5, 5A, 6 and 10 were the subject of subsequent unsuccessful appeals. Enforcement notices requiring the vacation of plots 5, 5A, 6, 10 and 11 came into effect in 2006.
6. The gypsy status of the appellants is not disputed. Indeed the gypsy status of the occupiers of 5, 5A, 6 and 10 was accepted by the Inspector who considered the appeals relating to those plots in June 2006. Based on the information available to me, I have no reason to depart from this view and I am satisfied that the appellants are all gypsies as defined in paragraph 15 of Circular 01/2006.

### **Planning Policy**

7. The Development Plan comprises Regional Planning Guidance East Anglia (RPG6); the Cambridgeshire and Peterborough Structure Plan 2003 (SP); the South Cambridgeshire Local Plan (LP); the South Cambridgeshire Local Development Framework Core Strategy Development Plan Document (CSDPD); and the South Cambridgeshire LDF Development Control Policies Development Plan Document (DCPD). However, RPG6, the SP, LP and CSDPD contain no policies specific to the provision of gypsy and traveller sites. Whilst the Council refer to SP Policy P7/4, and LP policies HG23 (Gypsies and Travelling Showpeople) and EN1 in the decision notice, these policies were not saved under a direction by the Secretary of State under Schedule 8 to the Planning and Compulsory Purchase Act 2004 and no longer form part of the development plan.

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<sup>1</sup> I note there are some inconsistencies with the audit taken by the Council in 2005 (page 25 of the proof of evidence of John Koch) in respect of the number of children on some plots.

8. RPG6 will be replaced by the East of England Plan which will set out the Regional Spatial Strategy (RSS) for the area up to 2021. A single issue review of the Regional Spatial Strategy entitled 'Planning for Gypsy and Traveller Accommodation in the East of England' has been through the issues and options stage. Following a period of consultation, the Regional Planning Panel recommended that South Cambridgeshire should provide 59 net additional residential caravan pitches during the period 2006 – 2011. This has since been accepted by the Regional Planning Board. This figure allows for the redistribution of the identified need as it currently arises in South Cambridgeshire – some 120 pitches. The final number of pitches required will be confirmed following an Examination in Public later this year.
9. The Council relies on policies contained in its recently adopted DCPDPD. Policies DP/1(p), DP/2(a), DP/3 (2(m)) requires development to conserve and wherever possible enhance local landscape character and not have an unacceptable adverse impact on the countryside. DCPDPD Policy NE/4 deals with landscape character areas. The appeal site is situated at the edge of the Fens.
10. The Council has commenced work on a Gypsy and Travellers Development Plan Document (GTDPD). The Council anticipate that a best estimate of when the GTDPD will be adopted is not before late 2010. The Issues and Options Report 1 sets out a suggested methodology for identifying suitable locations for Gypsy sites in South Cambridgeshire based on a three tier approach.

### **Main issues**

11. I consider the main issues are:
  - (i) the effect of the development on the character and appearance of the area;
  - (ii) whether the development would create a precedent that planning permission should be granted for other unauthorised plots at Smithy Fen;
  - (iii) the effect of the development on highway safety; and
  - (iv) whether any other circumstances exist including the general need for, and availability of, gypsy sites and the personal circumstances of the appellants, that would be sufficient to outweigh any harm identified.

### **Reasons**

#### ***Character and appearance of the area***

12. Smithy Fen is situated about 1km to the north-east of the main built-up part of Cottenham in an area defined as open countryside. It is situated at the edge of the Fens and the surrounding landscape is typically flat with long views and open fields with few hedges. The appeal site comprises a number of plots within a larger rectangular shaped area (the rectangle) of approximately 7.5ha which contains authorised and unauthorised pitches.

13. Within the rectangle there are two areas containing authorised gypsy sites. Some 18 plots are situated along Setchel Drove<sup>2</sup> forming the north west boundary of the rectangle. About 4 further plots extend south east beyond and adjoining 1 Setchel Drove resulting in an L-shaped area of some 22 authorised plots. The remaining authorised plots are accessed from Orchard Drive and Water Lane. A row of plots along Water Lane form the south east boundary of the rectangle. A further block of authorised plots occupy approximately half of the land on the opposite side of Water Lane and the same portion of land either side of Orchard Drive, again creating an L shaped area of some 15 authorised plots. I understand that some of these authorised plots may have been subdivided.
14. The Council considers that the establishment of additional caravan sites at Orchard Drive would further consolidate the area covered by the existing lawful caravan sites at Setchel Drove and Water Lane, making them more obtrusive in the landscape. The use of the site has, the Council asserts, a significant adverse effect on the rural character and appearance of the area in that the former openness of the site and the contribution that it made to the gap between existing authorised sites has been eroded.
15. Circular 01/2006, paragraph 54, recognises that gypsy sites may be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle. Smithy Fen is not within an area of countryside that is subject to any special planning constraints. Nevertheless, in previous appeal decisions, the countryside at Smithy Fen has been identified as being generally open and flat, with wide views and little natural screening. I agree with assessments made by other Inspectors that it is inherently difficult for such a sensitive fenland landscape to assimilate gypsy caravan development without causing harm to the rural character and appearance of the locality, and that such harm has already been caused by lawful gypsy caravan development at Smithy Fen.
16. Notwithstanding the unlawful pitches that remain in between the two areas of authorised pitches, they are physically separated by open land. I acknowledge that the gap between the two is relatively narrow at the south western side of the rectangle. However it quickly increases in width so that the north eastern side is completely open other than for the width of a single pitch to each end. When viewed from the north east, the large block of land forms a strong visual break between the two authorised areas.
17. The plots that are the subject of this appeal would extend one of the lawful areas towards the north east boundary of the larger rectangle. Only about the width of one plot would remain between plot 6 and the north east boundary. This plot has been the subject of an enforcement notice and an unsuccessful appeal in the past. A gap would remain between plots 10 and 11 and the authorised plots on Water Lane. To the north west of the site is a strip of land onto which plots 4, 5, 5a and 6 have encroached. Beyond this is an area of land that has been the subject of planning and enforcement appeals and injunctive action before being cleared of caravans in October 2006. This land is now enclosed by a bund to prevent future

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<sup>2</sup> 1 Setchel Drove (Park Lane) contains some 6 authorised plots.

unauthorised occupation by caravans. The appeal site, being separated from authorised plots on three sides, occupies a relatively isolated position. The development would, in my view, significantly erode the gap between the lawful areas.

18. I consider that to allow this appeal would have a significant adverse effect on the rural character and appearance of the surrounding area. This is essentially a landscape where significant amounts of planting, other than in the form of isolated woodland or orchard, are uncharacteristic. In respect of the enforcement appeals relative to some of the plots to which this appeal relates, the Inspector did not believe that the site could be satisfactorily assimilated into its surroundings by existing or additional planting. I consider that remains the case now.
19. To conclude on this issue, I consider the harm to the character and appearance of the landscape would be unacceptable. I have been referred to various appeal decisions concerning plots within the rectangle, including decisions that have had regard to Circular 01/2006. My view is consistent with that taken by the Secretary of State and Inspectors in relation to other unauthorised plots in the rectangle and indeed previous appeal decisions relating to Plot 5, 5A, 6 and 10 Orchard Drive. The development, if allowed, would result in significant adverse harm to the character and appearance of the rural landscape even for a temporary period. Whilst LP Policy H23 is no longer applicable, the policies within the DCPDPD are nevertheless relevant. Furthermore, the Council's GTDPD (Issues and Options 1) sets out a suggested methodology for identifying suitable locations for gypsy sites including that sites for gypsy and traveller pitches would only be permitted where it would not result in any significant adverse impact on the character and appearance of the locality.

### **Precedent**

20. I consider that allowing the appeals would create a precedent for further development within the rectangle at Smithy Fen, with the eventual effect being further loss of open land, a higher level of occupation and increased traffic along the narrow access road. The area within the rectangle and between the lawful plots has proved to be attractive to gypsy families as demonstrated by the considerable history related to Smithy Fen. I consider that in the event of this appeal succeeding it would be very difficult for the Council to resist other similar proposals. The cumulative impact of such incremental additions would further erode the gap between the two authorised areas and result in substantial harm to the surrounding area.

### **Highway Safety**

21. Highway safety was not a concern raised by the Council although it was raised by the Parish Council, Smithy Fen Residents Association and other interested parties. Access to the appeal site is off Twenty Pence Road via a public highway known as Lockspit Hall Drive. This is a single-track road that crosses Smithy Fen Bridge which after a sharp bend provides access to Water Lane and Setchel Drive. In my view, the additional traffic arising from this proposal would not be so significant to justify planning permission being withheld on these grounds. I am mindful that the highway authority

raised no objections in respect of the increased traffic using the highway. Nevertheless, as stated above, the cumulative impact of continued development at Smithy Fen would give rise to increased traffic which may at some stage give rise to unacceptable levels of traffic.

### **Other Considerations**

#### *The need for Gypsy sites*

22. The Council, in partnership with 8 other local planning authorities, carried out the Cambridgeshire Sub-Regional Traveller Needs Assessment in May 2006. This demonstrated a need arising for some additional 110-130 pitches during a five year period ending 2010 in South Cambridgeshire. The single issue review had regard to this assessment and proposes to redistribute some of that need resulting in the reduced figure of 59 net additional pitches, previously referred to, to be provided by 2011. Although the review remains at a relatively early stage and final pitch numbers may change, a need for additional pitches is nevertheless demonstrated.
23. The Council accepts that there is a shortage of gypsy sites in the district. However, the Council refer to two sites that have the benefit of temporary planning permissions amounting to a total of 48 pitches at Sandy Park, Chesterton Fen, Milton; a further 8 pitches at Swavesey and 6 pitches in Willingham. These, together with two further sites for which temporary planning permission has been renewed could, the Council asserts, result in a surplus of sites if only 59 are required in the district, should they be found acceptable as permanent sites as part of the Council's GTDPD.
24. Nevertheless, nationally, across the sub-region and in the district currently, there is undoubtedly a shortage of pitches. The site would help to meet some of this need, albeit for a temporary period. This is a material consideration weighing in favour of the appellant.

#### *The personal accommodation needs of the appellants*

25. The appellants all form part of an extended family of Irish Travellers. They were born in England and have lived on the appeal site for over 5.5 years, having previously lived on sites at Tring, Hemel Hempstead, and Blackbridge, Cambridge but for the most part on the roadside. They moved to Smithy Fen to obtain schooling for their children in a location where they already have family connections. The parents of Michael and Nora O'Brien live on Plot 2 Orchard Drive. Nora O'Brien's son, David, is registered with an eye specialist at Addenbrooks and one of her other sons, John, is fighting cancer. Nora also cares for her father who is ill. Nora Slattery's brothers live in Water Lane, Park Lane, Sedgewick Grove and Pine Lane. She suffers with high blood pressure and is due to have a baby shortly. She relies on the help of her family.
26. I understand from the information available that three of the five households have children attending school locally. Whilst resident on the site, the appellants have also been able to register with a GP. These are benefits arising from a settled base that are recognised in Circular 01/2006. Access to healthcare and education are not specific to the appeal site and

could also be met elsewhere, should sites be available. I recognise that the support of other family members is desirable. However, I have only limited information about the extent of care and help necessary and whether it could only be provided should all the family live on the same site. I give these personal circumstances limited weight.

*The lack of alternative sites*

27. The public gypsy sites in Cambridgeshire are full, with waiting lists for any pitches that occasionally become available. I understand that there are two authorised local authority sites at Whaddon and Milton. Whilst these are currently full, the Council points out that the waiting times for pitches are generally 3 years for Whaddon and one year for Milton. Both have waiting lists at present. Nevertheless the Council asserts that had the appellants applied to go on the waiting list in 2002, when they first occupied the appeal site, in all likelihood, they would have been accommodated by now.
28. That may be so, but it is perhaps not surprising that the appellants choose not to do so given that they were pursuing planning permission and subsequent appeals against enforcement notices on their own sites. I have no information to suggest that any of the appellants have put their names on the waiting list since the enforcement appeals were dismissed and the notices upheld or whether there are any reasons for not doing so. Nevertheless, not all of the appellants are likely to have been accommodated since then.
29. LP Policy CNF6 (saved under a direction) sets out a presumption in favour of applications for private gypsy sites within a defined area on the west side of Chesterton Fen Road, approximately 16 km from Smithy Fen. Much of that allocation has, the Council confirms, been taken up. The appellants suggest that land opposite Canalside Farm is only available to relations of the owner and the remaining allocated land is held on a long term lease by Greengate Piggeries. Any land left within the allocation would not therefore appear to be available to them. I understand that the Council are considering an application to extend the site but in the absence of any information in respect of the outcome of this decision or whether it is likely to be available to the appellants I give this little weight.
30. The Council also refer to vacant plots on Water Lane, Smithy Fen. I saw these on my visit. However, the appellants draw my attention to the lack of evidence produced by the Council to show that the empty plots along Water Lane are for sale or to rent or indeed would be affordable to the appellants. I am minded to agree that although they appear to be vacant that does not necessarily mean they would be available to the appellants. I give little weight to the Council's suggestion that the area of land between plots 3 and 6 would be an alternative option. It is currently 'amenity land' and does not have the benefit of planning permission for the use of land for the stationing of caravans.
31. The Council suggests that there was a reasonable expectation that the appellants could have found alternative sites in the years since the enforcement appeals were dismissed in 2006. I have not been provided

with any information about any attempts by the appellants to find alternative sites. Nevertheless, it appears that should the appeal fail, it would prove difficult for the appellants to find alternative sites at least in the short term. This is a consideration weighing in favour of the appellants.

### **Balance and Conclusions**

32. Temporary permission is sought for a period of 4 years. Paragraph 45 of Circular 01/2006 advises that where there is an unmet need and no alternative gypsy site provision, but there is a reasonable expectation that sites will become available within a given timescale to meet that need, local planning authorities should consider granting a temporary permission. In deciding whether to grant temporary planning permission, substantial weight must be given to unmet need.
33. It is accepted by the main parties that there is an unmet need. There appears to be a lack of alternative sites that would be available to the appellants at the present time. As such, the benefits arising from a settled base, in particular access to regular education and healthcare would be compromised should the families have to return to a roadside existence.
34. The Council considers that the GTDPD is unlikely to be adopted (best estimate) until at least the end of 2010. It is nevertheless underway. In this regard, this appeal differs from others that I have been referred to at Smithy Fen that post date Circular 01/2006. In those instances, a GTDPD was not underway. However, it still remains in the early stages of preparation.
35. In deciding whether to grant a temporary permission, substantial weight must be attributed to this unmet need. This must be balanced against the significant adverse harm that would arise to the countryside even if only for a temporary period. I am also mindful that the area has proven to be very attractive to gypsies. The Council has consistently sought to avoid any dilution of the gap between the lawful areas that would further impact on the surrounding countryside. This has been supported on appeal on numerous occasions. There are no overriding personal circumstances in this case that are likely to distinguish this case from other gypsy families with children at school. If I were to allow the appeal, even for a temporary period, I consider it would seriously undermine the ability of the Council to resist other similar proposals on the land in between the lawful areas. In my view, the cumulative harm that could arise, even if only for a temporary period, would outweigh the unmet need for further sites in this particular case.
36. I recognise that dismissal of this appeal would interfere with the appellants' homes and private and family life. In particular, it could result in the loss of their homes with no satisfactory alternative. However, the appellants started living on the land without obtaining prior planning permission. Their homes in this case have been established unlawfully and previous appeals against enforcement notices served on the sites upheld. The need to maintain a gypsy lifestyle is an important factor in the decision-making process. Those gypsies without an authorised site face difficulties in

endeavouring to continue to live their traditional way of life within the law. Nevertheless, that interference and the rights of these gypsies must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8 of the European Convention on Human Rights, particularly the economic well-being of the country (which includes the preservation of the environment). The objections to the development which has taken place are serious ones and cannot be overcome by granting a temporary planning permission or one subject to other conditions. There are strong environmental reasons for refusing this appeal and I am satisfied that this legitimate aim can only be safeguarded by dismissing the appeal.

37. On balance, I consider that the dismissal of the appeal would not have a disproportionate effect on the appellants. I therefore consider that dismissal of this appeal would not result in a violation of their rights under Article 8 of the Convention.
38. For the reasons given above I conclude that the appeal should be dismissed.

**Overall Decision**

**Appeal Ref: APP/W0530/A/07/2049741**

39. I dismiss the appeal.

*Claire Sherratt*  
INSPECTOR

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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

THE HONOURABLE MR JUSTICE MITTING

Dated this 6<sup>th</sup> day of April 2006



SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Claimant

and

1. JAMES SHERIDAN
2. DAVID SHERIDAN
3. PATRICK QUILLIGAN
4. MARGARET O'BRIEN
5. MICHAEL SLATTERY
6. KATHLEEN O'BRIEN
7. JEAN O'BRIEN
8. JOHN CULLIGAN
9. MICHAEL FLYNN
10. MARGARET QUILLIGAN
11. MARY GAMMELL
12. NORA O'BRIEN
13. MICHAEL O'BRIEN
14. NORA SLATTERY
15. MICHAEL HEGARTY
16. MILES CONNORS

17. PERSONS UNKNOWN

- a. causing or permitting caravans, mobile homes, sheds or other residential accommodation to be stationed on the areas of land edged in black on the plan hereto at Smithy Fen, Cottenham ('the Northern Area' and 'the Southern Area')
- b. occupying or causing or permitting the occupation of caravans, mobile homes, sheds or other residential accommodation stationed on the Northern Area or the Southern Area
- c. causing or permitting building materials or other material suitable for use in the creation of hard surfacing or drainage to be brought onto the Northern Area or the Southern Area
- d. causing or permitting excavations to be made or building operations to be carried out preparatory to or associated with the creation of hard surfacing or drainage on the Northern Area or the Southern Area

## ORDER FOR AN INJUNCTION

### **IMPORTANT NOTICE TO DEFENDANTS**

**This Order requires you to refrain from the acts set out in the Order. You should read the Order carefully. You are advised to consult a solicitor as soon as possible. If you disobey this Order you may be found guilty of Contempt of Court and you may be sent to prison or fined or your assets may be seized.**

#### The application

1. An application was made to the Court by counsel on behalf of the Claimant. The Defendants did not appear and were not represented. The Judge read the written evidence listed in Schedule 1 to this order.
2. This order relates to two areas of land at Smithy Fen, Cottenham, shown edged in black and labelled on the plan hereto ('the Northern Area' and 'the Southern Area').
3. The Claimant gave the undertaking set out in Schedule 2 hereto.

#### The injunction

4. IT IS ORDERED THAT until trial or further order –
  - a. Subject to the proviso below all the Defendants forthwith be restrained from causing or permitting any caravan, mobile home, day room or shed to be stationed within the Northern or Southern Areas

Provided that Defendants 4, 6 and 11-15 are permitted to continue to station caravans, mobile homes, sheds and day rooms within the Northern Area and Southern Area (or any replacement caravan, mobile home, shed or day rooms of a similar type) as follows –

- i. Defendant 11 - occupied plot within Northern Area – 1 mobile home
  - ii. Defendant 13 – plot 5 in Southern Area – 1 mobile home, 1 shed
  - iii. Defendant 4 – plot 5a in Southern Area - 1 mobile home
  - iv. Defendant 12 – plot 6 in Southern Area – 1 touring caravan, 1 mobile home, 1 shed
  - v. Defendant 14 – plot 10 in Southern Area – 1 mobile home, 1 dayroom
  - vi. Defendant 15 – plot 11 in Southern Area – 1 touring caravan and 1 dayroom
  - vii. Defendant 6 – plot 15 in Southern Area – 1 touring caravan, 1 mobile home, 1 day room;
- b. the Defendants be restrained forthwith from occupying any caravan, mobile home, shed or other residential accommodation brought onto the Northern or Southern Areas in breach of a. above;
- c. the Defendants forthwith be restrained, whether by themselves or their servants or agents, from causing or permitting any material suitable for use in the creation of hard surfacing or drainage to be brought onto the Northern or Southern Areas;
- d. the Defendants forthwith be restrained, whether by themselves or their servants or agents, from causing or permitting excavations to be made or building operations to be carried out preparatory to or associated with the creation of hard surfacing or drainage on the Northern or Southern Areas.

Service of application notice, claim form etc

5. The Claimant having taken the steps referred to in the witness statement of Charles Swain dated 4 April 2006, further service of the application notice herein, the claim form herein and the witness statement of Gareth Jones dated 9 March 2006 be dispensed with.

Service of this order

6. This order may be served by on the Defendants by –
- a. placing a copy of it in a clear plastic envelope and affixing the same to a stake or post on each unoccupied plot in the Southern Area;
  - b. placing a copy of it in a clear plastic envelope and affixing the same to a stake or post at the points marked 'x' on the plan attached hereto;
  - c. as for the occupied plots in the Northern and Southern Areas, either (i) placing a copy in a clear plastic envelope and affixing the same to a stake or post on such plot or (ii) delivering a copy to such plot;
  - d. giving a copy of it to any adult present on the Northern and Southern Areas at the time the above steps are taken; and
  - e. delivering it to 6 Pine View, 9 Setchell Drove and 10 Setchell Drove, Smithy Fen, Cottenham.
7. Service of this order shall be treated as effected at the time the steps referred to above are taken.

Varying the order

8. The Defendant may apply to vary or discharge this order upon giving 24 hours notice in writing to the Claimant's Solicitors, Colin Tucker, Head of Legal Services, South Cambridgeshire District Council, South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambs, CB3 6EA, Tel 01954 713 060, Fax 01954 713 305. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's Solicitor in advance.

Costs

9. No order as to costs

Interpretation of this order

10. A Defendant who is ordered not to do something must not do it him/herself or in any other way. He/she must not do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.
11. The requirements of this order apply to each Defendant.

Communications with the Court

12. All communications to the Court about this Order should be sent to Room WG08, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0207 947 6010.

Schedule 1

Witness statement of Gareth Jones dated 9 March 2006 and the exhibits thereto  
Witness statement of Charles Swain dated 4 April 2006

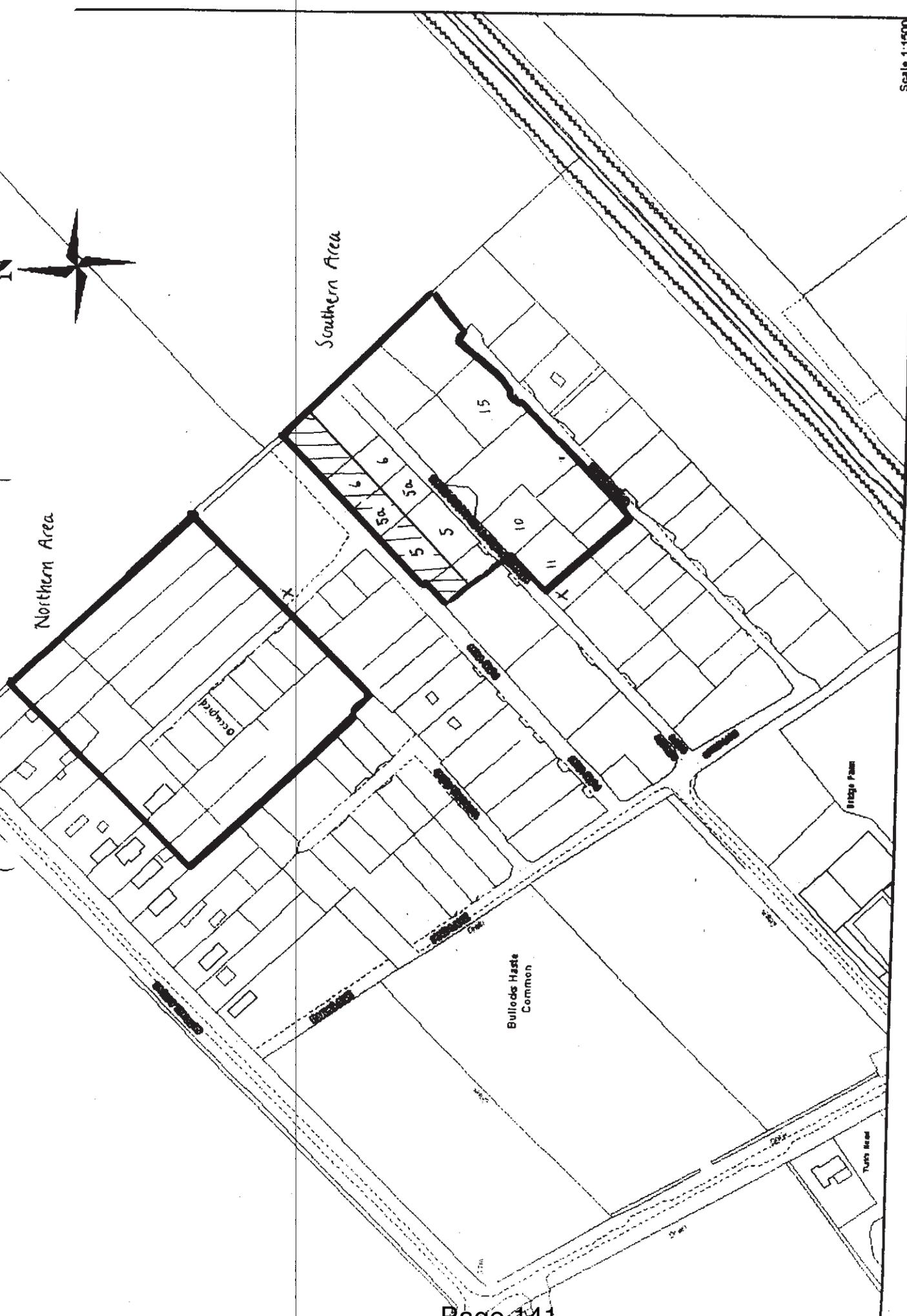
Schedule 2 – Claimant's undertaking

To serve the order herein as soon as practicable by the means referred to in paragraph 6 above.



Northern Area

Southern Area



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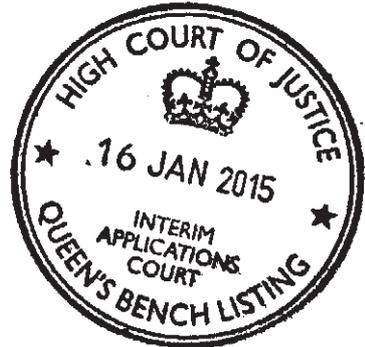
IN THE HIGH COURT OF JUSTICE  
QUEENS BENCH DIVISION

Claim No. HQ6X00555

Before the Honourable Mr Justice

Dated 16 January 2015

IN THE MATTER OF



**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

Claimant

VS

**MICHAEL O'BRIEN (1)  
MARGARET O'BRIEN (2)  
NORA O'BRIEN(3)**

Defendants

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**INJUNCTION ORDER**

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**PENAL NOTICE**

**IF YOU THE WITHIN NAMED MICHAEL O'BRIEN, MARGARET O'BRIEN OR NORA O'BRIEN DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR FINED OR YOUR ASSETS SEIZED**

## IMPORTANT

### Notice to the Defendants

You should read the terms of this Order and the Guidance Notes very carefully.

You are advised to consult a solicitor as soon as possible.

If you disobey this Order you may be found guilty of Contempt of Court and may be sent to prison or fined. In the case of a Corporate Defendant, it may be fined, its Directors may be sent to prison or fined or its assets may be seized.

Upon hearing Counsel for the Claimant, upon reading the witness statement listed in Schedule A and upon accepting the undertaking listed in Schedule B

1. **IT IS ORDERED** that ~~until [the return date]~~ the Order of Mitting J dated 6 April 2006 ("the Order") be varied to remove the Defendants from within the proviso set out in paragraph 4 (a) of that Order. Within the terms of the Order the Defendants are those numbered 4, 12 and 13.

For the avoidance of doubt, IT IS FURTHER ORDERED that the remainder of the injunction in paragraph 4 a, b, c and d of the Order remains in force and must be complied with.

2. Service of this Order shall be by affixing a copy of this Order and the Order of Mitting J dated 6 April 2006 contained in a transparent waterproof envelope in a prominent position on the Land and if practicable personal service on the Defendants.
3. The Defendants may each of them (or anyone notified of this Order) apply to the Court on 48 hours notice in writing to vary or discharge this Order (or so much as it affects that person),
- (4) The costs of the matter be reserved.



## GUIDANCE NOTES

### **Effect of this Order**

- (1) A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (2) A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

### **Parties other than the Claimant and Defendants**

#### **Effect of this Order:-**

It is a Contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be sent to prison, fined or have his assets seized.

### **INTERPRETATION OF THIS ORDER**

- (1) In this Order, where there is more than one Defendant (unless otherwise stated) references to "the Defendants" means each or all of them.
- (2) A requirement to serve on "the Defendants" means on each of them. However, the Order is effective against any Defendant on whom it is served.
- (3) An Order requiring "the Defendants" to do or not to do anything applies to all Defendants.

### **Communications with the Court**

All communications to the Court about this Order should be sent to Room WG08, Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6010). The offices are open between 10 am and 4.30 pm Monday to Friday.

### **Schedule A**

Witness Statement:

- (1) Statement of Mr Charles Swain, South Cambridgeshire District Council

## Schedule B

### Undertakings given to the Court by the Claimant

(1) Anyone notified of this Order will be given a copy of it by the Claimant's legal representatives.

### Name and Address of Claimant's Legal Representatives

The Claimant's Legal Representatives are:-

Sharpe Pritchard, Elizabeth House, Fulwood Place, London, WC1V 6HG, London

Agents for the Claimant, South Cambridgeshire District Council

Tel: 020 7405 4600

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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Hilary Term  
[2011] UKSC 4

*On appeal from: [2009] EWCA Civ 691*

## **JUDGMENT**

**ZH (Tanzania) (FC) (Appellant) v Secretary of  
State for the Home Department (Respondent)**

**before**

**Lord Hope, Deputy President**

**Lady Hale**

**Lord Brown**

**Lord Mance**

**Lord Kerr**

**JUDGMENT GIVEN ON**

**1 February 2011**

**Heard on 9 and 10 November 2010**

*Appellant*  
Manjit Gill QC  
Benjamin Hawkin  
(Instructed by Raffles  
Haig Solicitors)

*Interveners (for the  
Appellant's children)*  
Joanna Dodson QC  
Edward Nicholson  
(Instructed by Raffles  
Haig Solicitors)

*Respondent*  
Monica Carss-Frisk QC  
Susan Chan  
(Instructed by Treasury  
Solicitors)

**LADY HALE (with whom Lord Brown and Lord Mance agree)**

1. The over-arching issue in this case is the weight to be given to the best interests of children who are affected by the decision to remove or deport one or both of their parents from this country. Within this, however, is a much more specific question: in what circumstances is it permissible to remove or deport a non-citizen parent where the effect will be that a child who is a citizen of the United Kingdom will also have to leave? There is, of course, no power to remove or deport a person who is a United Kingdom citizen: see Immigration Act 1971, section 3(5) and (6). They have a right of abode in this country, which means that they are free to live in, and to come and go into and from the United Kingdom without let or hindrance: see 1971 Act, sections 1 and 2. The consistent stance of the Secretary of State is that UK citizens are not compulsorily removed from this country (eg Phil Woolas, *Hansard*, Written Answers, 15 June 2009). However if a non-citizen parent is compulsorily removed and agrees to take her children with her, the effect is that the children have little or no choice in the matter. There is no machinery for consulting them or giving independent consideration to their views.

*The facts*

2. The facts of this case are a good illustration of how these issues can arise. The mother is a national of Tanzania who arrived here in December 1995 at the age of 20. She made three unsuccessful claims for asylum, one in her own identity and two in false identities. In 1997 she met and formed a relationship with a British citizen. They have two children, a daughter, T, born in 1998 (who is now 12 years old) and a son, J, born in 2001 (who is now nine). The children are both British citizens, having been born here to parents, one of whom is a British citizen. They have lived here with their mother all their lives, nearly all of the time at the same address. They attend local schools.

3. Their parents separated in 2005 but their father continues to see them regularly, visiting approximately twice a month for 4 to 5 days at a time. In 2007 he was diagnosed with HIV. He lives on disability living allowance with his parents and his wife and is reported to drink a great deal. The tribunal nevertheless thought that there would not “necessarily be any particular practical difficulties” if the children were to go to live with him. The Court of Appeal very sensibly considered this “open to criticism as having no rational basis”. Nevertheless, they upheld the tribunal’s finding that the children could reasonably be expected to follow their mother to Tanzania: [2009] EWCA Civ 691, para 27. They also declined to hold that there was no evidence to support the tribunal’s finding that

the father would be able to visit them in Tanzania, despite his fragile health and limited means: para 32.

4. As it happens, this Court has seen another illustration of how these issues may arise, in the case of *R (WL) (Congo) v Secretary of State for the Home Department* [2010] 1 WLR 2168 (Supreme Court judgment pending). Both father and mother are citizens of the Democratic Republic of Congo. Their child, however, is a British citizen. The Secretary of State intends to deport the father under section 3(5) of the 1971 Act and also served notice of intention to deport both mother and child. There is power to deport non-citizen family members of those deported under section 3(5) but there is no power to deport citizens under that or any other provision of the 1971 Act. It is easy to see how a mother served with such a notice might think that there was such a power and that she had no choice. Fortunately, it appears that the notice was not followed up with an actual decision to deport in that case.

#### *These proceedings*

5. This mother's immigration history has rightly been described as "appalling". She made a claim for asylum on arrival in her own name which was refused in 1997 and her appeal was dismissed in 1998, shortly after the birth of her daughter. She then made two further asylum applications, pretending to be a Somali, both of which were refused. In 2001, shortly before the birth of her son, she made a human rights application, claiming that her removal would be in breach of article 8 of the European Convention on Human Rights. This was refused in 2004 and her appeal was dismissed later that year. Also in 2004 she and the children applied for leave to remain under the "one-off family concession" which was then in force. This was refused in 2006 because of her fraudulent asylum claims. Meanwhile in 2005 she applied under a different policy known as the "seven year child concession". This too was refused, for similar reasons, later in 2006 and her attempts to have this judicially reviewed were unsuccessful.

6. After the father's diagnosis in 2007, fresh representations were made. The Secretary of State accepted these as a fresh claim but rejected it early in 2008. The mother's appeal was dismissed in March 2008. However an application for reconsideration was successful. In May 2008, Senior Immigration Judge McGeachy held that the immigration judge had not considered the relationship between the children and their father (it being admitted that there was no basis on which he could have found that they could live here with him), the fact that they had been born in Britain and were then aged nine and seven and were British. It was a material error of law for the immigration judge not to have taken into account the rights of the children and the effect of the mother's removal upon them.

7. Nevertheless at the second stage of the reconsideration, the tribunal, having heard the evidence, dismissed the appeal: Appeal Number IA/01284/2008. They found that there was family life between the mother and the children and between the father and the children, although not between the parents, and also that the mother had built up a substantial private life in this country (para 5.3). Removal to Tanzania, if the children accompanied the Appellant, would substantially interfere with the relationship with their father; staying behind would substantially interfere with the relationship with their mother (para 5.4). Removing the mother would be in accordance with the law for the purpose of protecting the rights and freedoms of others. The only question was whether it would be proportionate (para 5.5).

8. The Tribunal found the mother to be seriously lacking in credibility. She had had the children knowing that her immigration status was precarious. Having her second child was “demonstrably irresponsible” (para 5.8). However, the children were innocent of their parents’ shortcomings (para 5.9). The parents now had to choose what would be best for their children: “We do not consider that it can be regarded as unreasonable for the respondent’s decision to have that effect, because the eventual need to take such a decision must have been apparent to them ever since they began their relationship and decided to have children together.” (para 5.10).

9. The Tribunal found it a “distinct and very real possibility” that the children might remain here with their father (para 5.11). This might motivate him to overcome his difficulties. People with HIV can lead ordinary lives. The daughter was of an age when many African children were separated from their parents and sent to boarding schools. The son, had he been a Muslim, would have been regarded as old enough to live with his father rather than his mother. Hence the tribunal could not see “any particular practical difficulties” if the children were to go and live with their father (para 5.15).

10. Equally, it would be “a very valid decision” for the children to go and live with their mother in Tanzania (para 5.16). It is not an uncivilised or an inherently dangerous place. Their mother must have told them about it. There were no reasons why their father should not from time to time travel to see the children there. They did not accept that either his HIV status or his financial circumstances were an obstacle. Looking at the circumstances in the round, therefore, “neither of the potential outcomes of the appellant’s removal which we have outlined above would represent such an interference with the family life of the children, or either of them, with either their mother on the one hand or their father on the other as to be disproportionate, again having regard to the importance of the removal of the appellant in pursuance of the system of immigration control in this country” (para 5.20). They had earlier said that this was “of very great importance and considerable weight must be placed upon it” (para 5.19).

11. Permission to appeal was initially refused on the basis that, even if the Tribunal had been wrong to think that the children could stay here with their father, they could live in Tanzania with their mother. Ward LJ eventually gave permission to appeal because he was troubled about the effect of their leaving upon their relationship with their father: "how are we to approach the family rights of a broken family like this?" Before the Court of Appeal, however, it was argued that the British citizenship of the children was a "trump card" preventing the removal of their mother. This was rejected as inconsistent with the authorities, and in particular with the principle that there is no "hard-edged or bright-line rule", which was enunciated by Lord Bingham of Cornhill in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41, [2009] 1 AC 1159, and is quoted in full at para 15 below.

12. Mr Manjit Gill QC, on behalf of the appellant mother, does not argue in this Court that the citizenship of the children should be dispositive in every case. But he does argue that insufficient weight is given to the welfare of all children affected by decisions to remove their parents and in particular to the welfare of children who are British citizens. This is incompatible with their right to respect for their family and private lives, considered in the light of the obligations of the United Kingdom under the United Nations Convention on the Rights of the Child. Those obligations are now (at least partially) reflected in the duty of the Secretary of State under section 55 of the Borders, Citizenship and Immigration Act 2009.

13. The Secretary of State now concedes that it would be disproportionate to remove the mother in the particular facts of this case. But she is understandably concerned about the general principles which the Border Agency and appellate authorities should apply.

#### *The domestic law*

14. This is the mother's appeal on the ground that her removal will constitute a disproportionate interference with her right to respect for her private and family life, guaranteed by article 8 of the European Convention on Human Rights:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for

the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

However, in *Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39, [2009] AC 115, the House of Lords held that both the Secretary of State and the immigration appellate authorities had to consider the rights to respect for their family life of all the family members who might be affected by the decision and not just those of the claimant or appellant in question. Lord Brown of Eaton-under-Heywood summarised the argument which the House accepted thus, at para 20:

“Together these members enjoy a single family life and whether or not the removal would interfere disproportionately with it has to be looked at by reference to the family unit as a whole and the impact of removal upon each member. If overall the removal would be disproportionate, all affected family members are to be regarded as victims.”

I added this footnote at para 4:

“To insist that an appeal to the Asylum and Immigration Tribunal consider only the effect upon other family members as it affects the appellant, and that a judicial review brought by other family members considers only the effect upon the appellant as it affects them, is not only artificial and impracticable. It also risks missing the central point about family life, which is that the whole is greater than the sum of its individual parts. The right to respect for the family life of one necessarily encompasses the right to respect for the family life of others, normally a spouse or minor children, with whom that family life is enjoyed.”

15. When dealing with the relevant principles in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41, [2009] AC 1159, Lord Bingham of Cornhill said this, at para 12:

“Thus the appellate immigration authority must make its own judgment and that judgment will be strongly influenced by the particular facts and circumstances of the particular case. The authority will, of course, take note of factors which have, or have not, weighed with the Strasbourg court. It will, for example, recognise that it will rarely be proportionate to uphold an order for

removal of a spouse if there is a close and genuine bond with the other spouse and that spouse cannot reasonably be expected to follow the removed spouse to the country of removal, or if the effect of the order is to sever a genuine and subsisting relationship between parent and child. But cases will not ordinarily raise such stark choices, and there is in general no alternative to making a careful and informed evaluation of the facts of the particular case. The search for a hard-edged or bright-line rule to be applied in the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires.”

Thus, of particular importance is whether a spouse or, I would add, a child can reasonably be expected to follow the removed parent to the country of removal.

16. Miss Monica Carss-Frisk QC, for the Secretary of State, was content with the way I put it in the Privy Council case of *Naidike v Attorney-General of Trinidad and Tobago* [2004] UKPC 49, [2005] 1 AC 538, at para 75:

“The decision-maker has to balance the reason for the expulsion against the impact upon other family members, including any alternative means of preserving family ties. The reason for deporting may be comparatively weak, while the impact on the rest of the family, either of being left behind or of being forced to leave their own country, may be severe. On the other hand, the reason for deporting may be very strong, or it may be entirely reasonable to expect the other family members to leave with the person deported.”

#### *The Strasbourg cases*

17. These questions tend to arise in two rather different sorts of case. The first relates to long-settled residents who have committed criminal offences (as it happens, this was the context of *WL (Congo) v Secretary of State for the Home Department*, above). In such cases, the principal legitimate aims pursued are the prevention of disorder and crime and the protection of the rights and freedoms of others. The Strasbourg court has identified a number of factors which have to be taken into account in conducting the proportionality exercise in this context. The leading case is now *Üner v The Netherlands* (2007) 45 EHRR 421. The starting point is, of course, that states are entitled to control the entry of aliens into their territory and their residence there. Even if the alien has a very strong residence status and a high degree of integration he cannot be equated with a national. Article 8 does not give him an absolute right to remain. However, if expulsion will interfere with the right to respect for family life, it must be necessary in a

democratic society and proportionate to the legitimate aim pursued. At para 57, the Grand Chamber repeated the relevant factors which had first been enunciated in *Boutif v Switzerland* (2001) 33 EHRR 50 (numbers inserted):

“[i] the nature and seriousness of the offence committed by the applicant;

[ii] the length of the applicant’s stay in the country from which he or she is to be expelled;

[iii] the time elapsed since the offence was committed and the applicant’s conduct during that period;

[iv] the nationalities of the various persons concerned;

[v] the applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple’s family life;

[vi] whether the spouse knew about the offence at the time when he or she entered into a family relationship;

[vii] whether there are children of the marriage, and if so, their age; and

[viii] the seriousness of the difficulties which the spouse is likely to encounter in the country to which the appellant is to be expelled.”

Significantly for us, however, the Grand Chamber in *Üner* went on, in para 58, “to make explicit two criteria which may already be implicit” in the above (again, numbers inserted):

“[ix] the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

[x] the solidity of social, cultural and family ties with the host country and with the country of destination”.

The importance of these is reinforced in the recent case of *Maslov v Austria* [2009] INLR 47, para 75 where the Grand Chamber emphasised that “for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile”.

18. The second sort of case arises in the ordinary immigration context, where a person is to be removed because he or she has no right to be or remain in the country. Once again, the starting point is the right of all states to control the entry and residence of aliens. In these cases, the legitimate aim is likely to be the economic well-being of the country in controlling immigration, although the prevention of disorder and crime and the protection of the rights and freedoms of others may also be relevant. Factors (i), (iii), and (vi) identified in *Boultif* and *Üner* are not relevant when it comes to ordinary immigration cases, although the equivalent of (vi) for a spouse is whether family life was established knowing of the precariousness of the immigration situation.

19. It was long ago established that mixed nationality couples have no right to set up home in whichever country they choose: see *Abdulaziz v United Kingdom* (1985) 7 EHRR 471. Once they have done so, however, the factors relevant to judging the proportionality of any interference with their right to respect for their family lives have quite recently been rehearsed in the case of *Rodrigues da Silva, Hoogkamer v Netherlands* (2007) 44 EHRR 729, at para 39:

“ . . . Article 8 does not entail a general obligation for a state to respect immigrants’ choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a state’s obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the person involved and the general interest [the reference is to *Gül v Switzerland* (1996) 22 EHRR 93, at [38]]. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the contracting state, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them, whether there are factors of immigration control (eg a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion [the reference is to *Solomon v The Netherlands*,

App No 44328/98, 5 September 2000]. Another important consideration will also be whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be precarious. The Court has previously held that where this is the case it is likely only to be in the most exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8 [the reference is to *Mitchell v United Kingdom*, App No 40447/98, 24 November 1998; *Ajayi v United Kingdom*, App No 27663/95, 22 June 1999].”

Despite the apparent severity of these words, the Court held that there had been a violation on the facts of the case. A Brazilian mother came to the Netherlands in 1994 and set up home with a Dutch national without ever applying for a residence permit. In 1996 they had a daughter who became a Dutch national. In 1997 they split up and the daughter remained with her father. It was eventually confirmed by the Dutch courts that it was in her best interests to remain with her father and his family in the Netherlands even if this meant that she would have to be separated from her mother. In practice, however, her care was shared between the mother and the paternal grandparents. The court concluded at para 44 that, notwithstanding the mother’s “cavalier attitude to Dutch immigration rules”,

“In view of the far reaching consequences which an expulsion would have on the responsibilities which the first applicant has as a mother, as well as on her family life with her young daughter, and taking into account that it is clearly in Rachael’s best interests for the first applicant to stay in the Netherlands, the Court considers that in the particular circumstances of the case the economic well-being of the country does not outweigh the applicants’ rights under article 8, despite the fact that the first applicant was residing illegally in the Netherlands at the time of Rachael’s birth.”

20. It is worthwhile quoting at such length from the Court’s decision in *Rodrigues de Silva* because it is a relatively recent case in which the reiteration of the court’s earlier approach to immigration cases is tempered by a much clearer acknowledgement of the importance of the best interests of a child caught up in a dilemma which is of her parents’ and not of her own making. This is in contrast from some earlier admissibility decisions in which the Commission (and on occasion the Court) seems to have concentrated more on the failings of the parents than upon the interests of the child, even if a citizen child might thereby be deprived of the right to grow up in her own country: see, for example, *O and OL v United Kingdom*, App No 11970/86, 13 July 1987; *Sorabjee v United Kingdom*, App No 23938/94, 23 October 1995; *Jaramillo v United Kingdom*, App No 24865/94, 23 October 1995, and *Poku v United Kingdom*, App No 26985/95, 15

May 1996. In *Poku*, the Commission repeated that “in previous cases, the factor of citizenship has not been considered of particular significance”. These were, however, cases in which the whole family did have a real choice about where to live. They may be contrasted with the case of *Fadele v United Kingdom*, App No 13078/87, in which British children aged 12 and 9 at the date of the decision had lived all their lives in the United Kingdom until they had no choice but to go and live in some hardship in Nigeria after their mother died and their father was refused leave to enter. The Commission found their complaints under articles 3 and 8 admissible and a friendly settlement was later reached (see Report of the Commission, 4 July 1991).

*The UNCRC and the best interests of the child*

21. It is not difficult to understand why the Strasbourg Court has become more sensitive to the welfare of the children who are innocent victims of their parents’ choices. For example, in *Neulinger v Switzerland* (2010) 28 BHRC 706, para 131, the Court observed that “the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken . . . of ‘any relevant rules of international law applicable in the relations between the parties’ and in particular the rules concerning the international protection of human rights”. The Court went on to note, at para 135, that “there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount”.

22. The Court had earlier, in paras 49 to 56, collected references in support of this proposition from several international human rights instruments: from the second principle of the United Nations Declaration on the Rights of the Child 1959; from article 3(1) of the Convention on the Rights of the Child 1989 (UNCRC); from articles 5(b) and 16(d) of the Convention on the Elimination of All Forms of Discrimination against Women 1979; from General Comments 17 and 19 of the Human Rights Committee in relation to the International Covenant on Civil and Political Rights 1966; and from article 24 of the European Union’s Charter of Fundamental Rights. All of these refer to the best interests of the child, variously describing these as “paramount”, or “primordial”, or “a primary consideration”. To a United Kingdom lawyer, however, these do not mean the same thing.

23. For our purposes the most relevant national and international obligation of the United Kingdom is contained in article 3(1) of the UNCRC:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children. The immigration authorities were at first excused from this duty, because the United Kingdom had entered a general reservation to the UNCRC concerning immigration matters. But that reservation was lifted in 2008 and, as a result, section 55 of the Borders, Citizenship and Immigration Act 2009 now provides that, in relation among other things to immigration, asylum or nationality, the Secretary of State must make arrangements for ensuring that those functions “are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom”.

24. Miss Carss-Frisk acknowledges that this duty applies, not only to how children are looked after in this country while decisions about immigration, asylum, deportation or removal are being made, but also to the decisions themselves. This means that any decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be “in accordance with the law” for the purpose of article 8(2). Both the Secretary of State and the tribunal will therefore have to address this in their decisions.

25. Further, it is clear from the recent jurisprudence that the Strasbourg Court will expect national authorities to apply article 3(1) of UNCRC and treat the best interests of a child as “a primary consideration”. Of course, despite the looseness with which these terms are sometimes used, “a primary consideration” is not the same as “the primary consideration”, still less as “the paramount consideration”. Miss Joanna Dodson QC, to whom we are grateful for representing the separate interests of the children in this case, boldly argued that immigration and removal decisions might be covered by section 1(1) of the Children Act 1989:

“When a court determines any question with respect to –

(a) the upbringing of a child; or

(b) the administration of a child’s property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration."

However, questions with respect to the upbringing of a child must be distinguished from other decisions which may affect them. The UNHCR, in its Guidelines on Determining the Best Interests of the Child (May 2008), explains the matter neatly, at para 1.1:

"The term 'best interests' broadly describes the well-being of a child. . . . The CRC neither offers a precise definition, nor explicitly outlines common factors of the best interests of the child, but stipulates that:

- the best interests must be **the determining factor for specific actions**, notably adoption (Article 21) and separation of a child from parents against their will (Article 9);
- the best interests must be a **primary** (but not the sole) **consideration for all other actions** affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3)."

This seems to me accurately to distinguish between decisions which directly affect the child's upbringing, such as the parent or other person with whom she is to live, and decisions which may affect her more indirectly, such as decisions about where one or both of her parents are to live. Article 9 of UNCRC, for example, draws a distinction between the compulsory separation of a child from her parents, which must be necessary in her best interests, and the separation of a parent from his child, for example, by detention, imprisonment, exile, deportation or even death.

26. Nevertheless, even in those decisions, the best interests of the child must be a primary consideration. As Mason CJ and Deane J put it in the case of *Minister for Immigration and Ethnic Affairs v Teoh* [1995] HCA 20, (1995) 183 CLR 273, 292 in the High Court of Australia:

"A decision-maker with an eye to the principle enshrined in the Convention would be looking to the best interests of the children as a primary consideration, asking whether the force of any other consideration outweighed it."

As the Federal Court of Australia further explained in *Wan v Minister for Immigration and Multi-cultural Affairs* [2001] FCA 568, para 32,

“[The Tribunal] was required to identify what the best interests of Mr Wan’s children required with respect to the exercise of its discretion and then to assess whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the consideration of the best interests of the children understood as a primary consideration.”

This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first. That seems, with respect, to be the correct approach to these decisions in this country as well as in Australia.

27. However, our attention was also drawn to General Comment No 6 of the United Nations Committee on the Rights of the Child (2005), on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin. The context, different from ours, was the return of such children to their countries of origin even though they could not be returned to the care of their parents or other family members (para 85). At para 86, the Committee observed:

“Exceptionally, a return to the home country may be arranged, after careful balancing of the child’s best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights based arguments such as those relating to general migration control, cannot override best interests considerations.”

28. A similar distinction between “rights-based” and “non-rights-based” arguments is drawn in the UNHCR Guidelines (see, para 3.6). With respect, it is difficult to understand this distinction in the context of article 8(2) of the ECHR. Each of the legitimate aims listed there may involve individual as well as community interests. If the prevention of disorder or crime is seen as protecting the rights of other individuals, as it appears that the CRC would do, it is not easy to see why the protection of the economic well-being of the country is not also protecting the rights of other individuals. In reality, however, an argument that the continued presence of a particular individual in the country poses a specific risk to

others may more easily outweigh the best interests of that or any other child than an argument that his or her continued presence poses a more general threat to the economic well-being of the country. It may amount to no more than that.

*Applying these principles*

29. Applying, therefore, the approach in *Wan* to the assessment of proportionality under article 8(2), together with the factors identified in Strasbourg, what is encompassed in the “best interests of the child”? As the UNHCR says, it broadly means the well-being of the child. Specifically, as Lord Bingham indicated in *EB (Kosovo)*, it will involve asking whether it is reasonable to expect the child to live in another country. Relevant to this will be the level of the child’s integration in this country and the length of absence from the other country; where and with whom the child is to live and the arrangements for looking after the child in the other country; and the strength of the child’s relationships with parents or other family members which will be severed if the child has to move away.

30. Although nationality is not a “trump card” it is of particular importance in assessing the best interests of any child. The UNCRC recognises the right of every child to be registered and acquire a nationality (Article 7) and to preserve her identity, including her nationality (Article 8). In *Wan*, the Federal Court of Australia, pointed out at para 30 that, when considering the possibility of the children accompanying their father to China, the tribunal had not considered any of the following matters, which the Court clearly regarded as important:

“(a) the fact that the children, as citizens of Australia, would be deprived of the country of their own and their mother’s citizenship, ‘and of its protection and support, socially, culturally and medically, and in many other ways evoked by, but not confined to, the broad concept of lifestyle’ (*Vaitaiki v Minister for Immigration and Ethnic Affairs* [1998] FCA 5, (1998) 150 ALR 608, 614);

(b) the resultant social and linguistic disruption of their childhood as well as the loss of their homeland;

(c) the loss of educational opportunities available to the children in Australia; and

(d) their resultant isolation from the normal contacts of children with their mother and their mother’s family.”

31. Substituting “father” for “mother”, all of these considerations apply to the children in this case. They are British children; they are British, not just through the “accident” of being born here, but by descent from a British parent; they have an unqualified right of abode here; they have lived here all their lives; they are being educated here; they have other social links with the community here; they have a good relationship with their father here. It is not enough to say that a young child may readily adapt to life in another country. That may well be so, particularly if she moves with both her parents to a country which they know well and where they can easily re-integrate in their own community (as might have been the case, for example, in *Poku*, para 20, above). But it is very different in the case of children who have lived here all their lives and are being expected to move to a country which they do not know and will be separated from a parent whom they also know well.

32. Nor should the intrinsic importance of citizenship be played down. As citizens these children have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language. They will have lost all this when they come back as adults. As Jacqueline Bhaba (in ‘The “Mere Fortuity of Birth”?’ Children, Mothers, Borders and the Meaning of Citizenship’, in *Migrations and Mobilities: Citizenship, Borders and Gender* (2009), edited by Seyla Benhabib and Judith Resnik, at p 193) has put it:

‘In short, the fact of belonging to a country fundamentally affects the manner of exercise of a child’s family and private life, during childhood and well beyond. Yet children, particularly young children, are often considered parcels that are easily movable across borders with their parents and without particular cost to the children.’

33. We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother’s appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that. And the inevitable result of removing their primary carer would be that they had to leave with her. On the facts, it is as least as strong a case as *Edore v Secretary of State for the Home Department* [2003] 1 WLR 2979, where Simon Brown LJ held that “there really is only room for one view” (para 26). In those circumstances, the Secretary of State was clearly right to concede that there could be only one answer.

*Consulting the children*

34. Acknowledging that the best interests of the child must be a primary consideration in these cases immediately raises the question of how these are to be discovered. An important part of this is discovering the child's own views. Article 12 of UNCRC provides:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

35. There are circumstances in which separate representation of a child in legal proceedings about her future is essential: in this country, this is so when a child is to be permanently removed from her family in her own best interests. There are other circumstances in which it may be desirable, as in some disputes between parents about a child's residence or contact. In most cases, however, it will be possible to obtain the necessary information about the child's welfare and views in other ways. As I said in *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64, [2009] 1 AC 1198, at para 49:

"Separate consideration and separate representation are, however, two different things. Questions may have to be asked about the situation of other family members, especially children, and about their views. It cannot be assumed that the interests of all the family members are identical. In particular, a child is not to be held responsible for the moral failures of either of his parents. Sometimes, further information may be required. If the Child and Family Court Advisory and Support Service or, more probably, the local children's services authority can be persuaded to help in difficult cases, then so much the better. But in most immigration situations, unlike many ordinary abduction cases, the interests of different family members are unlikely to be in conflict with one another. Separate legal (or other) representation will rarely be called for."

36. The important thing is that those conducting and deciding these cases should be alive to the point and prepared to ask the right questions. We have been told about a pilot scheme in the Midlands known as the Early Legal Advice Project (ELAP). This is designed to improve the quality of the initial decision, because the legal representative can assist the “caseowner” in establishing all the facts of the claim before a decision is made. Thus cases including those involving children will be offered an appointment with a legal representative, who has had time to collect evidence before the interview. The Secretary of State tells us that the pilot is limited to asylum claims and does not apply to pure article 8 claims. However, the two will often go hand in hand. The point, however, is that it is one way of enabling the right questions to be asked and answered at the right time.

37. In this case, the mother’s representatives did obtain a letter from the children’s school and a report from a youth worker in the Refugee and Migrant Forum of East London (Ramfel), which runs a Children’s Participation Forum and other activities in which the children had taken part. But the immigration authorities must be prepared at least to consider hearing directly from a child who wishes to express a view and is old enough to do so. While their interests may be the same as their parents’ this should not be taken for granted in every case. As the Committee on the Rights of the Child said, in General Comment No 12 (2009) on the Right of the Child to be Heard, at para 36:

“in many cases . . . there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child’s views are transmitted correctly to the decision-maker by the representative.”

Children can sometimes surprise one.

### *Conclusion*

38. For the reasons given, principally in paragraphs 26 and 30 to 33 above, I would allow this appeal.

### **LORD HOPE**

39. I am in full agreement with the reasons that Lady Hale has given for allowing this appeal.

40. It seems to me that the Court of Appeal fell into error in two respects. First, having concluded that the children's British citizenship did not dispose of the issues arising under article 8 (see [2010] EWCA Civ 691, paras 16-22), they did not appreciate the importance that was nevertheless to be attached to the factor of citizenship in the overall assessment of what was in the children's best interests. Second, they endorsed the view of the tribunal that the question whether it was reasonable to expect the children to go with their mother to Tanzania, looked at in the light of its effect on the father and the mother and in relation to the children, was to be judged in the light of the fact that both children were conceived in the knowledge that the mother's immigration status was precarious: para 26.

41. The first error may well have been due to the way the mother's case was presented to the Court of Appeal. It was submitted that the fact that the children were British citizens who had never been to Tanzania trumped all other considerations: para 16. That was, as the court recognised, to press the point too far. But there is much more to British citizenship than the status it gives to the children in immigration law. It carries with it a host of other benefits and advantages, all of which Lady Hale has drawn attention to and carefully analysed. They ought never to be left out of account, but they were nowhere considered in the Court of Appeal's judgment. The fact of British citizenship does not trump everything else. But it will hardly ever be less than a very significant and weighty factor against moving children who have that status to another country with a parent who has no right to remain here, especially if the effect of doing this is that they will inevitably lose those benefits and advantages for the rest of their childhood.

42. The second error was of a more fundamental kind, which lies at the heart of this appeal. The tribunal found that the mother knew full well that her immigration status was precarious before T was born. On looking at all the evidence in the round, it was not satisfied that her decisions to have her children were not in some measure motivated by a belief that having children in the United Kingdom of a British citizen would make her more difficult to remove. It accepted that the children were innocent of the mother's shortcomings. But it went on to say that the eventual need to take a decision as to where the children were to live must have been apparent both to the father and the mother ever since they began their relationship and decided to have children together. It was upon the importance of maintaining a proper and efficient system of immigration in this respect that in the final analysis the tribunal placed the greatest weight. The best interests of the children melted away into the background.

43. The Court of Appeal endorsed the tribunal's approach. When it examined the effect on the family unit of requiring the children to go with the mother to Tanzania, it held that this had to be looked at in the context of the fact that the children were conceived when the mother's immigration status was precarious:

para 26. It acknowledged that what was all-important was the effect upon the children: para 27. But it agreed with the tribunal that the decision that the children should go with their mother was a very valid decision. The question whether this was in their best interests was not addressed.

44. There is an obvious tension between the need to maintain a proper and efficient system of immigration control and the principle that, where children are involved, the best interests of the children must be a primary consideration. The proper approach, as was explained in *Wan v Minister for Immigration and Multicultural Affairs* [2001] FCA 568, para 32, is, having taken this as the starting point, to assess whether their best interests are outweighed by the strength of any other considerations. The fact that the mother's immigration status was precarious when they were conceived may lead to a suspicion that the parents saw this as a way of strengthening her case for being allowed to remain here. But considerations of that kind cannot be held against the children in this assessment. It would be wrong in principle to devalue what was in their best interests by something for which they could in no way be held to be responsible.

#### **LORD KERR**

45. I have read and agree with the judgments of Lady Hale and Lord Hope. For the reasons they have given, I too would allow the appeal.

46. It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.

47. The significance of a child's nationality must be considered in two aspects. The first of these is in its role as a contributor to the debate as to where the child's best interests lie. It seems to me self evident that to diminish a child's right to assert his or her nationality will not normally be in his or her best interests. That

consideration must therefore feature in the determination of where the best interests lie. It was also accepted by the respondent, however, (and I think rightly so) that if a child is a British citizen, this has an independent value, freestanding of the debate in relation to best interests, and this must weigh in the balance in any decision that may affect where a child will live. As Lady Hale has said, this is not an inevitably decisive factor but the benefits that British citizenship brings, as so aptly described by Lord Hope and Lady Hale, must not readily be discounted.